STATUTORY INSTRUMENTS

2025 No. 909 (L. 7)

SENIOR COURTS OF ENGLAND AND WALES

MAGISTRATES' COURTS, ENGLAND AND WALES

The Criminal Procedure Rules 2025

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The Criminal Procedure Rule Committee—

(a) revokes the Criminal Procedure Rules 2020(**a**) and makes the following Rules under section 69 of the Courts Act 2003(**b**), after consulting in accordance with section 72(1)(a) of that Act; and

(b) in making the Rules listed in the first column of this table, exercises also the powers listed in the corresponding entry in the second column—

Rule	*Power*
2.4, 2.5, 2.6, 2.7, 2.8 and 2.9	Section 67B(1) of the Courts Act 2003(**c**)
2.11	Section 2 of the Commissioners for Oaths Act 1889(**d**)
3.16	Section 86A(2) of the Courts Act 2003(**e**)
3.21	Section 86A(2) of the Courts Act 2003
3.32	Section 77(1) of the Senior Courts Act 1981(**f**)
4.1 and 4.12	Section 12(1) and (3) of the Road Traffic Offenders Act 1988(**g**)
5.5	Section 32(1) of the Criminal Appeal Act 1968(**h**)
Part 8	Section 48(1) of the Criminal Law Act 1977(**i**)
9.2	Section 86A(2) of the Courts Act 2003
Part 10	Section 2 of the Indictments Act 1915(**j**) and section 2(6) of the Administration of Justice (Miscellaneous Provisions) Act 1933(**k**)
14.6	Section 5B(9) of the Bail Act 1976(**l**)
16.4	Section 9(2A) of the Criminal Justice Act 1967(**m**)
19.3	Section 81(1) of the Police and Criminal Evidence Act 1984(**n**) and section 20(3) of the Criminal Procedure and Investigations Act 1996(**o**)
20.4	Section 132(4) of the Criminal Justice Act 2003(**p**)
Part 23	Sections 37(5) and 38(6) and (7) of the Youth Justice and Criminal Evidence Act 1999(**q**)

(**a**) S.I. 2020/759; amended by S.I. 2021/40, 2021/849, 2022/45, 2022/815, 2023/44, 2023/786, 2024/62, 2024/842 and 2025/60.

(**b**) 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).

(**c**) 2003 c. 39; section 67B was inserted by section 3 of, and paragraph 32 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).

(**d**) 1889 c. 10; section 2 was amended by section 59 of, and paragraph 15 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**e**) 2003 c. 39; section 86A was inserted by section 162 of the Policing and Crime Act 2017 (c. 3).

(**f**) 1981 c. 54; section 77 was amended by section 15 of, and paragraph 11 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 18 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 41 of, and paragraph 54 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44) and article 3 of, and paragraphs 11 and 13 of the Schedule to, S.I. 2004/2035. It is further amended by section 31 of, and paragraph 11 of Schedule 1 and Schedule 2 to, the Prosecution of Offences Act 1985 (c. 23) with effect from a date to be appointed.

(**g**) 1988 c. 53; section 12 was amended by article 3 of, and paragraphs 29 and 30 of the Schedule to, S.I. 2004/2035.

(**h**) 1968 c. 19.

(**i**) 1977 c. 45; section 48 was amended by paragraph 190 of Schedule 8 to the Courts Act 2003 (c. 39).

(**j**) 1915 c. 90; section 2 was amended by section 19 of the Criminal Justice Administration Act 1956 (c. 34) and sections 56 and 109 of, and paragraph 67 of Schedule 8 and Schedule 11 to, the Courts Act 2003 (c. 39).

(**k**) 1933 c. 36; section 2(6) was amended by Part IV of Schedule 11 to the Courts Act 1971 (c. 23), paragraph 1 of the Schedule to S.I. 2004/2035 and section 82 of the Deregulation Act 2015 (c. 20).

(**l**) 1976 c. 63; section 5B(9) was inserted by section 30 of the Criminal Justice and Public Order Act 1994 (c. 33) and amended by paragraph 183 of Schedule 8 to the Courts Act 2003 (c. 39).

(**m**) 1967 c. 80; section 9(2A) was inserted by section 80 of the Deregulation Act 2015 (c. 20).

(**n**) 1984 c. 60; section 81 was amended by paragraph 286 of Schedule 8 to the Courts Act 2003 (c. 39).

(**o**) 1996 c. 25; section 20(3) was amended by paragraph 378 of Schedule 8 to the Courts Act 2003 (c. 39).

(**p**) 2003 c. 44; section 132 was amended by article 3 of, and paragraphs 45 and 51 of the Schedule to, S.I. 2004/2035.

(**q**) 1999 c. 23; section 37(5), 38(6) and (7) were amended by section 109 of, and paragraph 384 of Schedule 8 to, the Courts Act 2003 (c. 39).

24.9	Section 16K(1) of the Magistrates' Courts Act 1980(**a**)
24.11	Section 52(4) of the Sentencing Act 2020(**b**)
24.14	Section 12(7ZA) of the Magistrates' Courts Act 1980(**c**)
24.15	Section 86A(2) of the Courts Act 2003
25.16	Section 52(4) of the Sentencing Act 2020
25.18	Section 86A(2) of the Courts Act 2003
28.4	Section 385(7) of the Sentencing Act 2020
33.5, 33.35, 33.37 and 33.38	Section 91 of the Proceeds of Crime Act 2002(**d**)
34.11	Sections 73(2) and 74(2), (3) and (4) of the Senior Courts Act 1981(**e**)
36.8	Section 87(4) of the Senior Courts Act 1981(**f**)
37.6	Section 49(1) of the Criminal Justice Act 2003
38.9	Section 73(2) of the Criminal Justice Act 2003
40.8	Section 159(6) of the Criminal Justice Act 1988(**g**)
42.8	Section 141(2) of the Sentencing Act 2020
42.14, 42.18, 42.19 and 42.20	Section 91 of the Proceeds of Crime Act 2002
44.2	Section 30(1) of the Criminal Justice Act 2003(**h**)
45.6 and 45.7	Section 52(1) of the Senior Courts Act 1981
47.4 and 47.10; 47.24 and 47.30	Paragraph 15A of Schedule 1 to the Police and Criminal Evidence Act 1984(**i**)
47.4 and 47.11 to 47.16 inclusive	Paragraph 10(2) of Schedule 5, paragraph 14(2) of Schedule 5A, paragraph 4(1) of Schedule 6 and paragraph 5(1) of Schedule 6A to the Terrorism Act 2000(**j**)
47.4 and 47.17 to 47.22 inclusive	Sections 351(2), 362(2), 369(2) and 375(1) of the Proceeds of Crime Act 2002(**k**)
47.4 and 47.23	Section 157(9) of the Extradition Act 2003(**l**)
47.24 and 47.31	Paragraph 11(5) of Schedule 5 to the Terrorism Act 2000(**m**)
47.24 and 47.32	Section 352(8) of the Proceeds of Crime Act 2002(**n**)
47.24 and 47.33	Section 160(10) of the Extradition Act 2003(**o**)
47.35 and 47.38	Section 59(13) of the Criminal Justice and Police Act 2001(**p**)
47.49	Section 74(3) of the Senior Courts Act 1981(**q**)

(**a**) 1980 c. 43; section 16K was inserted by section 3 of the Judicial Review and Courts Act 2022 (c. 35).
(**b**) 2020 c. 17.
(**c**) 1980 c. 43; section 12(7ZA) was inserted by section 81 of the Deregulation Act 2015 (c. 20).
(**d**) 2002 c. 29; section 91 was amended by section 109(1) of, and paragraph 410 of Schedule 8 to, the Courts Act 2003 (c. 39).
(**e**) 1981 c. 54; section 73(2) was amended by article 3 of, and paragraphs 11 and 12(b) of the Schedule to, S.I. 2004/2035. Section 74(2) and (3) was amended by article 3 of, and paragraphs 11 and 12(c) of the Schedule to, S.I. 2004/2035.
(**f**) 1981 c. 54; section 87(4) was amended by articles 2 and 3 of, and paragraphs 11 and 17 of the Schedule to, S.I. 2004/2035.
(**g**) 1988 c. 33; section 159(6) was amended by S.I. 2004/2035.
(**h**) 2003 c. 44; section 30 was amended by article 3 of, and paragraphs 45 and 46 of the Schedule to, S.I. 2004/2035.
(**i**) 1984 c. 60; paragraph 15A of Schedule 1 was inserted by section 82 of the Deregulation Act 2015 (c. 20).
(**j**) 2000 c. 11; paragraph 10 of Schedule 5 was amended by section 109(1) of, and paragraph 389 of Schedule 8 to, the Courts Act 2003 (c. 39) and it is further amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from a date to be appointed. Paragraph 4 of Schedule 6 was amended by section 109(1) of, and paragraph 390 of Schedule 8 to, the Courts Act 2003 (c. 39). Schedule 6A was inserted by section 3 of, and paragraph 1(1) and (3) of Part 1 of Schedule 2 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24).
(**k**) 2002 c. 29.
(**l**) 2003 c. 41; section 157(9) was inserted by section 174 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).
(**m**) 2000 c. 11; paragraph 11(5) of Schedule 5 was inserted by section 82 of the Deregulation Act 2015 (c. 20).
(**n**) 2002 c. 29; section 352(8) was inserted by section 82 of the Deregulation Act 2015 (c. 20).
(**o**) 2003 c. 41; section 160(10) was inserted by section 174 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).
(**p**) 2001 c. 16; section 59(13) was inserted by section 82 of the Deregulation Act 2015 (c. 20).
(**q**) 1981 c. 54; section 74(3) was amended by article 3 of, and paragraphs 11 and 12(c) of the Schedule to, S.I. 2004/2035. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

47.63 to 47.68 inclusive	Sections 11(1) and 18(2) of the Crime (Overseas Production Orders) Act 2019(**a**)
48.16	Section 19 of the Criminal Procedure and Investigations Act 1996(**b**)
50.17	Section 67 of the Senior Courts Act 1981(**c**)
50.23	Sections 36A(4), 36B(3), 118A(4) and 118B(3) of the Extradition Act 2003(**d**)
50.30	Sections 19(3) and 66(1) of the Senior Courts Act 1981(**e**)

These Rules may be cited as the Criminal Procedure Rules 2025 and shall come into force on 6th October 2025.

PART 1

THE OVERRIDING OBJECTIVE

Contents of this Part

The overriding objective	rule 1.1
The duty of the participants in a criminal case	rule 1.2
The application by the court of the overriding objective	rule 1.3

The overriding objective

1.1.—(1) The overriding objective of this procedural code is that criminal cases be dealt with justly.

(2) Dealing with a criminal case justly includes—

(a) acquitting the innocent and convicting the guilty;

(b) treating all participants with politeness and respect;

(c) dealing with the prosecution and the defence fairly;

(d) recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights;

(e) respecting the interests of witnesses, victims and jurors and keeping them informed of the progress of the case;

(f) dealing with the case efficiently and expeditiously;

(g) ensuring that appropriate information is available to the court when bail and sentence are considered; and

(h) dealing with the case in ways that take into account—

(i) the gravity of the offence alleged,

(ii) the complexity of what is in issue,

(iii) the severity of the consequences for the defendant and others affected, and

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(**a**) 2019 c. 5.

(**b**) 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).

(**c**) 1981 c. 54.

(**d**) 2003 c. 41; sections 36A, 36B, 118A and 118B were inserted by section 161 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

(**e**) 1981 c. 54.

(iv) the needs of other cases.

The duty of the participants in a criminal case

1.2.—(1) Each participant, in the conduct of each case, must—

(a) prepare and conduct the case in accordance with the overriding objective;

(b) comply with these Rules, practice directions and directions made by the court; and

(c) at once inform the court and all parties of any significant failure (whether or not that participant is responsible for that failure) to take any procedural step required by these Rules, any practice direction or any direction of the court. A failure is significant if it might hinder the court in furthering the overriding objective.

(2) Anyone involved in any way with a criminal case is a participant in its conduct for the purposes of this rule.

The application by the court of the overriding objective

1.3. The court must further the overriding objective in particular when—

(a) exercising any power given to it by legislation (including these Rules);

(b) applying any practice direction; or

(c) interpreting any rule or practice direction.

PART 2

UNDERSTANDING AND APPLYING THE RULES; POWERS AND DUTIES OF COURT OFFICERS AND JUSTICES' LEGAL ADVISERS

Contents of this Part

Understanding and applying the Rules

When the Rules apply rule 2.1
Definitions rule 2.2
References to Acts of Parliament and to Statutory Instruments rule 2.3

Powers of authorised court officers

Exercise of court's functions by authorised court officers: general rules rule 2.4
Exercise of functions of the Court of Appeal rule 2.5
Exercise of functions of the High Court rule 2.6
Exercise of functions of the Crown Court rule 2.7
Exercise of functions of magistrates' courts rule 2.8
Exercise of functions of a District Judge (Magistrates' Courts) in extradition cases rule 2.9
Court's power to extend time under rule 2.6 or rule 2.7 rule 2.10

Powers of court officers to take statutory declarations

Taking of statutory declarations by court officers rule 2.11

Justices' legal advisers

Duties of justices' legal adviser rule 2.12

When the Rules apply

2.1.—(1) In general, Criminal Procedure Rules apply—

(a) in all criminal cases in magistrates' courts and in the Crown Court;

(b) in extradition cases in the High Court; and

(c) in all cases in the criminal division of the Court of Appeal.

(2) If a rule applies only in one or some of those courts, the rule makes that clear.

(3) These Rules apply on and after 6th October 2025 but unless the court otherwise directs, they do not affect a right or duty existing under the Criminal Procedure Rules 2020(**a**).

[Note. The rules replaced by the first Criminal Procedure Rules (the Criminal Procedure Rules 2005(**b**)*) were revoked when those Rules came into force by provisions of the Courts Act 2003, the Courts Act 2003 (Consequential Amendments) Order 2004*(**c**) *and the Courts Act 2003 (Commencement No. 6 and Savings) Order 2004*(**d**)*. The first Criminal Procedure Rules reproduced the substance of all the rules they replaced.]*

Definitions

2.2.—(1) In these Rules, unless the context makes it clear that something different is meant:

'advocate' means a person who is entitled to exercise a right of audience in the court under section 13 of the Legal Services Act 2007(**e**);

'authorised court officer' has the meaning given by rule 2.4;

'business day' means any day except Saturday, Sunday, Christmas Day, Boxing Day, Good Friday, Easter Monday or a bank holiday;

'court' means a tribunal with jurisdiction over criminal cases. It includes a judge, recorder, District Judge (Magistrates' Court), lay justice and, when exercising their judicial powers, the Registrar of Criminal Appeals and an authorised court officer;

'court officer' means the appropriate member of the staff of a court;

'justices' legal adviser' means a person authorised under section 28 of the Courts Act 2003(**f**) to give advice about law to justices of the peace;

'legal representative' means:

(i) the person for the time being named as a party's representative in any legal aid representation order made under section 16 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**g**), or

(ii) subject to that, the person named as a party's representative in any notice for the time being given under rule 46.2 (Notice of appointment, etc. of legal representative: general rules), provided that person is entitled to conduct litigation in the court under section 13 of the Legal Services Act 2007;

'live link' means a live audio link or a live video link and:

(**a**) S.I. 2020/759; amended by S.I. 2021/40, 2021/849, 2022/45, 2022/815, 2023/44, 2023/786, 2024/62, 2024/842 and 2025/60.
(**b**) S.I. 2005/384; amended by S.I. 2006/353, 2006/2636, 2007/699, 2007/2317, 2007/3662, 2008/2076, 2008/3269 and 2009/2087.
(**c**) S.I. 2004/2035.
(**d**) S.I. 2004/2066.
(**e**) 2007 c. 29.
(**f**) 2003 c. 39; section 28 is substituted by section 3 of, and paragraph 26 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).
(**g**) 2012 c. 10.

(i) 'live audio link' means a live telephone link or other arrangement by which a person taking part in a hearing can hear, and be heard by, everyone else who is taking part and who is not in the same place as that person,

(ii) 'live video link' means a live television link or other arrangement by which a person taking part in a hearing can see and hear, and be seen and heard by, everyone else who is taking part and who is not in the same place as that person;

'live link direction' means a direction that:

(i) under section 51(1) of the Criminal Justice Act 2003(**a**) requires or permits a person to take part through a live audio link or a live video link in the proceedings listed in section 51(3) of that Act, or

(ii) under section 206A of the Extradition Act 2003(**b**) requires a person to take part through a live link in a hearing in proceedings under Part 1 or Part 2 of that Act;

'Practice Direction' means the Lord Chief Justice's Criminal Practice Directions, as amended, and 'Criminal Costs Practice Direction' means the Lord Chief Justice's Practice Direction (Costs in Criminal Proceedings), as amended;

'public interest ruling' means a ruling about whether it is in the public interest to disclose prosecution material under sections 3(6), 7A(8) or 8(5) of the Criminal Procedure and Investigations Act 1996(**c**); and

'Registrar' means the Registrar of Criminal Appeals or a court officer exercising a function of the Registrar.

(2) Special definitions and definitions of some other expressions are in the rules in which they apply.

[Note. The glossary at the end of the Rules is a guide to the meaning of certain legal expressions used in them.]

References to legislation, including these Rules

2.3.—(1) In these Rules, where a rule refers to an Act of Parliament or to subordinate legislation by title and year, subsequent references to that Act or to that legislation in the rule are shortened: so, for example, after a reference to the Criminal Procedure and Investigations Act 1996(**d**) that Act is called 'the 1996 Act'; and after a reference to the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 2011(**e**) those Regulations are called 'the 2011 Regulations'.

(2) In the courts in which these Rules apply—

(a) unless the context makes it clear that something different is meant, a reference to the Criminal Procedure Rules, without reference to a year, is a reference to the Criminal Procedure Rules in force at the date on which the event concerned occurs or occurred;

(b) a reference to the Criminal Procedure Rules may be abbreviated to 'CrimPR'; and

(c) a reference to a Part or rule in the Criminal Procedure Rules may be abbreviated to, for example, 'CrimPR Part 3' or 'CrimPR 3.5'.

(**a**) 2003 c. 44; section 51 was substituted by section 200 of the Police, Crime, Sentencing and Courts Act 2022 (c. 32).
(**b**) 2003 c. 41; section 206A was inserted by section 78 of the Policing and Crime Act 2009 (c. 26) and amended by section 208 of, and paragraph 2 of Schedule 20 to, the Police, Crime Sentencing and Courts Act 2022 (c. 32).
(**c**) 1996 c. 25; section 7A was inserted by section 37 of the Criminal Justice Act 2003 (c. 44).
(**d**) 1996 c. 25.
(**e**) S.I. 2011/209.

Exercise of court's functions by authorised court officers: general rules

2.4.—(1) This rule and rules 2.5, 2.6, 2.7, 2.8 and 2.9 provide for the exercise of relevant judicial functions within the meaning of section 67A of the Courts Act 2003(**a**)—

(a) in a court in which these Rules apply; and

(b) by a person authorised for the purpose by the Lord Chief Justice under section 67B of that Act(**b**).

(2) In this rule and in rules 2.5, 2.6, 2.7, 2.8 and 2.9—

(a) 'authorised court officer' means any such person; and

(b) a reference to an authorised court officer who is legally qualified is a reference to one who has such qualifications as are for the time being prescribed by regulations made under section 28(3) of the Courts Act 2003.

(3) No court officer may—

(a) authorise a person's committal to prison;

(b) authorise a person's arrest (but that exclusion does not apply to the issue of a warrant of arrest, whether or not endorsed for bail, to secure that a person attends court proceedings relating to an offence of which the person has been accused or convicted in a case in which no objection is made by or on behalf of that person to the issue of the warrant);

(c) grant or withhold bail, except to the extent that rule 2.6 or rule 2.8 allows;

(d) adjudicate on guilt, or on the act or omission with which a defendant is charged, except to the extent of—

(i) acquitting a defendant against whom the prosecutor offers no evidence,

(ii) convicting a defendant who pleads guilty, or

(iii) giving a prosecutor permission to withdraw a case;

(e) determine the admissibility of evidence;

(f) set ground rules for the conduct of questioning where rule 3.8(6), (7) (directions for the appropriate treatment and questioning of a witness or the defendant) applies;

(g) make findings of fact for the purpose of sentence, defer or pass sentence, impose a penalty or commit a defendant to the Crown Court for sentence;

(h) make an order for a party or other person to pay costs, unless that party or person agrees;

(i) make any other order consequent upon acquittal, conviction or a finding that the accused did the act or made the omission charged, except to the extent that rule 2.8 allows;

(j) vary, discharge, remit, remove, revoke, review or suspend a sentence, penalty or other order consequent on acquittal or conviction, except to the extent that rule 2.8 allows;

(k) order the search, confiscation, restraint, detention or seizure of property except to the extent that rule 2.8 allows;

(l) determine an appeal or reference to an appeal court, or an application for permission to appeal or refer, except to the extent that rule 2.6 allows; or

(m) determine an allegation of contempt of court.

(4) An authorised court officer may exercise a relevant judicial function for which rule 2.5, 2.6, 2.7, 2.8 or 2.9 provides—

(**a**) 2003 c. 39; section 67A is inserted by section 3 of, and paragraph 32 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).

(**b**) 2003 c. 39; section 67B is inserted by section 3 of, and paragraph 32 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).

(a) only subject to the same conditions as apply to its exercise by the court or person whose function it is; and

(b) where a party affected by the exercise of that function is entitled to make representations before its exercise, only if each such party has had a reasonable opportunity to make such representations—

(i) in writing, or

(ii) at a hearing (whether or not that party in fact attends).

(5) Unless the context makes it clear that something different is meant, provision in rule 2.5, 2.6, 2.7, 2.8 or 2.9 permitting the exercise of a relevant judicial function by an authorised court officer includes a power to decline to exercise that function.

[Note. Under section 67A of the Courts Act 2003, 'relevant judicial function' means a function of a court to which the general duty of the Lord Chancellor under section 1 of that Act applies and a judicial function of a person holding an office that entitles the person to exercise functions of such a court, but does not include in a court in which Criminal Procedure Rules apply—

(a) any function so far as its exercise involves authorising a person's committal to prison; or

(b) any function so far as its exercise involves authorising a person's arrest, except the issue of a warrant of arrest (whether or not endorsed for bail) to secure that a person attends court proceedings relating to an offence of which the person has been accused or convicted in a case in which no objection is made by or on behalf of that person to the issue of the warrant.

Under section 67B of the 2003 Act, in a court in which Criminal Procedure Rules apply the Rules may provide for the exercise of relevant judicial functions by persons who are appointed under section 2(1) of that Act and who satisfy any requirements specified in the Rules as to qualifications or experience. Such a person may exercise such a function only if authorised to do so by the Lord Chief Justice.

Section 28 of the 2003 Act provides for persons authorised by the Lord Chief Justice to give advice to justices of the peace about matters of law. Such a person may be authorised for that purpose only if appointed under section 2(1) of that Act and possessed of such qualifications as may be prescribed by regulations made under section 28. See also rule 2.2 (Definitions).]

Exercise of functions of the Court of Appeal

2.5.—(1) This rule provides for the exercise by an authorised court officer of relevant judicial functions of—

(a) the criminal division of the Court of Appeal; and

(b) the Registrar of Criminal Appeals.

(2) Subject to rule 2.4, an authorised court officer may exercise—

(a) any function of the criminal division of the Court of Appeal that may be exercised by the Registrar of Criminal Appeals; and

(b) any other judicial function of the Registrar.

(3) Where an authorised court officer exercises a function of the court—

(a) the same provision as that made by section 31A(4) or section 31C(3), as the case may be, of the Criminal Appeal Act 1968(**a**) applies as if that function had been exercised by the Registrar; and

(b) rule 36.5 (Renewing an application refused by a judge or the Registrar) applies.

(**a**) 1968 c. 19; section 31A was inserted by section 6 of the Criminal Appeal Act 1995 (c. 35) and amended by sections 87 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39) and paragraphs 86 and 88 of Schedule 36 to the Criminal Justice Act 2003 (c. 44). Section 31C was inserted by section 87 of the Courts Act 2003 (c. 39) and amended by sections 47 and 149 of, and paragraphs 1 and 12 of Schedule 8 and part 3 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4).

[Note. See also rule 2.4, which makes general rules about the exercise of judicial functions by authorised court officers.

For the functions of the criminal division of the Court of Appeal that may be exercised by the Registrar of Criminal Appeals, see sections 31A and 31B of the Criminal Appeal Act 1968(**a**)*. For other functions of the Registrar, see section 21 of that Act*(**b**)*.*

Sections 31A(4) and 31C(3) of the 1968 Act provide for the reconsideration by a judge of a decision by the Registrar to which those provisions apply.]

Exercise of functions of the High Court

2.6.—(1) This rule provides for the exercise by an authorised court officer of relevant judicial functions of the High Court in relation to its jurisdiction under the Extradition Act 2003(**c**).

(2) An authorised court officer may exercise any such function of the High Court to which the rules in Section 3 of Part 50 apply (Extradition; Appeal to the High Court), subject to—

(a) rule 2.4; and

(b) paragraph (3) of this rule.

(3) No court officer may—

(a) grant or withhold bail;

(b) impose or vary a condition of bail; or

(c) reopen a decision which determines an appeal or an application for permission to appeal,

unless paragraph (4) applies.

(4) If making a decision to which the parties have agreed in writing, an authorised court officer may—

(a) give or refuse permission to appeal;

(b) determine an appeal;

(c) grant or withhold bail; or

(d) impose or vary a condition of bail.

(5) Paragraph (6) of this rule—

(a) applies where a party wants a judge to reconsider a decision made by an authorised court officer; but

(b) does not apply where such an officer agrees to postpone the date on which the required period for extradition begins under section 36(3) of the Extradition Act 2003(**d**).

(6) Such a party must—

(a) apply for such a reconsideration as soon as reasonably practicable, and in any event no later than the earlier of—

(i) the next hearing before a judge, or

(ii) the fifth business day after the date on which notice of the decision is served on the applicant;

(b) unless the application is made at a hearing, serve the application on—

(i) the court officer, and

(ii) each other party (if any) affected by the decision; and

(c) in the application—

(**a**) 1968 c. 19; section 31B was inserted by section 87 of the Courts Act 2003 (c. 39).
(**b**) 1968 c. 19.
(**c**) 2003 c. 41.
(**d**) 2003 c. 41; section 36 was amended by section 40 of, and paragraph 81 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(i) specify the decision in issue,

(ii) explain why it is appropriate for the decision to be reconsidered and what decision the applicant thinks would be appropriate, and

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

(7) The judge may determine the application—

(a) at a hearing (which may be in public or private), or without a hearing; and

(b) in the absence of—

(i) the applicant,

(ii) each other party (if any) affected by the decision.

(8) But the judge must not determine the application in the absence of an affected party unless that party has had—

(a) such notice as the nature and urgency of the application permits; and

(b) a reasonable opportunity to make written representations.

[Note. See also—

(a) rule 2.4, which makes general rules about the exercise of judicial functions by authorised court officers;

(b) rule 2.10, which provides for extension of the time limit under this rule;

(c) rule 3.6 (Application to vary a direction); and

(d) rule 50.18 (Case management in the High Court).

For the functions of the High Court for which this rule provides, see the introductory note to Section 3 of Part 50. See also rule 50.30 for the constitution of the High Court when exercising the powers to which that Section of that Part applies.

Under section 36 of the Extradition Act 2003, where an extradition order has been made under Part 1 of the Act and the outcome of an appeal by the defendant is that he or she is to be extradited, then unless the requesting authority and the High Court agree to postpone that starting date the defendant must be removed to the requesting territory within 10 days starting with the day on which the decision of the relevant court on the appeal becomes final or proceedings on the appeal are discontinued.]

Exercise of functions of the Crown Court

2.7.—(1) This rule provides for the exercise by an authorised court officer of relevant judicial functions of the Crown Court in a criminal cause or matter.

(2) Subject to rule 2.4 and to paragraph (3) of this rule, an authorised court officer may—

(a) determine an application to extend a time limit set by a rule or by a judge, including a time limit for the conduct of confiscation proceedings, unless the effect would be—

(i) to affect the date of any hearing that has been fixed, including a trial, or

(ii) significantly to affect the progress of the case in any other way;

(b) give a live link direction under section 51 of the Criminal Justice Act 2003(**a**) for the participation of a defendant in custody in a preliminary hearing, a sentencing hearing or an enforcement hearing;

(c) exercise the court's functions listed in rule 23.2 (Appointment of advocate to cross-examine witness) and select such an advocate as that rule describes (but a court officer may not decline to select such an advocate where that rule applies);

(**a**) 2003 c. 44; section 51 was substituted by section 200 of the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

(d) issue a summons under section 80 of the Senior Courts Act 1981(**a**) in proceedings to which rule 32.2 applies (application, etc. in relation to the breach, revocation or amendment of a community or other order); and

(e) amend the local justice area named in the order on receipt of a notice from the responsible officer—

(i) in respect of a community order under paragraph 16(3) of Schedule 10 to the Sentencing Act 2020(**b**), or

(ii) in respect of a suspended sentence order under paragraph 23(3) of Schedule 16 to the 2020 Act(**c**).

(3) An authorised court officer may not exercise a function of the court in a case in which a judge so directs.

(4) Paragraph (5) of this rule applies where a party or an advocate appointed under rule 23.2 (Appointment of advocate to cross-examine witness) wants a judge to reconsider a decision made by an authorised court officer.

(5) Such a party or advocate must—

(a) apply for such a reconsideration as soon as reasonably practicable, and in any event no later than the earlier of—

(i) the next hearing before a judge, or

(ii) the tenth business day after the date on which notice of the decision is served on the applicant;

(b) unless the application is made at a hearing, serve the application on—

(i) the court officer, and

(ii) each other party (if any) affected by the decision; and

(c) in the application—

(i) specify the decision in issue,

(ii) explain why it is appropriate for the decision to be reconsidered and what decision the applicant thinks would be appropriate, and

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

(6) The judge may determine the application—

(a) at a hearing (which may be in public or private), or without a hearing; and

(b) in the absence of—

(i) the applicant,

(ii) each other party (if any) affected by the decision.

(7) But the judge must not determine the application in the absence of an affected party unless that party has had—

(a) such notice as the nature and urgency of the application permits; and

(b) a reasonable opportunity to make representations.

[Note. See also—

(a) rule 2.4, which makes general rules about the exercise of judicial functions by authorised court officers;

(b) rule 2.10, which provides for extension of the time limit under this rule; and

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(**a**) 1981 c. 54; section 80 was amended by section 41 of, and paragraph 54 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44).

(**b**) 2020 c. 17; paragraph 16 of Schedule 10 was amended by section 151 of the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

(**c**) 2020 c. 17; paragraph 23 of Schedule 16 was amended by section 151 of the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

(c) rule 3.6 (Application to vary a direction).

For the constitution and powers of the Crown Court, see the note to rule 25.1 (Trial and sentence in the Crown Court; When this Part applies).]

Exercise of functions of a magistrates' court

2.8.—(1) This rule provides for the exercise by an authorised court officer of relevant judicial functions of a magistrates' court in a criminal cause or matter.

(2) Subject to rule 2.4 and to paragraph (12) of this rule, an authorised court officer may—

(a) fix, cancel or vary the date, time or place for a hearing, including a trial, or adjourn a hearing;

(b) adjourn, remit or transfer proceedings from one local justice area to another;

(c) determine an application to extend a time limit set by a rule or by the court, unless the effect would be—

(i) to affect the date of any hearing that has been fixed, including a trial, or

(ii) significantly to affect the progress of the case in any other way;

(d) issue a summons at the request of a public prosecutor, or under section 16B of the Magistrates' Courts Act 1980(**a**) (Cases not tried in accordance with section 16A) or section 83 of that Act(**b**) (Process for securing attendance of offender);

(e) give a prosecutor permission to withdraw a case;

(f) grant bail where the defendant already is on bail and—

(i) the conditions, if any, to which that bail is subject will remain the same, or

(ii) bail conditions will be varied or imposed with both parties' agreement;

(g) give consent for another magistrates' court to deal with a defendant for an offence in respect of which the defendant, when an adult, was discharged conditionally;

(h) order a convicted defendant to produce his or her driving licence;

(i) require a statement of the defendant's assets and other financial circumstances;

(j) amend an attendance centre order to—

(i) vary the day or hour specified in that order for the defendant's first attendance, or

(ii) substitute an alternative centre;

(k) amend the local justice area or responsible officer named in an order of the court;

(l) amend a sentence or order by requiring it to be completed in Northern Ireland or Scotland;

(m) extend the time for service of a statutory declaration to which applies—

(i) rule 44.2 (Statutory declaration of ignorance of proceedings), or

(ii) rule 29.4 (Statutory declaration to avoid fine after fixed penalty notice);

(n) fix a later time at which a defendant must attend court for the purposes of an enquiry or hearing under section 82 of the Magistrates' Courts Act 1980(**c**) (Restriction on power to impose imprisonment for default);

(**a**) 1980 c. 43; section 16B was inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2).

(**b**) 1980 c. 43; section 83 was amended by articles 46 and 47 of S.I. 2006/1737 and sections 97(2) and 106 of, and Part V (table 8) of Schedule 15 to, the Access to Justice Act 1999 (c. 22).

(**c**) 1980 c. 43; section 82 was amended by section 77 of, and paragraph 52 of Schedule 14 to, the Criminal Justice Act 1982 (c. 48), sections 61 and 123 of, and paragraphs 1 and 2 of Schedule 8 to, the Criminal Justice Act 1988 (c. 33), section 55 of and paragraph 10 of Schedule 4 to the Crime (Sentences) Act 1997 (c. 43), paragraph 220 of Schedule 8 to the Courts Act 2003 (c. 39), section 62 of, and paragraphs 45 and 51 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15) and section 179 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12) and section 54 of, and paragraphs 2 and 3 of Schedule 12 to, the Criminal Justice and Courts Act 2015 (c. 2). It is further amended by paragraphs 58 and 63 of Part II of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43) and Part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from dates to be appointed.

(o) conduct a means enquiry;

(p) make a collection order;

(q) issue a warrant of control;

(r) extend the time for payment of a fine or sum to which Part 30 (Enforcement of fines and other orders for payment) applies;

(s) vary an order for the payment by instalments of such a fine or sum;

(t) make a transfer of fine order;

(u) make a disclosure order under section 125CA Magistrates' Courts Act 1980(**a**) (Power to make disclosure order) for the purposes of securing the execution of a warrant;

(v) make an attachment of earnings order;

(w) make or withdraw an application for deductions to be made from a defendant's benefit payments; and

(x) take any step listed in paragraph 38 of Schedule 5 to the Courts Act 2003(**b**) (range of further steps available against defaulters).

(3) In addition to the functions listed in paragraph (2), subject to rule 2.4 and to paragraph (12) of this rule an authorised court officer who is legally qualified may exercise the other functions of a magistrates' court listed in paragraphs (4) to (11).

(4) In connection with the rules about general matters (Parts 1 to 6)—

(a) exercising the powers to which section 50 of the Crime and Disorder Act 1998(**c**) (Early administrative hearings) refers, where that section applies and subject to the restrictions that it contains;

(b) giving, varying or revoking a live link direction under sections 51 and 52 of the Criminal Justice Act 2003(**d**) for the participation of a defendant in custody in a preliminary hearing, a sentencing hearing or an enforcement hearing;

(c) determining an application to extend a time limit set by a rule or by the court;

(d) giving, varying or revoking an order for separate or joint trials in respect of two or more defendants or two or more offences, if all parties agree;

(e) giving, varying or revoking directions for the conduct of proceedings, including—

(i) the timetable for the case,

(ii) the attendance of the parties,

(iii) the service of documents (including summaries of any legal arguments relied on by the parties),

(iv) the manner in which evidence is to be given, insofar as this rule makes no other provision and except the making, varying or revocation of a witness anonymity order;

(f) directing the correction of a court record under rule 5.4(4) (correction of inaccuracy in court record);

(**a**) 1980 c. 43; section 125CA was inserted by section 28 of the Domestic Violence, Crime and Victims Act 2004 (c. 28) and amended by section 62 of, and paragraphs 45 and 60 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**b**) 2003 c. 39; paragraph 38 of Schedule 5 was amended by articles 2, 4 and 26 of S.I. 2006/1737, section 62 of, and paragraphs 148 and 149 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15), section 80 of the Criminal Justice and Immigration Act 2008 (c. 4) and section 88 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**c**) 1998 c. 37; section 50 was amended by section 106 of, and Schedule 15 to, the Access to Justice Act 1999 (c. 22), sections 41 and 332 of, and paragraphs 15 and 16 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), regulation 8 of S.I. 2006/2493 and section 39 of, and paragraphs 46 and 47 of Schedule 5 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 3 of, and paragraphs 20 and 22 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).

(**d**) 2003 c. 44; section 51 was substituted by section 200 of, and section 52 was substituted by paragraph 1 of Schedule 20 to, the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

(g) where rule 5.10 applies (Request or application determined by the court)—

(i) directing service of a request under rule 5.10(2)(a)(ii) (service on a person not specified by the rule),

(ii) extending the period for objection under rule 5.10(3), and

(iii) determining a request referred to the court under rule 5.9(7) (Request for information by a party or person directly affected by a case) where no notice of objection is given within the time for which rule 5.10(3) provides;

(h) imposing a reporting restriction under section 45 of the Youth Justice and Criminal Evidence Act 1999(**a**) (identity of a person under 18) where there is no objection to the order;

(i) giving permission for proceedings to be recorded; and

(j) asking a court security officer to remove a person from a courtroom.

(5) In connection with the rules about preliminary proceedings (Parts 7 to 12)—

(a) issuing a summons and giving directions for service;

(b) under section 4 of the Summary Jurisdiction (Process) Act 1881(**b**), endorsing a summons or warrant issued by a court in Scotland;

(c) giving a prosecutor permission to withdraw a charge;

(d) dismissing a prosecution where the prosecutor offers no evidence;

(e) amending a charge; and

(f) sending a defendant to the Crown Court for trial where the only condition for sending is—

(i) that prescribed by section 51(2)(a), of the Crime and Disorder Act 1998(**c**) (offence triable only on indictment other than one in respect of which notice is given under section 51B or 51C of that Act(**d**)), or

(ii) the service of a notice under section 51B or 51C of that Act (prosecutor's notice requiring sending for trial in a case of serious or complex fraud or a case in which a child is to be called as a witness).

(6) In connection with the rules about custody and bail (Parts 13 and 14)—

(a) issuing or withdrawing a warrant for a person's arrest to secure that the person attends court proceedings relating to an offence of which the person has been accused or convicted in a case in which no objection is made by or on behalf of that person to the issue of the warrant; and

(b) granting bail where—

(i) the defendant is present,

(ii) the prosecutor agrees to the grant of bail, and

(iii) the conditions, if any, to which that bail will be subject will remain the same as before, or will be varied or imposed with the parties' agreement.

(7) In connection with the rules about evidence (Parts 16 to 23)—

(a) requiring a person who has made a written statement to attend before the court to give evidence;

(**a**) 1999 c. 23.

(**b**) 1881 c. 24.

(**c**) 1998 c. 37; section 51 was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 52 of the Criminal Justice and Courts Act 2015 (c. 2).

(**d**) 1998 c. 37; sections 51B and 51C were inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 51B was amended by section 50 of, and paragraph 69 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11), paragraphs 46 and 48 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and article 3 of, and paragraphs 14 and 15 of Schedule 2 to, S.I. 2014/834. Section 51C was modified by section 63 of, and paragraph 36 of Schedule 6 to, the Serious Crime Act 2007 (c. 27) and amended by regulations 8 and 9 of S.I. 2016/244.

(b) issuing a witness summons and giving directions for its service; and

(c) exercising the court's functions listed in rule 23.2 (Appointment of advocate to cross-examine witness) and appointing such an advocate as that rule describes (but a court officer may not decline to appoint such an advocate where that rule applies).

(8) In connection with the rules about trial (Parts 24 to 27)—

(a) convicting a defendant who has pleaded guilty;

(b) requesting a pre-sentence report where a defendant pleads guilty; and

(c) directing the commissioning of a medical report.

(9) In connection with the rules about appeal (Parts 34 to 44)—

(a) stating a case for the opinion of the High Court where the decision under appeal was made by an authorised court officer; and

(b) requiring the appellant to enter into a recognizance under section 114 of the Magistrates' Courts Act 1980(**a**) on an application to state a case for the opinion of the High Court.

(10) In connection with the rules about costs (Part 45)—

(a) making or varying an order for a party to pay costs, if both parties agree;

(b) making or varying an order for another person to pay costs, if that person agrees; and

(c) making a costs order to which rule 45.4 (Costs out of central funds) applies.

(11) In connection with the rules about other proceedings (Parts 46 to 50)—

(a) making a legal aid representation order on an appeal against a refusal of legal aid (but a court officer may not decline to make such an order); and

(b) determining an application for a change of legal representative.

(12) An authorised court officer who is not a justices' legal adviser may not exercise a function of the court in a case in which a District Judge (Magistrates' Courts), a lay justice or a justices' legal adviser so directs.

[Note. See also—

(a) rule 2.4, which makes general rules about the exercise of judicial functions by authorised court officers; and

(b) rule 3.6 (Application to vary a direction).

Under section 148 of the Magistrates' Courts Act 1980(**b**)*, the expression 'magistrates' court' means any justice or justices of the peace acting under any enactment or by virtue of their commission or under the common law. For a court's power to try an allegation of an offence, see the note to rule 24.1 (Trial and sentence in a magistrates' court; When this Part applies).*

Under section 50 of the Crime and Disorder Act 1998(**c**)*, where a defendant has been charged with an offence at a police station the magistrates' court before whom he or she appears or is brought for the first time in relation to the charge may consist of a single justice; and where on such an occasion the powers of a single justice are exercised by an authorised court officer that court officer may not remand the defendant in custody or, without the consent of the prosecutor and the defendant, remand the defendant on bail on conditions other than those (if any) previously imposed.*

(**a**) 1980 c. 43; section 114 was amended by section 90 of, and paragraphs 95 and 113 of Schedule 13 to, the Access to Justice Act 1999 (c. 22) and section 109 of, and paragraph 235 of Schedule 8 to, the Courts Act 2003 (c. 39). It is further amended by section 3 of, and paragraphs 5 and 7 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c 33).

(**b**) 1980 c. 43; section 148 was amended by section 109 of, and paragraph 248 of Schedule 8 to, the Courts Act 2003 (c. 39).

(**c**) 1998 c. 37; section 50 was amended by section 106 of, and Schedule 15 to, the Access to Justice Act 1999 (c. 22), sections 41 and 332 of, and paragraphs 15 and 16 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), regulation 8 of S.I. 2006/2493 and section 39 of, and paragraphs 46 and 47 of Schedule 5 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 3 of, and paragraphs 20 and 22 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).

Under section 8B(3) of the Magistrates' Courts Act 1980(**a**)*, a magistrates' court may discharge or vary (or further vary) a pre-trial ruling within the meaning of section 8A of that Act*(**b**) *if the court has given the parties an opportunity to be heard and if, among other things, there has been a material change of circumstances since the ruling was made or, if a previous application has been made, since the application (or last application) was made.*

Under section 53(4) of the Courts Act 2003(**c**)*, a court security officer acting in the execution of that officer's duty may remove any person from a courtroom at the request of a judge or a justice of the peace.]*

Exercise of functions of a District Judge (Magistrates' Courts) in extradition cases

2.9.—(1) This rule provides for the exercise by an authorised court officer of relevant judicial functions of a District Judge (Magistrates' Courts) in a case to which Part 50 (Extradition) applies.

(2) Subject to rule 2.4, an authorised court officer who is legally qualified may—

(a) fix, cancel or vary the date, time or place for a hearing, including an extradition hearing; and

(b) determine an application to extend a time limit set by a rule or by the court, unless the effect would be—

(i) to affect the date of any hearing that has been fixed, including an extradition hearing, or

(ii) significantly to affect the progress of the case in any other way.

(3) An authorised court officer who is not a justices' legal adviser may not exercise a function of the court in a case in which a District Judge (Magistrates' Courts) or a justices' legal adviser so directs.

[Note. See also—

(a) rule 2.4, which makes general rules about the exercise of judicial functions by authorised court officers;

(b) rule 3.6 (Application to vary a direction); and

(c) rule 50.4 (Case management in the magistrates' court and duty of court officer).]

Court's power to extend time under rule 2.6 or rule 2.7

2.10.—(1) The court may extend (even after it has expired) a time limit under rule 2.6 (Exercise of functions of the High Court) or rule 2.7 (Exercise of functions of the Crown Court).

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

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

(b) explain the delay.

POWERS OF COURT OFFICERS TO TAKE STATUTORY DECLARATIONS

Taking of statutory declarations by court officers

2.11.—(1) This rule applies to a statutory declaration required by—

(a) rule 29.4 (Statutory declaration to avoid fine after fixed penalty notice); or

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(**a**) 1980 c. 43; section 8B was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by paragraph 51 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

(**b**) 1980 c. 43; section 8A was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by S.I. 2006/2493 and paragraphs 12 and 14 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

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

(b) rule 44.2 (Statutory declaration of ignorance of proceedings).

(2) A court officer may take a statutory declaration to which this rule applies if that officer is—

(a) a justices' legal adviser;

(b) nominated for the purpose by a justices' legal adviser; or

(c) authorised to exercise the function to which rule 2.8(2)(m) refers (extending time for the service of a statutory declaration).

[Note. Section 2 of the Commissioners for Oaths Act 1889(**a**) *allows rules that regulate the procedure of a court to authorise the taking of a statutory declaration by an officer of that court.]*

JUSTICES' LEGAL ADVISERS

Duties of justices' legal adviser

2.12.—(1) This rule applies in relation to a magistrates' court, including a youth court, that comprises a lay justice or lay justices.

(2) A justices' legal adviser—

(a) must provide the court with any legal advice that it needs to carry out its functions, whether the court asks for that advice or not, including advice about—

(i) questions of law,

(ii) questions of mixed law and fact,

(iii) matters of practice and procedure,

(iv) relevant judicial decisions that bind the court,

(v) the process to be followed to reach a decision,

(vi) the process to be followed when sentencing,

(vii) the range of penalties and orders available when sentencing and the matters to be taken into account, in accordance with any sentencing guideline that applies, and

(viii) any other matter relevant to the case before the court;

(b) must allow the parties, if present, an opportunity to make representations to the court about that advice;

(c) may ask questions of a party or witness on the court's behalf to clarify representations and evidence;

(d) if necessary must assist the court with the formulation and recording of reasons for its decisions; and

(e) may make announcements on the court's behalf, other than an announcement of—

(i) an allocation or sending decision,

(ii) an indication of likely sentence, or

(iii) a verdict or sentence.

(3) To provide the legal advice required by paragraph (2)(a) a justices' legal adviser must—

(a) if necessary, attend the members of the court outside the courtroom; and

(b) in that event, inform the parties, if present, of any such advice given there.

(4) A justices' legal adviser must assist a party who has no legal representative—

(a) to understand what the court requires and why;

(b) to provide information required by the court to prepare for trial or to carry out its other functions; and

(**a**) 1889 c. 10; section 2 was amended by section 59 of, and paragraph 15 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(c) if necessary, to make representations to the court or to give evidence.

(5) In performing the functions for which these Rules provide a justices' legal adviser—

(a) must avoid the appearance of advocacy for a party;

(b) must adhere to the same principles that apply to courts of independence, impartiality, integrity, propriety, competence, diligence and ensuring fair treatment; and

(c) may consult with other justices' legal advisers.

[Note. Section 28 of the Courts Act 2003(**a**) *provides for persons authorised by the Lord Chief Justice to give advice to justices of the peace about matters of law. Such a person may be authorised for that purpose only if appointed under section 2(1) of that Act and possessed of such qualifications as may be prescribed. Section 29 of the 2003 Act*(**b**) *provides that the Lord Chief Justice may give directions to such a person but that, apart from that, such a person is not subject to the direction of the Lord Chancellor or anyone else when exercising functions under section 28.*

See also rule 2.2 (Definitions).

The following rules impose specific duties on a justices' legal adviser in addition to those listed in this rule—

(a) rule 9.4 (duty of justices' legal adviser during allocation and sending for trial);

(b) rule 14.3 (duty of justices' legal adviser in proceedings about bail and custody time limits);

(c) rule 24.14 (duty of justices' legal adviser during trial and sentence in a magistrates' court);

(d) rule 30.2 ((duty of justices' legal adviser in proceedings about the enforcement of fines and other orders for payment);

(e) rule 35.4 (duty of justices' legal adviser on an application to a magistrates' court to state a case for the High Court); and

(f) rule 47.25 (duty of justices' legal adviser on an application to a magistrates' court for a search warrant).]

PART 3

CASE MANAGEMENT

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(**a**) 2003 c. 39; section 28 was substituted by section 3 of, and paragraphs 25 and 26 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).

(**b**) 2003 c. 39; section 29 was substituted by section 3 of, and paragraphs 25 and 26 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).

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GENERAL RULES

When this Part applies

3.1.—(1) Rules 3.1 to 3.15 apply to the management of each case in a magistrates' court and in the Crown Court (including an appeal to the Crown Court) until the conclusion of that case.

(2) Rules 3.16 to 3.18 apply where the case must be tried in a magistrates' court, or the court orders trial there.

(3) Rules 3.19 to 3.34 apply where—

(a) the defendant is sent to the Crown Court for trial;

(b) a High Court or Crown Court judge gives permission to serve a draft indictment; or

(c) the Court of Appeal orders a retrial.

(4) Rules 3.35 to 3.39 apply where the court can give a live link direction.

[Note. Rules that apply to procedure in the Court of Appeal are in Parts 36 to 42 of these Rules. Rules that apply to procedure in extradition proceedings are in Part 50 of these Rules: see in particular rules 50.3, 50.4, 50.17 and 50.18.

At the first hearing in a magistrates' court the court may (and in some cases must) order trial in that court, or may (and in some cases must) send the defendant to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998(**a**)*. See Part 9 (Allocation and sending for trial) for the procedure. The decision depends upon—*

(a) the classification of the offence (and the general rule, subject to exceptions, is that an offence classified as triable only on indictment must be sent to the Crown Court for trial; an offence classified as triable only summarily must be tried in a magistrates' court; and an offence classified as triable either way, on indictment or summarily, must be allocated to one or the other court for trial, subject to the defendant's right to choose Crown Court trial: see in particular sections 50A, 51 and 51A of the 1998 Act(**b**) *and section 19 of the Magistrates' Courts Act 1980*(**c**)*);*

(b) the defendant's age (and the general rule, subject to exceptions, is that an offence alleged against a defendant under 18 must be tried in a magistrates' court sitting as a youth court: see in particular sections 24 and 24A of the 1980 Act(**d**)*);*

(c) whether the defendant is awaiting Crown Court trial for another offence;

(d) whether another defendant, charged with the same offence, is awaiting Crown Court trial for that offence;

(e) in some cases (destroying or damaging property; aggravated vehicle taking), whether the value involved is more or less than £5,000; and

(f) in a case of low-value shoplifting, whether the defendant chooses Crown Court trial: see section 22A of the 1980 Act(**e**)*.*

Under paragraph 2(1) of Schedule 17 to the Crime and Courts Act 2013(**f**) *and section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933*(**g**)*, the Crown Court may give permission to serve a draft indictment where it approves a deferred prosecution agreement. See Part 11 for the rules about that procedure and Part 10 for the rules about indictments.*

The procedure for applying for the permission of a High Court judge to serve a draft indictment is in rule 10.9 (Application to a High Court judge for permission to serve a draft indictment).

(**a**) 1998 c. 37; section 51 was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4). Section 51A was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 6 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**b**) 1998 c. 37; section 50A was inserted by paragraphs 15 and 17 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**c**) 1980 c. 43; section 19 was substituted by paragraphs 1 and 5 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by sections 144, 177 and 178 of, and paragraph 4 of Schedule 17, paragraph 80 of Schedule 21 and Part 5 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).

(**d**) 1980 c. 43; section 24 was amended by paragraph 47 of Schedule 14 to the Criminal Justice Act 1982 (c. 48), sections 17, 68 and 101 of, and paragraph 6 of Schedule 8 and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), paragraph 40 of Schedule 10, and Schedule 11, to the Criminal Justice and Public Order Act 1994 (c. 33), sections 47 and 119 of, and paragraph 40 of Schedule 8, to the Crime and Disorder Act 1998 (c. 37), paragraph 64 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 42 of, and paragraphs 1 and 9 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44) and sections 49 and 65 of, and paragraph 1 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38). Section 24A was inserted by paragraphs 1 and 10 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**e**) 1980 c. 43; section 22A was inserted by section 176 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12) and amended by section 52 of the Criminal Justice and Courts Act 2015 (c. 2).

(**f**) 2013 c. 22.

(**g**) 1933 c. 36; section 2 was amended by Part IV of Schedule 11 to the Courts Act 1971 (c. 23), Schedule 5 to the Senior Courts Act 1981 (c. 54), Schedule 2 to the Prosecution of Offences Act 1985 (c. 23), paragraph 1 of Schedule 2 to the Criminal Justice Act 1987 (c. 38), paragraph 10 of Schedule 15 to the Criminal Justice Act 1988 (c. 33), paragraph 8 of Schedule 6 to the Criminal Justice Act 1991 (c. 53), Schedule 1 to the Statute Law (Repeals) Act 1993 (c. 50), paragraph 17 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25), paragraph 5 of Schedule 8 to the Crime and Disorder Act 1998 (c. 37), paragraph 34 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), paragraph 1 of the Schedule to S.I. 2004/2035, section 12 of, and paragraph 7 of Schedule 1 to, the Constitutional Reform Act 2005 (c. 4), sections 116 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25), paragraph 32 of Schedule 17 to the Crime and Courts Act 2013 (c. 22) and section 82 of the Deregulation Act 2015 (c. 20).

The Court of Appeal may order a retrial under section 8 of the Criminal Appeal Act 1968(**a**) *(on a defendant's appeal against conviction) or under section 77 of the Criminal Justice Act 2003*(**b**) *(on a prosecutor's application for the retrial of a serious offence after acquittal). Section 8 of the 1968 Act, section 84 of the 2003 Act and rules 27.6 and 39.14 require the arraignment of a defendant within 2 months.]*

The duty of the court

3.2.—(1) The court must further the overriding objective by actively managing the case.

(2) Active case management includes—

(a) the early identification of the real issues;

(b) the early identification of the needs of witnesses;

(c) achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;

(d) monitoring the progress of the case and compliance with directions;

(e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;

(f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;

(g) encouraging the participants to co-operate in the progression of the case; and

(h) making use of technology.

(3) The court must actively manage the case by giving any direction appropriate to the needs of that case as early as possible.

(4) Where appropriate live links are available, making use of technology for the purposes of this rule includes giving a live link direction for a person's participation—

(a) under a power to which rule 3.35 applies (Live link direction: exercise of court's powers); and

(b) whether an application for such a direction is made or not.

(5) At the first hearing in a case the court must require a defendant who is present—

(a) to provide—

(i) the defendant's name and date of birth; and

(ii) at least one address at which documents may be served on the defendant under rule 4.4 (Service by leaving or posting a document), including any address at which the defendant resides, in order to facilitate effective communication between the court and the defendant; and

(b) further to assist communication between the court and the defendant, to provide any—

(i) electronic address by means of which written messages may be sent to the defendant, and

(ii) telephone number by means of which oral messages may be given to or left for the defendant.

(6) At any hearing after the first in a case the court may require a defendant who is present to provide or confirm the information required under paragraph (5).

(**a**) 1968 c. 19; section 8 was amended by section 12 of, and paragraph 38 of Schedule 2 to, the Bail Act 1976 (c. 63), section 56 of, and Part IV of Schedule 11 to, the Courts Act 1971 (c. 23), section 65 of, and paragraph 36 of Schedule 3 to, the Mental Health (Amendment) Act 1982 (c. 51), section 148 of, and paragraph 23 of Schedule 4 to, the Mental Health Act 1983 (c. 20), section 43 of the Criminal Justice Act 1988 (c. 33), section 168 of, and paragraph 19 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 58 of the Access to Justice Act 1999 (c. 22), sections 41 and 332 of, and paragraph 43 of Schedule 3 to, and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and section 32 of, and paragraph 2 of Schedule 4 to, the Mental Health Act 2007 (c. 12).

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

(7) Information required under paragraph (5)(a) must be provided in public unless the court otherwise directs.

(8) If the defendant fails to comply with a requirement to provide name and date of birth—

(a) the court that imposed the requirement—

(i) may invite the prosecutor there and then to start a prosecution in respect of that failure, in accordance with the rules in Part 7 (Starting a prosecution in a magistrates' court),

(ii) must apply to any such prosecution the rules in Part 24 (Trial and sentence in a magistrates' court), and

(iii) in any such prosecution may receive evidence from court staff but must not, as a general rule, receive evidence from the defendant's legal representative (if any) or from a member of the court; and

(b) for the purposes of this paragraph the rules in Parts 7 and 24 apply in the Crown Court as well as in a magistrates' court.

[Note. Under section 51 of the Criminal Justice Act 2003(**a**)*, the court may require or permit any person to take part through a live audio or video link in the pre-trial, trial, sentencing, enforcement and appeal proceedings listed in that section. Under section 52A of the Act*(**b**)*, a person who takes part in accordance with a live link direction is to be treated as present in court.*

Under section 86A of the Courts Act 2003(**c**)*, Criminal Procedure Rules must specify stages of proceedings at which the court must require the defendant to provide name and date of birth and may specify other stages of proceedings at which such a requirement may be imposed. Under section 86A(3) a person commits an offence if, without reasonable excuse, that person fails to comply with such a requirement, whether by providing false or incomplete information or by providing no information. Under section 86A(6) the court before which a person is required to provide that information may deal with any suspected such offence at the same time as dealing with the offence for which the person was already before the court.]*

The duty of the parties

3.3.—(1) Each party must—

(a) actively assist the court in fulfilling its duty under rule 3.2, without or if necessary with a direction; and

(b) apply for a direction if needed to further the overriding objective.

(2) Active assistance for the purposes of this rule includes—

(a) at the beginning of the case, communication between the prosecutor and the defendant at the first available opportunity and in any event no later than the beginning of the day of the first hearing;

(b) after that, communication between the parties and with the court officer until the conclusion of the case;

(c) by such communication establishing, among other things—

(i) whether the defendant is likely to plead guilty or not guilty,

(ii) what is agreed and what is likely to be disputed,

(iii) what information, or other material, is required by one party of another, and why, and

(iv) what is to be done, by whom, and when (without or if necessary with a direction);

(**a**) 2003 c. 44; section 51 was substituted by section 200 of the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

(**b**) 2003 c. 44; section 52A was inserted by paragraph 1 of Schedule 20 to the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

(**c**) 2003 c. 39; section 86A was inserted by section 162 of the Policing and Crime Act 2017 (c. 3).

(d) reporting on that communication to the court—

(i) at the first hearing, and

(ii) after that, as directed by the court;

(e) alerting the court to any reason why—

(i) a live link direction should not be given, or

(ii) such a direction should be varied or rescinded;

(f) alerting the court to any potential impediment to the defendant's effective participation in the trial;

(g) alerting the court to any potential need for a witness to be accompanied while giving evidence, and in that event—

(i) identifying a proposed companion,

(ii) naming that person, if possible, and

(iii) explaining why that person would be an appropriate companion for the witness, including the witness' own views; and

(h) alerting the court to any related family proceedings or anticipated such proceedings as soon as reasonably practicable after becoming aware of them.

[Note. See also rule 3.8(7) (Case preparation and progression) about the participation of a witness companion.]

Case progression officers and their duties

3.4.—(1) At the beginning of the case each party must, unless the court otherwise directs—

(a) nominate someone responsible for progressing that case; and

(b) tell other parties and the court who that is and how to contact that person.

(2) In fulfilling its duty under rule 3.2, the court must where appropriate—

(a) nominate a court officer responsible for progressing the case; and

(b) make sure the parties know who that is and how to contact that court officer.

(3) In this Part a person nominated under this rule is called a case progression officer.

(4) A case progression officer must—

(a) monitor compliance with directions;

(b) make sure that the court is kept informed of events that may affect the progress of that case;

(c) make sure that he or she can be contacted promptly about the case during ordinary business hours;

(d) act promptly and reasonably in response to communications about the case; and

(e) if he or she will be unavailable, appoint a substitute to fulfil his or her duties and inform the other case progression officers.

The court's case management powers

3.5.—(1) In fulfilling its duty under rule 3.2 the court may give any direction and take any step actively to manage a case unless that direction or step would be inconsistent with legislation, including these Rules.

(2) In particular, the court may—

(a) nominate a judge, magistrate or justices' legal adviser to manage the case;

(b) give a direction on its own initiative or on application by a party;

(c) ask or allow a party to propose a direction;

(d) receive applications, notices, representations and information by letter, by live link, by email or by any other means of electronic communication, and conduct a hearing by live link or other such electronic means;

(e) give a direction—

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

(ii) without a hearing;

(f) fix, postpone, bring forward, extend, cancel or adjourn a hearing;

(g) shorten or extend (even after it has expired) a time limit fixed by a direction;

(h) require that issues in the case should be—

(i) identified in writing,

(ii) determined separately, and decide in what order they will be determined;

(i) specify the consequences of failing to comply with a direction;

(j) request information from a court dealing with family proceedings by—

(i) making the request itself, or

(ii) directing the court officer or a party to make the request on the criminal court's behalf; and

(k) supply information to a court dealing with family proceedings as if a request had been made under rule 5.8(7) (Request for information about a case) by—

(i) supplying the information itself, or

(ii) directing the court officer or a party to supply that information on the criminal court's behalf.

(3) A magistrates' court may give a direction that will apply in the Crown Court if the case is to continue there.

(4) The Crown Court may give a direction that will apply in a magistrates' court if the case is to continue there.

(5) Any power to give a direction under this Part includes a power to vary or revoke that direction.

(6) If a party fails to comply with a rule or a direction, the court may—

(a) fix, postpone, bring forward, extend, cancel or adjourn a hearing;

(b) exercise its powers to make a costs order; and

(c) impose such other sanction as may be appropriate.

(7) In deciding whether to postpone, cancel or adjourn a hearing the court must take into account—

(a) the likelihood that delay would be contrary to the court's duty under rule 1.3 (The application by the court of the overriding objective);

(b) the court's duty under rule 3.8 (Case preparation and progression);

(c) the availability of a substitute hearing date;

(d) the need for compelling reasons, and especially where an application to postpone, cancel or adjourn is made at or shortly before the hearing;

(e) the nature and gravity of any failure to comply with a rule or direction, or to take some other step, where that failure prompts the proposed postponement, cancellation or adjournment; and

(f) the evidence of unfitness to attend, where a participant's ill-health prompts the proposed postponement, cancellation or adjournment, and in particular the extent to which any medical certificate satisfactorily—

(i) identifies the date of the participant's examination,

(ii) describes the participant's injury, illness or condition, the activity or activities which that ill-health impedes and the likely duration of that impediment, and

(iii) explains how that ill-health renders the participant unfit to attend the hearing.

[Note. Depending upon the nature of a case and the stage that it has reached, its progress may be affected by other Criminal Procedure Rules and by other legislation. The note at the end of this Part lists other rules and legislation that may apply.

See also rule 3.8 (Case preparation and progression).

The court may require expert evidence in support of an application to postpone, cancel or adjourn a hearing by reason of ill-health, in particular from the medical practitioner who provided a certificate in support of the application. See also Part 19 (Expert evidence).

The court may make a costs order under—

*(a) section 19 of the Prosecution of Offences Act 1985(***a***), where the court decides that one party to criminal proceedings has incurred costs as a result of an unnecessary or improper act or omission by, or on behalf of, another party;*

*(b) section 19A of that Act(***b***), where the court decides that a party has incurred costs as a result of an improper, unreasonable or negligent act or omission on the part of a legal representative;*

*(c) section 19B of that Act(***c***), where the court decides that there has been serious misconduct by a person who is not a party.*

Under some other legislation, including Parts 19, 20 and 21 of these Rules, if a party fails to comply with a rule or a direction then in some circumstances—

(a) the court may refuse to allow that party to introduce evidence;

(b) evidence that that party wants to introduce may not be admissible;

(c) the court may draw adverse inferences from the late introduction of an issue or evidence.

See also—

*(a) section 81(1) of the Police and Criminal Evidence Act 1984(***d***) and section 20(3) of the Criminal Procedure and Investigations Act 1996(***e***) (advance disclosure of expert evidence);*

*(b) section 11(5) of the Criminal Procedure and Investigations Act 1996(***f***) (faults in disclosure by accused);*

*(c) section 132(5) of the Criminal Justice Act 2003(***g***) (failure to give notice of hearsay evidence).]*

(**a**) 1985 c. 23; section 19 was amended by section 166 of the Criminal Justice Act 1988 (c. 33), section 45 of, and Schedule 6 to, the Legal Aid Act 1988 (c. 34), section 7 of, and paragraph 8 of Schedule 3 to, the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), section 24 of, and paragraphs 27 and 28 of Schedule 4 to, the Access to Justice Act 1999 (c. 22), sections 40 and 67 of, and paragraph 4 of Schedule 7 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 165 of, and paragraph 99 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 378 of, and paragraph 107 of Schedule 16 to, the Armed Forces Act 2006 (c. 52), section 6 of, and paragraph 32 of Schedule 4 and paragraphs 1 and 5 of Schedule 27 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraphs 22 and 23 of Schedule 5, and paragraphs 1 and 5 and Part 4 of Schedule 7, to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**b**) 1985 c. 23; section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).

(**c**) 1985 c. 23; section 19B was inserted by section 93 of the Courts Act 2003 (c. 39).

(**d**) 1984 c. 60; section 81(1) was amended by section 109(1) of, and paragraph 286 of Schedule 8 to, the Courts Act 2003 (c. 39).

(**e**) 1996 c. 25; section 20(3) was amended by section 109(1) of, and paragraph 378 of Schedule 8 to, the Courts Act 2003 (c. 39).

(**f**) 1996 c. 25; section 11 was substituted by section 39 of the Criminal Justice Act 2003 (c. 44) and amended by section 60 of the Criminal Justice and Immigration Act 2008 (c. 4).

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

Application to vary a direction

3.6.—(1) A party may apply to vary a direction if—

(a) the court gave it without a hearing;

(b) the court gave it at a hearing in that party's absence; or

(c) circumstances have changed.

(2) A party who applies to vary a direction must—

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

(b) give as much notice to the other parties as the nature and urgency of the application permits.

Agreement to vary a time limit fixed by a direction

3.7.—(1) The parties may agree to vary a time limit fixed by a direction, but only if—

(a) the variation will not—

(i) affect the date of any hearing that has been fixed, or

(ii) significantly affect the progress of the case in any other way;

(b) the court has not prohibited variation by agreement; and

(c) the court's case progression officer is promptly informed.

(2) The court's case progression officer must refer the agreement to the court if in doubt that the condition in paragraph (1)(a) is satisfied.

Case preparation and progression

3.8.—(1) At every hearing, if a case cannot be concluded there and then the court must give directions so that it can be concluded at the next hearing or as soon as possible after that.

(2) At every hearing the court must, where relevant—

(a) if the defendant is absent, decide whether to proceed nonetheless;

(b) take the defendant's plea (unless already done) or if no plea can be taken then find out whether the defendant is likely to plead guilty or not guilty;

(c) set, follow or revise a timetable for the progress of the case, which may include a timetable for any hearing including the trial or (in the Crown Court) the appeal;

(d) in giving directions, ensure continuity in relation to the court and to the parties' representatives where that is appropriate and practicable; and

(e) where a direction has not been complied with, find out why, identify who was responsible, and take appropriate action.

(3) In order to prepare for the trial, the court must take every reasonable step—

(a) to encourage and to facilitate the attendance of witnesses when they are needed; and

(b) to facilitate the participation of any person, including the defendant.

(4) Facilitating the participation of the defendant includes finding out whether the defendant needs interpretation because—

(a) the defendant does not speak or understand English; or

(b) the defendant has a hearing or speech disorder.

(5) Where the defendant needs interpretation—

(a) the court officer must arrange for interpretation to be provided at every hearing which the defendant is due to attend;

(b) interpretation may be by an intermediary where the defendant has a speech disorder, without the need for a defendant's evidence direction;

(c) on application or on its own initiative, the court may require a written translation to be provided for the defendant of any document or part of a document, unless—

(i) translation of that document, or part, is not needed to explain the case against the defendant, or

(ii) the defendant agrees to do without and the court is satisfied that the agreement is clear and voluntary and that the defendant has had legal advice or otherwise understands the consequences; and

(d) on application by the defendant, the court must give any direction which the court thinks appropriate, including a direction for interpretation by a different interpreter, where—

(i) no interpretation is provided,

(ii) no translation is ordered or provided in response to a previous application by the defendant, or

(iii) the defendant complains about the quality of interpretation or of any translation.

(6) Facilitating the participation of any person includes—

(a) giving directions for someone to accompany a witness if the witness so wishes while the witness gives evidence and at any other hearing; and

(b) giving directions for the appropriate treatment and questioning of a witness or the defendant, especially where the court directs that such questioning is to be conducted through an intermediary.

(7) Where a witness will be accompanied—

(a) the court—

(i) may allow or require the companion to sit with the witness, and

(ii) if the companion is an adviser must as a general rule allow that adviser to sit next to or near the witness in the courtroom or at any other place where the witness takes part, subject to any direction under rule 3.9 (Ground rules hearing);

(b) before the hearing begins an accompanying adviser must notify the court, orally or in writing (but not in public unless the court otherwise directs) of—

(i) the adviser's presence, the adviser's name and the identity of the witness whom the adviser will accompany, and

(ii) the name and address of the organisation, if any, on behalf of which the adviser is providing the witness with support; and

(c) an adviser or other companion must not—

(i) discuss the evidence with the witness,

(ii) advise the witness on how to answer a question,

(iii) give the witness legal advice,

(iv) address the court unless asked to do so, or

(v) interrupt the hearing.

(8) For the purposes of this rule 'adviser' means an independent domestic violence adviser or an independent sexual violence adviser and—

(a) an independent domestic violence adviser is a person who provides support to an individual who is a victim of criminal conduct which constitutes domestic abuse within the meaning of the Domestic Abuse Act 2021(**a**); and

(b) an independent sexual violence adviser is a person who provides support to an individual who is a victim of criminal conduct which constitutes conduct of a sexual nature.

(9) Where directions for appropriate treatment and questioning are required, the court must—

(**a**) 2021 c. 17.

(a) invite representations by the parties and by any intermediary; and

(b) set ground rules for the conduct of the questioning, which rules may include—

(i) a direction relieving a party of any duty to put that party's case to a witness or a defendant in its entirety,

(ii) directions about the manner of questioning,

(iii) directions about the duration of questioning,

(iv) if necessary, directions about the questions that may or may not be asked,

(v) directions about the means by which any intermediary may intervene in questioning, if necessary,

(vi) where there is more than one defendant, the allocation among them of the topics about which a witness may be asked, and

(vii) directions about the use of models, plans, body maps or similar aids to help communicate a question or an answer.

[Note. See also—

(a) rule 3.3(2)(g) which requires the parties to alert the court to any potential need for a witness to be accompanied while giving evidence;

(b) rule 3.36(2)(h) (Content of application for a live link direction) and rule 18.10(f) (Content of application for a special measures direction) about the participation of a witness companion in the circumstances to which those rules apply; and

(c) the Victim Support (Specified Roles) Regulations 2025(**a**) *and guidance issued under section 16 of the Victims and Prisoners Act 2024*(**b**)*.*

Where a trial in a magistrates' court will take place in Wales, a participant may use the Welsh language: see rule 3.18. Where a trial in the Crown Court will take place in Wales and a participant wishes to use the Welsh language, see rule 3.34.]

Ground rules hearing

3.9.—(1) This rule applies where the court exercises the powers to which rule 3.8(6)(b) and (9) apply (directions for appropriate treatment and questioning of a witness or defendant).

(2) At a pre-trial case management hearing convened for the purpose—

(a) the parties and any intermediary must—

(i) attend, unless the court otherwise directs, and

(ii) actively assist the court in setting ground rules and giving directions;

(b) the court must—

(i) discuss proposed ground rules and directions with the parties and any intermediary,

(ii) set ground rules for the conduct of questioning of the witness or defendant, as applicable, and

(iii) give such other directions as may be required to facilitate the effective participation of that witness or defendant; and

(c) despite rule 3.14(b) (court officer's duty to make a record of directions), the court may require the parties—

(i) to make a record of those ground rules and directions, and

(ii) to serve that record on each other, on any intermediary and on the court officer.

(3) In setting such ground rules and giving such directions, the court must have regard to—

(**a**) S.I. 2025/455.
(**b**) 2024 c. 21.

(a) any intermediary's report;

(b) the parties' representations; and

(c) such other information or advice as the court requires.

(4) The ground rules for questioning set by the court may include any listed in rule 3.8(9)(b).

(5) The directions given by the court may include any about—

(a) the timetable for the submission of proposed questions;

(b) the timetable for the trial, including the taking of breaks during proceedings;

(c) seating arrangements in the court room for the defendant, the defendant's advocate and legal representative, any intermediary and any parent, guardian or other companion of the defendant; and

(d) any explanation to be given to the jury, if there is one, of—

(i) the witness' or the defendant's communication needs and behaviour, as applicable, and

(ii) the role of the intermediary, if there is one.

[Note. See also rule 3.16 (Pre-trial hearings in a magistrates' court: general rules) and rule 3.21 (Pre-trial hearings in the Crown Court: general rules).]

Directions for commissioning medical reports, other than for sentencing purposes

3.10.—(1) This rule applies where, because of a defendant's suspected mental ill-health—

(a) a magistrates' court requires expert medical opinion about the potential suitability of a hospital order under section 37(3) of the Mental Health Act 1983(**a**) (hospital order without convicting the defendant);

(b) the Crown Court requires expert medical opinion about the defendant's fitness to participate at trial, under section 4 of the Criminal Procedure (Insanity) Act 1964(**b**); or

(c) a magistrates' court or the Crown Court requires expert medical opinion to help the court determine a question of intent or insanity,

other than such opinion introduced by a party.

(2) A court may exercise the power to which this rule applies on its own initiative having regard to—

(a) an assessment of the defendant's health by a mental health practitioner acting independently of the parties to assist the court;

(b) representations by a party; or

(c) observations by the court.

(3) A court that requires expert medical opinion to which this rule applies must—

(a) identify each issue in respect of which the court requires such opinion and any legislation applicable;

(b) specify the nature of the expertise likely to be required for giving such opinion;

(c) identify each party or participant by whom a commission for such opinion must be prepared, who may be—

(i) a party (or party's representative) acting on that party's own behalf,

(ii) a party (or party's representative) acting on behalf of the court, or

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(**a**) 1983 c. 20; section 37(3) was amended by sections 1 and 55 of, and paragraphs 1 and 7 of Schedule 1 and Schedule 11 to, the Mental Health Act 2007 (c. 12).

(**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).

(iii) the court officer acting on behalf of the court;

(d) where there are available to the court arrangements with the National Health Service under which an assessment of a defendant's mental health may be prepared, give such directions as are needed under those arrangements for obtaining the expert report or reports required;

(e) where no such arrangements are available to the court, or they will not be used, give directions for the commissioning of an expert report or expert reports, including—

(i) such directions as can be made about supplying the expert or experts with the defendant's medical records,

(ii) directions about the other information, about the defendant and about the offence or offences alleged to have been committed by the defendant, which is to be supplied to each expert, and

(iii) directions about the arrangements that will apply for the payment of each expert;

(f) set a timetable providing for—

(i) the date by which a commission is to be delivered to each expert,

(ii) the date by which any failure to accept a commission is to be reported to the court,

(iii) the date or dates by which progress in the preparation of a report or reports is to be reviewed by the court officer, and

(iv) the date by which each report commissioned is to be received by the court; and

(g) identify the person (each person, if more than one) to whom a copy of a report is to be supplied, and by whom.

(4) A commission addressed to an expert must—

(a) identify each issue in respect of which the court requires expert medical opinion and any legislation applicable;

(b) include—

(i) the information required by the court to be supplied to the expert,

(ii) details of the timetable set by the court, and

(iii) details of the arrangements that will apply for the payment of the expert;

(c) identify the person (each person, if more than one) to whom a copy of the expert's report is to be supplied; and

(d) request confirmation that the expert from whom the opinion is sought—

(i) accepts the commission, and

(ii) will adhere to the timetable.

[Note. See also rule 28.8 (Directions for commissioning medical reports for sentencing purposes).

The court may request a medical examination of the defendant and a report under—

(a) section 4 of the Criminal Procedure (Insanity) Act 1964, under which the Crown Court may determine a defendant's fitness to plead;

(b) section 35 of the Mental Health Act 1983(**a**)*, under which the court may order the defendant's detention in hospital to obtain a medical report;*

(c) section 36 of the 1983 Act(**b**)*, under which the Crown Court may order the defendant's detention in hospital instead of in custody pending trial or sentence;*

(**a**) 1983 c. 20; section 35 was amended by sections 1(4) and 10(1) and (2) of, and paragraphs 1 and 5 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 208(1) of, and paragraphs 53 and 54 of Schedule 21 to, the Legal Services Act 2007 (c. 29).

(**b**) 1983 c. 20; section 36 was amended by sections 1(4), 5(1) and (2) and 10(1) and (3) of, and paragraphs 1 and 6 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 208(1) of, and paragraphs 53 and 55 of Schedule 21 to, the Legal Services Act 2007 (c. 29).

(d) section 37 of the 1983 Act(**a**)*, under which the court may order the defendant's detention and treatment in hospital, or make a guardianship order, instead of disposing of the case in another way (section 37(3) allows a magistrates' court to make such an order without convicting the defendant if satisfied that the defendant did the act or made the omission charged);*

(e) section 38 of the 1983 Act(**b**)*, under which the court may order the defendant's temporary detention and treatment in hospital instead of disposing of the case in another way;*

(f) section 157 of the Criminal Justice Act 2003(**c**)*, under which the court must usually obtain and consider a medical report before passing a custodial sentence if the defendant is, or appears to be, mentally disordered;*

(g) section 207 of the 2003 Act(**d**) *(in the case of a defendant aged 18 or over), or section 1(1)(k) of the Criminal Justice and Immigration Act 2008(**e**) (in the case of a defendant who is under 18), under which the court may impose a mental health treatment requirement.*

For the purposes of the legislation listed in (a), (c), (d) and (e) above, the court requires the written or oral evidence of at least two registered medical practitioners, at least one of whom is approved as having special experience in the diagnosis or treatment of mental disorder. For the purposes of (b), (f) and (g), the court requires the evidence of one medical practitioner so approved.

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

Part 19 (Expert evidence) contains rules about the content of expert medical reports.

For the authorities from whom the court may require information about hospital treatment or guardianship, see sections 39 and 39A of the 1983 Act(**g**)*.*

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

Payments to medical practitioners for reports and for giving evidence are governed by section 19(3) of the Prosecution of Offences Act 1985(**h**) *and by the Costs in Criminal Cases (General)*

(**a**) 1983 c. 20; section 37 was amended by sections 55 and 56 of, and paragraph 12 of Schedule 4 and Schedule 6 to, the Crime (Sentences) Act 1997 (c. 43), section 67 of, and paragraph 11 of Schedule 4 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 90 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 304 of, and paragraphs 37 and 38 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44), sections 49 and 65 of, and paragraph 2 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38), sections 1, 4, 10, 55 and paragraphs 1 and 7 of Schedule 1, and Part 1 of Schedule 11 to, the Mental Health Act 2007 (c. 12), sections 6 and 149 of, and paragraph 30 of Schedule 4, and Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4), sections 122 and 142 of, and paragraph 1 of Schedule 19 and paragraph 2 of Schedule 26 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and section 28 of, and paragraph 1 of Schedule 5 to, the Criminal Justice and Courts Act 2015 (c. 2). It is further amended by section 148 of, and paragraph 8 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4) with effect from a date to be appointed.

(**b**) 1983 c. 20; section 38 was amended by section 49(1) of the Crime (Sentences) Act 1997 (c. 43), sections 1(4) and 10(1) and (5) of, and paragraphs 1 and 8 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 208(1) of, and paragraphs 53 and 56 of Schedule 21 to, the Legal Services Act 2007 (c. 29).

(**c**) 2003 c. 44; section 157 was amended by section 38 of the Health and Social Care Act 2012 (c. 7).

(**d**) 2003 c. 44; section 207 was amended by article 4(2) of, and paragraph 7 of Schedule 5 to, S.I. 2009/1182, article 14(a) and (b) of, and Part 1 of Schedule 5 to, S.I. 2010/813, section 72 of the Health and Social Care Act 2012 (c. 7), section 73 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and section 62 of, and paragraph 48 of Schedule 5 to, the Children and Social Work Act 2017 (c. 16).

(**e**) 2008 c. 4.

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

(**g**) 1983 c. 20; section 39 was amended by sections 2(1) and 5(1) of, and paragraph 107 of Schedule 1 and Schedule 3 to, the Health Authorities Act 1995 (c. 17), section 2(5) of, and paragraphs 42 and 46 of Schedule 2 to, the National Health Service Reform and Health Care Professions Act 2002 (c. 17), section 31(1) and (2) of the Mental Health Act 2007 (c. 12), article 3 of, and paragraph 13 of the Schedule to, S.I. 2007/961 and section 55 of, and paragraphs 24 and 28 of Schedule 5 to, the Health and Social Care Act 2012 (c. 7). Section 39A was inserted by section 27(1) of the Criminal Justice Act 1991 (c. 53).

(**h**) 1985 c. 23; section 19(3) was amended by section 166 of the Criminal Justice Act 1988 (c. 33), section 7 of, and paragraph 8 of Schedule 3 to, the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), sections 40 and 67 of, and

Regulations 1986(**a**)*, regulation 17 (Determination of rates or scales of allowances payable out of central funds), regulation 20 (Expert witnesses, etc.) and regulation 25 (Written medical reports). The rates and scales of allowances payable under those Regulations are determined by the Lord Chancellor.]*

Hearing to inform the court of sensitive material

3.11.—(1) This rule applies where the prosecutor has, or is aware of, material—

(a) the revelation of which to the public or to the defendant the prosecutor thinks would give rise to a real risk of serious prejudice to an important public interest;

(b) to which the prosecutor does not think the obligation to disclose prosecution material applies, under Part I of the Criminal Procedure and Investigations Act 1996; but

(c) of the existence of which the prosecutor thinks it necessary to inform the court to avoid—

(i) potential unfairness to the defendant in the conduct of the trial,

(ii) potential prejudice to the fair management of the trial, or

(iii) potential prejudice to that public interest.

(2) Such a prosecutor must—

(a) ask for a hearing so to inform the court; and

(b) notify the defendant of that request only to such extent, if any, and at such time, if at all, as the court directs.

(3) At or before the hearing the prosecutor must—

(a) explain—

(i) why the hearing is necessary, and

(ii) why it is necessary for the hearing to take place in the defendant's absence;

(b) explain to what extent, if any, and when, if at all, the defendant should be informed—

(i) of the hearing, and

(ii) of the material of which the prosecutor wants to inform the court; and

(c) provide or describe the material to the court—

(i) only to the extent needed to achieve the purpose for which the hearing is convened, and

(ii) in such manner as the court directs.

(4) Unless the court otherwise directs—

(a) any such hearing—

(i) must be in private, and

(ii) must take place in the defendant's absence;

(b) the court officer must not give notice to anyone other than the prosecutor of—

(i) the court's decision on the request for a hearing,

(ii) the arrangements for any such hearing, and

(iii) any directions given at such a hearing; and

(c) the court officer may—

(i) keep any written representations or material received under this rule, or

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paragraph 4 of Schedule 7 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 165 of, and paragraph 99 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 378 of, and paragraph 107 of Schedule 16 to, the Armed Forces Act 2006 (c. 52).

(**a**) S.I. 1986/1335; regulation 17 was amended by regulations 2 and 13 of S.I. 2008/2448, regulation 20 was amended by regulations 2 and 14 of S.I. 2008/2448 and by regulations 4 and 7 of S.I. 2012/1804, and regulation 25 was amended by regulations 2 and 10 of S.I. 2009/2720.

(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.

Readiness for trial or appeal

3.12.—(1) This rule applies to a party's preparation for trial or appeal, and in this rule and rule 3.13 'trial' includes any hearing at which evidence will be introduced.

(2) In fulfilling the duty under rule 3.3, each party must—

(a) comply with directions given by the court;

(b) take every reasonable step to make sure that party's witnesses will attend when they are needed;

(c) make appropriate arrangements to present any written or other material; and

(d) promptly inform the court and the other parties of anything that may—

(i) affect the date or duration of the trial or appeal, or

(ii) significantly affect the progress of the case in any other way.

(3) The court may require a party to give a certificate of readiness.

Conduct of a trial or an appeal

3.13. In order to manage a trial or an appeal, the court—

(a) must establish, with the active assistance of the parties, what are the disputed issues;

(b) must consider setting a timetable that—

(i) takes account of those issues and of any timetable proposed by a party, and

(ii) may limit the duration of any stage of the hearing;

(c) may require a party to identify—

(i) which witnesses that party wants to give evidence in person,

(ii) the order in which that party wants those witnesses to give their evidence,

(iii) whether that party requires an order compelling the attendance of a witness,

(iv) what arrangements are desirable to facilitate the giving of evidence by a witness,

(v) what arrangements are desirable to facilitate the participation of any other person, including the defendant,

(vi) what written evidence that party intends to introduce,

(vii) what other material, if any, that person intends to make available to the court in the presentation of the case, and

(viii) whether that party intends to raise any point of law that could affect the conduct of the trial or appeal; and

(d) may limit—

(i) the examination, cross-examination or re-examination of a witness, and

(ii) the duration of any stage of the hearing.

[Note. See also rules 3.5 (The court's case management powers) and 3.8 (Case preparation and progression).]

Duty of court officer

3.14. The court officer must—

(a) where a person is entitled or required to attend a hearing, give as much notice as reasonably practicable to—

(i) that person, and

(ii) that person's custodian (if any); and

(b) where the court gives directions, promptly make a record available to the parties.

[Note. See also rule 5.9 (Request for information by a party or person directly affected by a case).]

Court's power to vary requirements under this Part

3.15.—(1) The court may—

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

(b) allow an application or representations to be made orally.

(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.

PREPARATION FOR TRIAL IN A MAGISTRATES' COURT

Pre-trial hearings in a magistrates' court: general rules

3.16.—(1) A magistrates' court—

(a) must conduct a preparation for trial hearing unless—

(i) under rule 9.11 or rule 9.13 (Adult defendant: allocation for magistrates' court trial; Young defendant) the defendant indicates an intention to plead guilty, or

(ii) the case is one to which rule 24.8 or rule 24.9 applies (Written guilty plea: special rules; Single justice procedure: special rules); and

(b) may conduct a further pre-trial case management hearing (and if necessary more than one such hearing) only where—

(i) the court anticipates a guilty plea,

(ii) it is necessary to conduct such a hearing in order to give directions for an effective trial, or

(iii) such a hearing is required to set ground rules for the conduct of the questioning of a witness or defendant.

(2) At a preparation for trial hearing the court must—

(a) give directions for an effective trial; and

(b) give any direction needed to impose a reporting restriction or to withhold information from the public.

(3) At a preparation for trial hearing, if the defendant is present—

(a) the court must satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary), that the defendant will receive credit for a guilty plea;

(b) the court may explain, in terms the defendant can understand (with help, if necessary), that the defendant may ask the court for an indication of whether a custodial or non-custodial sentence is more likely in the event of a guilty plea there and then, but the court need not give such an indication;

(c) whether the court gives such an explanation or not the defendant may ask the court for such an indication;

(d) if the defendant asks the court for such an indication, the prosecutor must—

(i) provide any information relevant to sentence not yet served but which is available there and then, and

(ii) identify any other matter relevant to sentence, including the legislation applicable, any sentencing guidelines or guideline cases and aggravating and mitigating factors;

(e) the court must take the defendant's plea or if no plea can be taken then find out whether the defendant is likely to plead guilty or not guilty; and

(f) unless the defendant pleads guilty, the court must satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary), that at the trial—

(i) the defendant will have the right to give evidence after the court has heard the prosecution case,

(ii) if the defendant does not attend, the trial is likely to take place in the defendant's absence, and

(iii) where the defendant is released on bail, failure to attend court when required is an offence for which the defendant may be arrested and punished and bail may be withdrawn.

(4) A pre-trial case management hearing must be in public, as a general rule, but all or part of the hearing may be in private if the court so directs.

[Note. Under section 11 of the Magistrates' Courts Act 1980(**a**)*, where the defendant does not attend the trial, where the defendant is at least 18 years old, and subject to some exceptions, then the court must proceed in his or her absence unless it appears to the court to be contrary to the interests of justice to do so. Where the defendant does not attend the trial and he or she is under 18 then, again subject to some exceptions, the court may proceed in his or her absence.*

Under sections 8A and 8B of the Magistrates' Courts Act 1980(**b**)*, a pre-trial ruling about the admissibility of evidence or any other question of law is binding unless it later appears to the court in the interests of justice to discharge or vary that ruling.]*

Place of magistrates' court trial

3.17. The court officer must arrange for a magistrates' court trial to take place in a courtroom provided by the Lord Chancellor, unless—

(a) the court otherwise directs; or

(b) the case is one to which rule 24.9 (Single justice procedure: special rules) applies.

[Note. See section 3 of the Courts Act 2003(**c**) *and section 16A of the Magistrates' Courts Act 1980*(**d**)*.*

In some circumstances the court may conduct all or part of the hearing outside a courtroom. The members of the court may discuss the verdict and sentence outside the courtroom.]

Use of Welsh language at magistrates' court trial

3.18. Where a magistrates' court trial takes place in Wales—

(a) any party or witness may use the Welsh language; and

(b) if practicable, at least one member of the court must be Welsh-speaking.

(**a**) 1980 c. 43; section 11 was amended by paragraph 39 of Schedule 8 and paragraph 39 of Schedule 10 to the Criminal Justice and Public Order Act 1994 (c. 33), section 54 of the Criminal Justice and Immigration Act 2008 (c. 4), section 48 of, and paragraph 4 of Schedule 11 to, the Criminal Justice and Courts Act 2015 (c. 2) and paragraph 43 of Schedule 24 to the Sentencing Act 2020 (c. 17).

(**b**) 1980 c. 43; section 8A was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by S.I. 2006/2493 and paragraphs 12 and 14 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 8B was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by paragraph 51 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

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

(**d**) 1980 c. 43; section 16A was inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2).

[Note. See section 3 of the Courts Act 2003(**a**) *and section 22 of the Welsh Language Act 1993*(**b**)*.]*

PREPARATION FOR TRIAL IN THE CROWN COURT

Service of prosecution evidence

3.19.—(1) This rule applies where the prosecutor—

(a) serves a draft indictment under rule 10.4, 10.5, 10.6, 10.7 or 10.8 (service of draft indictment after sending for trial; with judicial permission or on judicial direction; in connection with a deferred prosecution agreement; on reinstitution of proceedings); and

(b) serves on the defendant copies of the documents containing the evidence on which the prosecution case relies.

(2) The prosecutor must at the same time serve copies of those documents on the Crown Court officer.

[Note. See the rules in Part 10 (The indictment) listed in this rule and the other legislation to which those rules refer.

See also the Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2005(**c**) *which apply where a case is sent for trial. The time for service of the prosecution evidence in such a case is prescribed by regulation 2. It is—*

(a) not more than 50 days after sending for trial, where the defendant is in custody; and

(b) not more than 70 days after sending for trial, where the defendant is on bail.]

Application to dismiss offence sent for Crown Court trial

3.20.—(1) This rule applies where a defendant wants the Crown Court to dismiss an offence sent for trial there.

(2) The defendant must—

(a) apply in writing—

(i) not more than 20 business days after service of the prosecution evidence, and

(ii) before the defendant's arraignment under rule 3.32 (Arraigning the defendant on the indictment);

(b) serve the application on—

(i) the Crown Court officer, and

(ii) each other party; and

(c) in the application—

(i) explain why the prosecution evidence would not be sufficient for the defendant to be properly convicted,

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

(iii) identify any witness whom the defendant wants to call to give evidence in person, with an indication of what evidence the witness can give,

(iv) identify any material already served that the defendant thinks the court will need to determine the application, and

(v) include any material not already served on which the defendant relies.

(3) A prosecutor who opposes the application must—

(**a**) 2003 c. 39.
(**b**) 1993 c. 38.
(**c**) S.I. 2005/902; amended by S.I. 2012/1345.

(a) serve notice of opposition, not more than 10 business days after service of the defendant's notice, on—

(i) the Crown Court officer, and

(ii) each other party; and

(b) in the notice of opposition—

(i) explain the grounds of opposition,

(ii) ask for a hearing, if the prosecutor wants one, and explain why it is needed,

(iii) identify any witness whom the prosecutor wants to call to give evidence in person, with an indication of what evidence the witness can give,

(iv) identify any material already served that the prosecutor thinks the court will need to determine the application, and

(v) include any material not already served on which the prosecutor relies.

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

(a) at a hearing, in public or in private, or without a hearing; and

(b) in the absence of—

(i) the defendant who made the application, and

(ii) the prosecutor, if the prosecutor has had at least 10 business days in which to serve notice opposing the application.

(5) The court may—

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

(b) allow a witness to give evidence in person even if that witness was not identified in the defendant's application or in the prosecutor's notice.

[Note. Under paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998(**a**)*, on an application by the defendant the Crown Court must dismiss an offence charged if it appears to the court that the evidence would not be sufficient for the applicant to be properly convicted.]*

Pre-trial hearings in the Crown Court: general rules

3.21.—(1) The Crown Court—

(a) may, and in some cases must, conduct a preparatory hearing where rule 3.22 (Preparatory hearing) applies;

(b) must conduct a plea and trial preparation hearing; and

(c) may conduct a further pre-trial case management hearing (and if necessary more than one such hearing) only where—

(i) the court anticipates a guilty plea,

(ii) it is necessary to conduct such a hearing in order to give directions for an effective trial, or

(iii) such a hearing is required to set ground rules for the conduct of the questioning of a witness or defendant.

(2) At the plea and trial preparation hearing the court must—

(a) satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary), that the defendant will receive credit for a guilty plea;

(**a**) 1998 c. 37; paragraph 2 of Schedule 3 was amended by paragraphs 15 and 20 of Schedule 3, paragraph 73 of Schedule 36 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and S.I. 2004/2035.

(b) take the defendant's plea in accordance with rule 3.32 (Arraigning the defendant on the indictment) or if no plea can be taken then find out whether the defendant is likely to plead guilty or not guilty;

(c) unless the defendant pleads guilty, satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary), that at the trial—

(i) the defendant will have the right to give evidence after the court has heard the prosecution case,

(ii) if the defendant does not attend, the trial may take place in the defendant's absence,

(iii) if the trial takes place in the defendant's absence, the judge may inform the jury of the reason for that absence, and

(iv) where the defendant is released on bail, failure to attend court when required is an offence for which the defendant may be arrested and punished and bail may be withdrawn;

(d) give directions for an effective trial; and

(e) give any direction needed to impose a reporting restriction or to withhold information from the public.

(3) A pre-trial case management hearing—

(a) must be in public, as a general rule, but all or part of the hearing may be in private if the court so directs; and

(b) must be recorded, in accordance with rule 5.5 (Recording and transcription of proceedings in the Crown Court).

(4) Where the court determines a pre-trial application in private, it must announce its decision in public.

[Note. See also the general rules in the first section of this Part (rules 3.1 to 3.15) and the other rules in this section.

The Practice Direction lists the circumstances in which a further pre-trial case management hearing is likely to be needed in order to give directions for an effective trial.

There are rules relevant to applications which may be made at a pre-trial hearing in Part 6 (Reporting, etc. restrictions), Part 14 (Bail and custody time limits), Part 15 (Disclosure), Part 17 (Witness summonses, warrants and orders), Part 18 (Measures to assist a witness or defendant to give evidence), Part 19 (Expert evidence), Part 20 (Hearsay evidence), Part 21 (Evidence of bad character), Part 22 (Evidence of a complainant's previous sexual behaviour) and Part 23 (Restriction on cross-examination by a defendant).

On an application to which Part 14 (Bail and custody time limits) applies, rule 14.2 (exercise of court's powers under that Part) may require the defendant's presence, which may be by live link. Where rule 14.10 applies (Consideration of bail in a murder case), the court officer must arrange for the Crown Court to consider bail within 2 business days of the first hearing in the magistrates' court.

Under section 40 of the Criminal Procedure and Investigations Act 1996(**a**)*, a pre-trial ruling about the admissibility of evidence or any other question of law is binding unless it later appears to the court in the interests of justice to discharge or vary that ruling.]*

Preparatory hearing

3.22.—(1) This rule applies where the Crown Court—

(a) can order a preparatory hearing, under—

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

(i) section 7 of the Criminal Justice Act 1987(**a**) (cases of serious or complex fraud), or

(ii) section 29 of the Criminal Procedure and Investigations Act 1996(**b**) (other complex, serious or lengthy cases);

(b) must order such a hearing, to determine an application for a trial without a jury, under—

(i) section 44 of the Criminal Justice Act 2003(**c**) (danger of jury tampering), or

(ii) section 17 of the Domestic Violence, Crime and Victims Act 2004(**d**) (trial of sample counts by jury, and others by judge alone); and

(c) must order such a hearing, under section 29 of the 1996 Act, where section 29(1B) or (1C) applies (cases in which a terrorism offence is charged, or other serious cases with a terrorist connection).

(2) The court may decide whether to order a preparatory hearing—

(a) on an application or on its own initiative;

(b) at a hearing (in public or in private), or without a hearing; and

(c) in a party's absence, if that party—

(i) applied for the order, or

(ii) has had at least 10 business days in which to make representations.

[Note. See also section 45(2) of the Criminal Justice Act 2003 and section 18(1) of the Domestic Violence, Crime and Victims Act 2004.

At a preparatory hearing, the court may—

(a) require the prosecution to set out its case in a written statement, to arrange its evidence in a form that will be easiest for the jury (if there is one) to understand, to prepare a list of agreed facts, and to amend the case statement following representations from the defence (section 9(4) of the 1987 Act, section 31(4) of the 1996 Act); and

(b) require the defence to give notice of any objection to the prosecution case statement, and to give notice stating the extent of agreement with the prosecution as to documents and other matters and the reason for any disagreement (section 9(5) of the 1987 Act, section 31(6), (7), (9) of the 1996 Act).

Under section 10 of the 1987 Act(**e**)*, and under section 34 of the 1996 Act*(**f**)*, if either party later departs from the case or objections disclosed by that party, then the court, or another party, may comment on that, and the court may draw such inferences as appear proper.]*

Application for preparatory hearing

3.23.—(1) A party who wants the court to order a preparatory hearing must—

(a) apply in writing—

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

(ii) not more than 10 business days after the defendant pleads not guilty; and

(b) serve the application on—

(i) the court officer, and

(**a**) 1987 c. 38; section 7 is amended by paragraph 30 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33), sections 72 and 80 of, paragraph 2 of Schedule 3 to, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and sections 45 and 310 of, and paragraphs 52 and 53 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(**b**) 1996 c. 25; section 29 is amended by sections 45, 309 and 310 of, and paragraphs 65 and 66 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and section 16 of the Terrorism Act 2006 (c. 11).

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

(**d**) 2004 c. 28.

(**e**) 1987 c. 38; section 10 is amended by section 72 of, and paragraph 5 of Schedule 3 to, the Criminal Procedure and Investigations Act 1996 (c. 25), and paragraphs 52 and 55 of Schedule 36 to the Criminal Justice Act 2003 (c. 44).

(**f**) 1996 c. 25; section 34 is amended by paragraphs 65 and 68 of Schedule 36 to the Criminal Justice Act 2003 (c. 44).

(ii) each other party.

(2) The applicant must either—

(a) if relevant, explain what legislation requires the court to order a preparatory hearing; or

(b) explain—

(i) what makes the case complex or serious, or makes the trial likely to be long,

(ii) why a substantial benefit will accrue from a preparatory hearing, and

(iii) why the court's ordinary powers of case management are not adequate.

(3) A prosecutor who wants the court to order a trial without a jury must explain—

(a) where the prosecutor alleges a danger of jury tampering—

(i) what evidence there is of a real and present danger that jury tampering would take place,

(ii) what steps, if any, reasonably might be taken to prevent jury tampering, and

(iii) why, notwithstanding such steps, the likelihood of jury tampering is so substantial as to make it necessary in the interests of justice to order such a trial; or

(b) where the prosecutor proposes trial without a jury on some counts on the indictment—

(i) why a trial by jury involving all the counts would be impracticable,

(ii) how the counts proposed for jury trial can be regarded as samples of the others, and

(iii) why it would be in the interests of justice to order such a trial.

Application for non-jury trial containing information withheld from a defendant

3.24.—(1) This rule applies where—

(a) the prosecutor applies for an order for a trial without a jury because of a danger of jury tampering; and

(b) the application includes information that the prosecutor thinks ought not be revealed to a defendant.

(2) The prosecutor must—

(a) omit that information from the part of the application that is served on that defendant;

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

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

(3) The hearing of an application to which this rule applies—

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

(b) if the court so directs, may be, wholly or in part, in the absence of a defendant from whom information has been withheld.

(4) At the 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 prosecutor and then by each defendant, in all the parties' presence, and then

(ii) further representations by the prosecutor, in the absence of a defendant from whom information has been withheld; but

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

(5) Where, on an application to which this rule applies, the court orders a trial without a jury—

(a) the general rule is that the trial will be before a judge other than the judge who made the order; but

(b) the court may direct other arrangements.

Representations in response to application for preparatory hearing

3.25.—(1) This rule applies where a party wants to make representations about—

(a) an application for a preparatory hearing; or

(b) an application for a trial without a jury.

(2) Such a party must—

(a) serve the representations on—

(i) the court officer, and

(ii) each other party;

(b) do so not more than 10 business days after service of the application; and

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

(3) Where representations include information that the person making them thinks ought not be revealed to another party, that person must—

(a) omit that information from the representations served on that other party;

(b) mark the information to show that, unless the court otherwise directs, it is only for the court; and

(c) with that information include an explanation of why it has been withheld from that other party.

(4) Representations against an application for an order must explain why the conditions for making it are not met.

Commencement of preparatory hearing

3.26. At the beginning of a preparatory hearing, the court must—

(a) announce that it is such a hearing; and

(b) take the defendant's plea under rule 3.32 (Arraigning the defendant on the indictment), unless already done.

[Note. See section 8 of the Criminal Justice Act 1987(**a**) *and section 30 of the Criminal Procedure and Investigations Act 1996*(**b**)*.]*

Defence trial advocate

3.27.—(1) The defendant must notify the court officer of the identity of the intended defence trial advocate—

(a) as soon as practicable, and in any event no later than the day of the plea and trial preparation hearing; and

(b) in writing, or orally at that hearing.

(2) The defendant must notify the court officer in writing of any change in the identity of the intended defence trial advocate as soon as practicable, and in any event not more than 5 business days after that change.

Application to stay case for abuse of process

3.28.—(1) This rule applies where a defendant wants the Crown Court to stay the case on the grounds that the proceedings are an abuse of the court, or otherwise unfair.

(2) Such a defendant must—

(a) apply in writing—

(**a**) 1987 c. 38.
(**b**) 1996 c. 25.

(i) as soon as practicable after becoming aware of the grounds for doing so,

(ii) at a pre-trial hearing, unless the grounds for the application do not arise until trial, and

(iii) in any event, before the defendant pleads guilty or the jury (if there is one) retires to consider its verdict at trial;

(b) serve the application on—

(i) the court officer, and

(ii) each other party; and

(c) in the application—

(i) explain the grounds on which it is made,

(ii) include, attach or identify all supporting material,

(iii) specify relevant events, dates and propositions of law, and

(iv) identify any witness the applicant wants to call to give evidence in person.

(3) A party who wants to make representations in response to the application must serve the representations on—

(a) the court officer; and

(b) each other party,

not more than 10 business days after service of the application.

Application for joint or separate trials, etc.

3.29.—(1) This rule applies where a party wants the Crown Court to order—

(a) the joint trial of—

(i) offences charged by separate indictments, or

(ii) defendants charged in separate indictments;

(b) separate trials of offences charged by the same indictment;

(c) separate trials of defendants charged in the same indictment; or

(d) the deletion of a count from an indictment.

(2) Such a party must—

(a) apply in writing—

(i) as soon as practicable after becoming aware of the grounds for doing so, and

(ii) before the trial begins, unless the grounds for the application do not arise until trial;

(b) serve the application on—

(i) the court officer, and

(ii) each other party; and

(c) in the application—

(i) specify the order proposed, and

(ii) explain why it should be made.

(3) A party who wants to make representations in response to the application must serve the representations on—

(a) the court officer; and

(b) each other party,

not more than 10 business days after service of the application.

(4) Where the same indictment charges more than one offence, the court may exercise its power to order separate trials of those offences if of the opinion that—

(a) the defendant otherwise may be prejudiced or embarrassed in his or her defence (for example, where the offences to be tried together are neither founded on the same facts nor form or are part of a series of offences of the same or a similar character); or

(b) for any other reason it is desirable that the defendant should be tried separately for any one or more of those offences.

[Note. See section 5 of the Indictments Act 1915(**a**)*. Rule 10.2 (The indictment: general rules) governs the form and content of an indictment.*

Any issue arising from a decision under this rule may be subject to appeal to the Court of Appeal. Part 37 (Appeal to the Court of Appeal against ruling at preparatory hearing), Part 38 (Appeal to the Court of Appeal against ruling adverse to prosecution) and Part 39 (Appeal to the Court of Appeal about conviction or sentence) each contains relevant rules. The powers of the Court of Appeal on an appeal to which Part 39 applies are set out in sections 2, 3 and 7 of the Criminal Appeal Act 1968(**b**)*.]*

Order for joint or separate trials, or amendment of the indictment

3.30.—(1) This rule applies where the Crown Court makes an order—

(a) on an application to which rule 3.29 (Application for joint or separate trials, etc.) applies; or

(b) amending an indictment in any other respect.

(2) Unless the court otherwise directs, the court officer must endorse any paper copy of each affected indictment made for the court with—

(a) a note of the court's order; and

(b) the date of that order.

Application for indication of sentence

3.31.—(1) This rule applies where a defendant wants the Crown Court to give an indication of the maximum sentence that would be passed if a guilty plea were entered when the indication is sought.

(2) Such a defendant must—

(a) apply in writing as soon as practicable; and

(b) serve the application on—

(i) the court officer, and

(ii) the prosecutor.

(3) The application must—

(a) specify—

(i) the offence or offences to which it would be a guilty plea, and

(ii) the facts on the basis of which that plea would be entered; and

(b) include the prosecutor's agreement to, or representations on, that proposed basis of plea.

(4) The prosecutor must—

(a) provide information relevant to sentence, including—

(i) any previous conviction of the defendant, and the circumstances where relevant, and

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(**a**) 1915 c. 90; section 5 was amended by section 12 of, and paragraph 8 of Schedule 2 to, the Bail Act 1976 (c. 63), section 31 of, and Schedule 2 to, the Prosecution of Offences Act 1985 (c. 23) and section 331 of, and paragraph 40 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(**b**) 1968 c. 19; section 2 was amended by section 2 of the Criminal Appeal Act 1995 (c. 35). Section 3 was amended by section 316 of the Criminal Justice Act 2003 (c. 44). Section 7 was amended by sections 43 and 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33) and paragraph 44 of Schedule 36 to the Criminal Justice Act 2003 (c. 44).

(ii) any statement of the effect of the offence on the victim, the victim's family or others; and

(b) identify any other matter relevant to sentence, including—

(i) the legislation applicable,

(ii) any sentencing guidelines, or guideline cases, and

(iii) aggravating and mitigating factors.

(5) The hearing of the application—

(a) may take place in the absence of any other defendant; and

(b) must be attended by—

(i) the applicant defendant's legal representatives (if any), and

(ii) the prosecution advocate.

Arraigning the defendant

3.32.—(1) In order to take the defendant's plea, the Crown Court must—

(a) if more than one indictment has been preferred or proposed, or more than one draft indictment has been presented where rule 10.3 applies—

(i) identify the indictment or indictments that the prosecutor wants to be read to or placed before the defendant under this rule, and

(ii) identify any draft indictment, indictment or count in an indictment on which the prosecutor does not want to proceed;

(b) obtain the prosecutor's confirmation, in writing or orally—

(i) that each indictment (or draft indictment, as the case may be) that the prosecutor wants to be read to or placed before the defendant sets out a statement of each offence that the prosecutor wants the court to try and such particulars of the conduct constituting the commission of each such offence as the prosecutor relies upon to make clear what is alleged, and

(ii) of the order in which the prosecutor wants the defendants' names to be listed in each indictment, if the prosecutor proposes that more than one defendant should be tried at the same time;

(c) ensure that the defendant is correctly identified by each indictment or draft indictment that the prosecutor wants to be read to or placed before the defendant;

(d) satisfy itself that each allegation has been explained to the defendant, in terms the defendant can understand (with help, if necessary); and

(e) in respect of each count on which the prosecutor wants to proceed—

(i) read the count aloud to the defendant, or arrange for it to be read aloud or placed before the defendant in writing,

(ii) ask whether the defendant pleads guilty or not guilty to the offence charged by that count, and

(iii) take the defendant's plea.

(2) Where a count is read which is substantially the same as one already read aloud, then only the materially different details need be read aloud.

(3) Where a count is placed before the defendant in writing, the court must summarise its gist aloud.

(4) In respect of each count in an indictment read to or placed before the defendant—

(a) if the defendant declines to enter a plea, the court must treat that as a not guilty plea unless rule 25.10 applies (Defendant unfit to plead);

(b) if the defendant pleads not guilty to the offence charged by that count but guilty to another offence of which the court could convict on that count—

(i) if the prosecutor and the court accept that plea, the court must treat the plea as one of guilty of that other offence, but

(ii) otherwise, the court must treat the plea as one of not guilty; and

(c) if the defendant pleads a previous acquittal or conviction of the offence charged by that count—

(i) the defendant must identify that acquittal or conviction in writing, explaining the basis of that plea, and

(ii) the court must exercise its power to decide whether that plea disposes of that count.

(5) In a case in which a magistrates' court sends the defendant for trial, the Crown Court must take the defendant's plea—

(a) not less than 10 business days after the date on which that sending takes place, unless the parties otherwise agree; and

(b) not more than 80 business days after that date, unless the court otherwise directs (either before or after that period expires).

(6) Unless the court otherwise directs, no further proceedings may be taken on a draft indictment, indictment or count in an indictment on which under this rule the prosecutor chooses not to proceed.

[Note. See section 6 of the Criminal Law Act 1967(**a**)*, section 77 of the Senior Courts Act 1981*(**b**)*and section 122 of the Criminal Justice Act 1988*(**c**)*. Part 10 contains rules about the content and service of indictments: see in particular rule 10.2 (The indictment: general rules).*

Under section 6(2) of the 1967 Act, on an indictment for murder a defendant may instead be convicted of manslaughter or another offence specified by that provision. Under section 6(3) of that Act, on an indictment for an offence other than murder or treason a defendant may instead be convicted of another offence if—

(a) the allegation in the indictment amounts to or includes an allegation of that other offence; and

(b) the Crown Court has power to convict and sentence for that other offence.]

Place of Crown Court trial

3.33.—(1) Unless the court otherwise directs, the court officer must arrange for a Crown Court trial to take place in a courtroom provided by the Lord Chancellor.

(2) The court officer must arrange for the court and the jury (if there is one) to view any place required by the court.

[Note. See section 3 of the Courts Act 2003(**d**) *and section 14 of the Juries Act 1974*(**e**)*.*

In some circumstances the court may conduct all or part of the hearing outside a courtroom.]

Use of Welsh language at Crown Court trial

3.34. Where a Crown Court trial will take place in Wales and a participant wishes to use the Welsh language—

(**a**) 1967 c. 58; section 6 was amended by paragraph 41 of Schedule 36 to the Criminal Justice Act 2003 (c. 44) and section 11 of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(**b**) 1981 c. 54; section 77 was amended by section 15 of, and paragraph 11 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 18 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 41 of, and paragraph 54 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44) and article 3 of, and paragraphs 11 and 13 of the Schedule to, S.I. 2004/2035. It is further amended by section 31 of, and paragraph 11 of Schedule 1 and Schedule 2 to, the Prosecution of Offences Act 1985 (c. 23) with effect from a date to be appointed.

(**c**) 1988 c. 33.

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

(**e**) 1974 c. 23; section 14 was amended by paragraph 173 of Schedule 8 to the Courts Act 2003 (c. 39).

(a) that participant must serve notice on the court officer, or arrange for such a notice to be served on that participant's behalf—

(i) at or before the plea and trial preparation hearing, or

(ii) in accordance with any direction given by the court; and

(b) if such a notice is served, the court officer must arrange for an interpreter to attend.

[Note. See section 22 of the Welsh Language Act 1993(**a**)*.]*

LIVE LINKS

Live link direction: exercise of court's powers

3.35.—(1) The court may exercise its power to give, vary or rescind a live link direction under sections 51 and 52 of the Criminal Justice Act 2003(**b**) or under sections 206A and 206B of the Extradition Act 2003(**c**)—

(a) at a hearing, in public or in private, or without a hearing; and

(b) on an application under rule 3.36 (Content of application for a live link direction) or on its own initiative.

(2) Whether it acts on an application or on its own initiative, the court must not give, vary or rescind a live link direction unless—

(a) the court is satisfied that it is in the interests of justice to do so; and

(b) each party and (if applicable) any representative of the youth offending team whose functions are exercisable in relation to a defendant—

(i) is present, or

(ii) has had an opportunity to make representations.

(3) In deciding whether to give a live link direction the court must consider—

(a) any guidance given by the Lord Chief Justice under section 51(5)(a) of the Criminal Justice Act 2003; and

(b) all the circumstances of the case.

(4) Those circumstances include in particular—

(a) the availability of the proposed participant by live link;

(b) any potential need for that person to attend in person instead of by live link;

(c) any views which that person may have expressed;

(d) the suitability of the facilities at the place where that person would take part by live link if the direction were given;

(e) that person's ability to take part effectively if the direction were given (and see paragraph (5));

(f) if the proposed direction is for a person to give evidence by live link—

(i) the importance of that person's evidence to the case, and

(ii) any potential for the proposed direction to inhibit a party from effectively testing that evidence;

(g) if the proposed direction is for a person to take part by live link from a place outside the United Kingdom, any permission needed from a court or other authority in that place; and

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(**a**) 1993 c. 38.

(**b**) 2003 c. 44; section 51 was substituted by section 200 of, and section 52 was substituted by paragraph 1 of Schedule 20 to, the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

(**c**) 2003 c. 41; sections 206A and 206B were inserted by section 78 of the Policing and Crime Act 2009 (c. 26). Section 206A was amended by section 208 of, and paragraph 2 of Schedule 20 to, the Police, Crime Sentencing and Courts Act 2022 (c. 32).

(h) arrangements for members of the public to see and hear proceedings at which a person takes part by live link (and see paragraph (6)).

(5) In assessing a person's ability to take part effectively by live link, where that person is a defendant the court must have regard to, among other things—

(a) whether that defendant will be represented at the hearing for which the live link is proposed; and

(b) what other assistance will be available to that defendant at that hearing (for example, an intermediary).

(6) In assessing arrangements for members of the public to see and hear proceedings the court must have regard to, among other things, the terms of any direction under section 85A of the Courts Act 2003 (Remote observation and recording of proceedings by direction of the court).

(7) Where the proposed live link direction is for a person to take part by live link from a place outside the United Kingdom, the party in respect of whose case it is sought must assist the court by—

(a) finding out whether permission is needed from a court or other authority in that place;

(b) preparing any formal request needed to obtain that permission; and

(c) obtaining any such permission required.

(8) Where the court refuses an application to give, vary or rescind a live link direction the court must announce in public its reasons for doing so.

[Note. See sections 51, 52, 52A and 53 of the Criminal Justice Act 2003 and sections 206A to 206C of the Extradition Act 2003.]

Content of application for a live link direction

3.36.—(1) An applicant for a live link direction under section 51 of the Criminal Justice Act 2003 must—

(a) apply in writing as soon as reasonably practicable;

(b) serve the application on—

(i) the court officer, and

(ii) each other party; and

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

(2) The application must—

(a) specify the hearing or hearings in respect of which the applicant wants the direction to apply;

(b) identify each person to whom the applicant wants the direction to apply and specify—

(i) each one whom the applicant wants to give evidence by live link, and

(ii) each one whom the applicant wants to take part by live link without giving evidence;

(c) in respect of each such person, specify the type of live link proposed (either video or audio);

(d) unless the court otherwise directs, identify the place where each such person will take part if the direction is given;

(e) identify any material circumstances relating to—

(i) the availability of the proposed participant by live link,

(ii) any potential need for that participant to attend in person, not by live link,

(iii) any views which that participant may have expressed,

(iv) the suitability of the facilities at the place where that participant would take part by live link if the direction were given,

(v) any permission needed from a court or other authority in a place outside the United Kingdom from where, if the direction were given, the participant would take part by live link, and

(vi) that participant's ability to take part effectively if the direction were given;

(f) if the proposed direction is for a person to give evidence by live link, identify any material circumstances relating to—

(i) the importance of that person's evidence to the case, and

(ii) any potential for the proposed direction to inhibit a party from effectively testing that evidence;

(g) explain why it is in the interests of justice for each proposed participant by live link to take part by those means; and

(h) if the applicant wants a witness to be accompanied by another person while giving evidence—

(i) name that other person, if possible, and

(ii) explain why it is appropriate for that witness to be accompanied, including the witness' own views.

Application to vary or rescind a live link direction

3.37.—(1) A party who wants the court to vary or rescind a live link direction must—

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

(b) serve the application on—

(i) the court officer, and

(ii) each other party.

(2) The applicant must—

(a) explain what material circumstances have changed since the direction was given;

(b) explain why it is in the interests of justice to vary or rescind the direction; and

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

[Note. See section 52 of the Criminal Justice Act 2003.]

Application containing information withheld from another party

3.38.—(1) This rule applies where—

(a) an applicant serves an application for a live link direction, or for its variation or rescission; and

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

(2) The applicant must—

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

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

(c) in that other part, explain why the applicant has withheld that information from that other party.

(3) Any hearing of an application to which this rule applies—

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

(b) if the court so directs, may be, wholly or in part, in the absence of a party from whom information has been withheld.

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

(a) the general rule is that the court must consider, in the following sequence—

(i) representations first by the applicant and then by each other party, in all the parties' presence, and then

(ii) further representations by the applicant, in the absence of a party from whom information has been withheld; but

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

Representations in response

3.39.—(1) This rule applies where a party wants to make representations about an application for a live link direction or for the variation or rescission of such a direction.

(2) Such a party must—

(a) serve the representations on—

(i) the court officer, and

(ii) each other party;

(b) do so not more than 10 business days after service of the application; and

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

(3) Representations must explain why it is not in the interests of justice for the direction to be given, varied or rescinded, as the case may be.

Other provisions affecting case management

Case management may be affected by the following other rules and legislation:

Criminal Procedure Rules

Part 8 Initial details of the prosecution case

Part 9 Allocation and sending for trial

Part 10 The indictment

Part 15 Disclosure

Parts 16 – 23: the rules that deal with evidence

Part 24 Trial and sentence in a magistrates' court

Part 25 Trial and sentence in the Crown Court

Regulations

The Prosecution of Offences (Custody Time Limits) Regulations 1987(**a**)

The Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2005(**b**)

The Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 2011(**c**)

Acts of Parliament

Sections 10 and 18, Magistrates' Courts Act 1980(**d**)*: powers to adjourn hearings*

(**a**) S.I. 1987/299; amended by sections 71 and 80 of, and paragraph 8 of Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and S.I. 1989/767, 1991/1515, 1995/555, 1999/2744, 2000/3284, 2012/1344.

(**b**) S.I. 2005/902; amended by S.I. 2012/1345.

(**c**) S.I. 2011/209.

(**d**) 1980 c. 43; section 10 was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53) and section 47 of the Crime and Disorder Act 1998 (c. 37). Section 18 was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), section 49

Sections 128 and 129, Magistrates' Courts Act 1980(**a**)*: remand in custody by magistrates' courts*

Sections 19 and 24A, Magistrates' Courts Act 1980(**b**) *and sections 51 and 51A, Crime and Disorder Act 1998*(**c**)*: allocation and sending for trial*

Section 2, Administration of Justice (Miscellaneous Provisions) Act 1933(**d**)*: procedural conditions for trial in the Crown Court*

Sections 8A and 8B, Magistrates' Courts Act 1980(**e**)*: pre-trial hearings in magistrates' courts*

Section 7, Criminal Justice Act 1987(**f**)*; Parts III and IV, Criminal Procedure and Investigations Act 1996: pre-trial and preparatory hearings in the Crown Court*

Section 9, Criminal Justice Act 1967(**g**)*: proof by written witness statement*

Part 1, Criminal Procedure and Investigations Act 1996(**h**)*: disclosure.]*

PART 4

SERVICE OF DOCUMENTS

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of the Criminal Procedure and Investigations Act 1996 (c. 25), and paragraphs 1 and 4 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**a**) 1980 c. 43; section 128 was amended by section 59 to, and paragraphs 2, 3 and 4 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 48 of the Police and Criminal Evidence Act 1984 (c. 60), section 170(1) of, and paragraphs 65 and 69 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 125(3) of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 1990 (c. 41), sections 49, 52 and 80 of, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25), paragraph 75 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44). It is modified by section 91(5) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 129 was amended by paragraph 51 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**b**) 1980 c. 43; section 19 was substituted by paragraphs 1 and 5 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by sections 144, 177 and 178 of, and paragraph 4 of Schedule 17, paragraph 80 of Schedule 21 and Part 5 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).

(**c**) 1998 c. 37; section 51 was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4). Section 51A was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 6 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**d**) 1933 c. 36; section 2 was amended by Part IV of Schedule 11 to, the Courts Act 1971 (c. 23), Schedule 5 to, the Senior Courts Act 1981 (c. 54), Schedule 2 to the Prosecution of Offences Act 1985 (c. 23), paragraph 1 of Schedule 2 to the Criminal Justice Act 1987 (c. 38), paragraph 10 of Schedule 15 to the Criminal Justice Act 1988 (c. 33), paragraph 8 of Schedule 6 to the Criminal Justice Act 1991 (c. 53), Schedule 1 to the Statute Law (Repeals) Act 1993 (c. 50), paragraph 17 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25), paragraph 5 of Schedule 8 to the Crime and Disorder Act 1998 (c. 37), paragraph 34 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), paragraph 1 of the Schedule to S.I. 2004/2035, section 12 of, and paragraph 7 of Schedule 1 to, the Constitutional Reform Act 2005 (c. 4), sections 116 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25), paragraph 32 of Schedule 17 to the Crime and Courts Act 2013 (c. 22) and section 82 of the Deregulation Act 2015 (c. 20).

(**e**) 1980 c. 43; section 8A was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by S.I. 2006/2493 and paragraphs 12 and 14 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 8B was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by paragraph 51 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

(**f**) 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), section 80 of, and paragraph 2 of Schedule 3 and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and sections 45 and 310 of, and paragraphs 52 and 53 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44). The amendment made by section 45 of the Criminal Justice Act 2003 (c. 44) is in force for certain purposes; for remaining purposes it has effect from a date to be appointed.

(**g**) 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), regulation 9 of, and paragraph 4 of Schedule 5 to, S.I. 2001/1090, paragraph 43 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), section 26 of, and paragraph 7 of Schedule 2 to, the Armed Forces Act 2011 (c. 18) and section 80 of the Deregulation Act 2015 (c. 20). It is further amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54) and section 65 of, and paragraph 1 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from dates to be appointed.

(**h**) 1996 c. 25.

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When this Part applies

4.1.—(1) The rules in this Part apply to the service of—

(a) every document in a case to which these Rules apply; and

(b) any document which other legislation allows or requires to be served in accordance with these Rules.

(2) The rules apply subject to any special rules in other legislation (including other Parts of these Rules) or in the Practice Direction.

(3) In this Part, 'the relevant court office' means—

(a) in relation to a case in a magistrates' court or in the Crown Court, an office—

(i) at which that court's business is administered, and

(ii) the address or electronic address of which is advertised by the Lord Chancellor at the date of service as that at which that type of document must be served;

(b) in relation to an application to a High Court judge for permission to serve a draft indictment—

(i) in London, the King's Bench Listing Office, Royal Courts of Justice, Strand, London WC2A 2LL,

(ii) elsewhere, the office at which court staff administer the business of any court then constituted of a High Court judge, and

(iii) in either case, the electronic address which is advertised by the Lord Chancellor at the date of service as that at which such an application must be served;

(c) in relation to an extradition appeal case in the High Court—

(i) the Administrative Court Office, Royal Courts of Justice, Strand, London WC2A 2LL, and

(ii) the electronic address which is advertised by the Lord Chancellor at the date of service as that at which that type of document must be served; and

(d) where the recipient is the Registrar of Criminal Appeals—

(i) the Criminal Appeal Office, Royal Courts of Justice, Strand, London WC2A 2LL, and

(ii) the electronic address which is advertised by the Lord Chancellor at the date of service as that at which that type of document must be served.

[Note. The following provisions allow or require the service of documents in accordance with Criminal Procedure Rules—

(a) section 243 of the Road Traffic Act 1960(**a**) *(notice requiring identification of driver);*

(**a**) 1960 c. 16; section 243 was amended by section 109 of, and paragraph 107 of Schedule 8 to, the Courts Act 2003 (c. 39) and paragraph 1 of Schedule 1 to the Judicial Review and Courts Act 2022 (c. 35).

(b) section 29(A1) of the Misuse of Drugs Act 1971(**a**) *(notice or other document required by Act to be served);*

(c) paragraph 8(3) of the Schedule to the Prices Act 1974(**b**) *(notice of intended prosecution);*

(d) paragraph 10 of Schedule 4 to the Salmon and Freshwater Fisheries Act 1975(**c**) *(surrender of licence to court officer);*

(e) section 5(1) of the Isle of Man Act 1979(**d**) *(summons or process requiring a person in the Isle of Man to attend a criminal court in England and Wales);*

(f) section 82(5F) of the Magistrates' Courts Act 1980(**e**) *(notice of hearing to consider issue of warrant of commitment);*

(g) section 72 of the Public Passenger Vehicles Act 1981(**f**) *(notice requiring identification of driver);*

(h) section 19(4A) of the Video Recordings Act 1984(**g**) *(copy of certificate of examination);*

(i) section 83(4) of the Weights and Measures Act 1985(**h**) *(notice of intended prosecution for offence);*

(j) sections 164(10) and 172(7) of the Road Traffic Act 1988(**i**) *(notice requiring verification of date of birth; notice requiring identification of driver);*

(k) sections 1(1ZA), 12(1) and (3), 16(6), 25(7) and 85(A2) of the Road Traffic Offenders Act 1988(**j**) *(notice of intended prosecution; notice requiring identification of driver; analyst's certificate; notice requiring attendance of analyst; notice requiring verification of date of birth; other specified documents);*

(l) section 35(7) of the Transport and Works Act 1992(**k**) *(documentary evidence as to breath and other specimens);*

(m) section 60(11) of, and paragraphs 4(5) and 5(3) of Schedule 5 to, the Powers of Criminal Courts (Sentencing) Act 2000(**l**) *(attendance centre order); and*

(n) section 27(1) of the Criminal Justice and Police Act 2001(**m**) *(notice in connection with proposed closure of premises).]*

Methods of service

4.2.—(1) A document may be served by any of the methods described in rules 4.3 to 4.6 (subject to rules 4.7 and 4.10), or in rule 4.8.

(2) Where a document may be served by electronic means under rule 4.6, the general rule is that the person serving it must use that method.

(**a**) 1971 c. 38; section 29(A1) was inserted by paragraph 2 of Schedule 1 to the Judicial Review and Courts Act 2022 (c. 35).
(**b**) 1974 c. 24; paragraph 8(3) of the Schedule was amended by paragraph 3 of Schedule 1 to the Judicial Review and Courts Act 2022 (c. 35).
(**c**) 1975 c. 51; paragraph 10 of Schedule 4 was amended by section 233 of, and paragraphs 1 and 17 of Schedule 16 to, the Marine and Coastal Access Act 2009 (c. 23), section 90 of, and paragraph 86 of Schedule 13 to, the Access to Justice Act 1999 (c. 22) and paragraph 4 of Schedule 1 to the Judicial Review and Courts Act 2022 (c. 35).
(**d**) 1979 c. 58; section 5(1) was amended by paragraph 5 of Schedule 1 to the Judicial Review and Courts Act 2022 (c. 35).
(**e**) 1980 c. 43; section 82(5F) was inserted by section 61 of the Criminal Justice Act 1988 (c. 33) and amended by paragraph 6 of Schedule 1 to the Judicial Review and Courts Act 2022 (c. 35).
(**f**) 1981 c. 14; section 72 was amended by section 139 of, and Schedule 8 to, the Transport Act 1985 (c. 67) and paragraph 7 of Schedule 1 to the Judicial Review and Courts Act 2022 (c. 35).
(**g**) 1984 c. 39; section 19(4A) was inserted by paragraph 8 of Schedule 1 to the Judicial Review and Courts Act 2022 (c. 35).
(**h**) 1985 c. 72; section 83(4) was amended by paragraph 9 of Schedule 1 to the Judicial Review and Courts Act 2022 (c. 35).
(**i**) 1988 c. 52; sections 164(10) and 172(7) were amended by paragraph 10 of Schedule 1 to the Judicial Review and Courts Act 2022 (c. 35).
(**j**) 1988 c. 53; sections 1(1ZA) and 85(A2) were inserted, and sections 12(1) and (3), 16(6) and 25(7) were amended, by paragraph 11 of Schedule 1 to the Judicial Review and Courts Act 2022 (c. 35).
(**k**) 1992 c. 42; section 35(7) was amended by paragraph 12 of Schedule 1 to the Judicial Review and Courts Act 2022 (c. 35).
(**l**) 2000 c. 6; section 60(11) was amended by S.I. 2001/618 and S.I. 2005/866. Paragraph 5(3) of Schedule 5 was amended by S.I. 2005/866. Those two provisions and paragraph 4(5) of Schedule 5 all were amended by paragraph 13 of Schedule 1 to the Judicial Review and Courts Act 2022 (c. 35).
(**m**) 2001 c. 16; section 27(1) was amended by paragraph 14 of Schedule 1 to the Judicial Review and Courts Act 2022 (c. 35).

Service by handing over a document

4.3.—(1) A document may be served on—

(a) an individual by handing it to him or her;

(b) a corporation by handing it to a person holding a senior position in that corporation;

(c) an individual or corporation who is legally represented in the case by handing it to that legal representative;

(d) the prosecution by handing it to the prosecutor or to the prosecution representative; and

(e) the court officer or the Registrar of Criminal Appeals by handing it to a court officer with authority to accept it at the relevant court office.

(2) If an individual is under 18, a copy of a document served under paragraph (1)(a) must be handed to his or her parent, or another appropriate adult, unless no such person is readily available.

(3) Unless the court otherwise directs, for the purposes of paragraph (1)(c) or (d) (service by handing a document to a party's representative) 'representative' includes an advocate appearing for that party at a hearing.

[Note. Some legislation treats a body that is not a corporation as if it were one for the purposes of rules about service of documents. See for example section 143 of the Adoption and Children Act 2002(**a**)*.]*

Service by leaving or posting a document

4.4.—(1) A document may be served by addressing it to the person to be served and leaving it at the appropriate address for service under this rule, or by sending it to that address by first class post or by the equivalent of first class post.

(2) The address for service under this rule on—

(a) an individual is an address where it is reasonably believed that he or she will receive it;

(b) a corporation is its principal office, and if there is no readily identifiable principal office then any place where it carries on its activities or business;

(c) an individual or corporation who is legally represented in the case is that legal representative's office;

(d) the prosecution is the prosecutor's office;

(e) the court officer or the Registrar of Criminal Appeals is the relevant court office.

[Note. In addition to service in England and Wales for which these rules provide, service outside England and Wales may be allowed under other legislation. See—

(a) section 39 of the Criminal Law Act 1977(**b**) *(service of summons, etc. in Scotland and Northern Ireland);*

(b) section 1139(4) of the Companies Act 2006(**c**) *(service of copy summons, etc. on company's registered office in Scotland and Northern Ireland);*

(c) sections 3, 4, 4A and 4B of the Crime (International Co-operation) Act 2003(**d**) *(service of summons, etc. outside the United Kingdom) and rules 49.1 and 49.2; and*

(d) section 1139(2) of the Companies Act 2006 (service on overseas company).]

(**a**) 2002 c. 38.

(**b**) 1977 c. 45; sub-section (1) was substituted by section 331 of, and paragraph 6 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44). Sub-section (3) was amended by section 83 of, and paragraph 79 of Schedule 7 to, the Criminal Justice (Scotland) Act 1980 (c. 62).

(**c**) 2006 c. 46.

(**d**) 2003 c. 32; sections 4A and 4B were inserted by section 331 of, and paragraph 16 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

Service by document exchange

4.5.—(1) This rule applies where—

(a) the person to be served—

(i) has given a document exchange (DX) box number, and

(ii) has not refused to accept service by DX; or

(b) the person to be served is legally represented in the case and the legal representative has given a DX box number.

(2) A document may be served by—

(a) addressing it to that person or legal representative, as appropriate, at that DX box number; and

(b) leaving it at—

(i) the document exchange at which the addressee has that DX box number, or

(ii) a document exchange at which the person serving it has a DX box number.

(3) Where the person to be served under this rule is the court officer, the address for service is the relevant court office.

Service by electronic means

4.6.—(1) This rule applies where—

(a) the person to be served—

(i) has given an electronic address and has not refused to accept service at that address, or

(ii) is given access to an electronic address at which a document may be deposited and has not refused to accept service by the deposit of a document at that address; or

(b) the person to be served is legally represented in the case and the legal representative—

(i) has given an electronic address, or

(ii) is given access to an electronic address at which a document may be deposited.

(2) A document may be served—

(a) by sending it by electronic means to the address which the recipient has given; or

(b) by depositing it at an address to which the recipient has been given access and—

(i) in every case, making it possible for the recipient to read the document, or view or listen to its content, as the case may be,

(ii) unless the court otherwise directs, making it possible for the recipient to make and keep an electronic copy of the document, and

(iii) notifying the recipient of the deposit of the document (which notice may be given by electronic means).

(3) Where the person to be served under this rule is the court officer—

(a) the address for service is the relevant court office; and

(b) if service is by deposit under paragraph (2)(b), notice of that deposit—

(i) must be given only where arrangements for use of the electronic address advertised under rule 4.1(3) so require, and

(ii) if so required, must be given in accordance with those arrangements.

(4) Where a document is served under this rule the person serving it need not provide a paper copy as well.

Documents that must be served by specified methods

4.7. An application or written statement, and notice, under rule 48.9 alleging contempt of court may be served—

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

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

Service by person in custody

4.8.—(1) A person in custody may serve a document by handing it to the custodian addressed to the person to be served.

(2) The custodian must—

(a) endorse it with the time and date of receipt;

(b) record its receipt; and

(c) forward it promptly to the addressee.

Service by another method

4.9.—(1) The court may allow service of a document by a method—

(a) other than those described in rules 4.3 to 4.6 and in rule 4.8; and

(b) other than one specified by rule 4.7, where that rule applies.

(2) An order allowing service by another method must specify—

(a) the method to be used; and

(b) the date on which the document will be served.

Documents that may not be served on a legal representative

4.10. Unless the court otherwise directs, service on a party's legal representative of any of the following documents is not service of that document on that party—

(a) a summons, requisition, single justice procedure notice or witness summons;

(b) notice of an order under section 25 of the Road Traffic Offenders Act 1988(**a**);

(c) a notice of registration under section 71(6) of that Act(**b**);

(d) notice of a hearing to review the postponement of the issue of a warrant of detention or imprisonment under section 77(6) of the Magistrates' Courts Act 1980(**c**);

(e) notice under section 86 of that Act(**d**) of a revised date to attend a means inquiry;

(f) any notice or document served under Part 14 (Bail and custody time limits);

(g) notice under rule 24.15(a) of when and where an adjourned hearing will resume;

(h) notice under rule 28.5(3) of an application to vary or discharge a compensation order;

(i) notice under rule 28.10(2)(c) of the location of the sentencing or enforcing court;

(j) a collection order, or notice requiring payment, served under rule 30.2(a); or

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(**a**) 1988 c. 53; section 25 was amended by section 90 of, and paragraphs 140 and 142 of Schedule 13 to, the Access to Justice Act 1999 (c. 22), section 165 of, and paragraph 118 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 109 of, and paragraph 311 of Schedule 8 to, the Courts Act 2003 (c. 39).

(**b**) 1988 c. 53; section 71(6) was amended by section 109 of, and paragraph 317 of Schedule 8 to, the Courts Act 2003 (c. 39).

(**c**) 1980 c. 43; section 77(6) was substituted by section 109 of, and paragraph 218 of Schedule 8 to, the Courts Act 2003 (c. 39).

(**d**) 1980 c. 43; section 86 was amended by section 51(2) of the Criminal Justice Act 1982 (c. 48) and section 97(3) of the Access to Justice Act 1999 (c. 22).

(k) an application or written statement, and notice, under rule 48.9 alleging contempt of court.

Date of service

4.11.—(1) A document served under rule 4.3 or rule 4.8 is served on the day it is handed over.

(2) Unless something different is shown, a document served on a person by any other method is served—

(a) in the case of a document left at an address, on the next business day after the day on which it was left;

(b) in the case of a document sent by first class post or by the equivalent of first class post, on the second business day after the day on which it was posted or despatched;

(c) in the case of a document served by document exchange, on the second business day after the day on which it was left at a document exchange allowed by rule 4.5;

(d) in the case of a document served by electronic means—

(i) on the day on which the document is sent under rule 4.6(2)(a) or on which notice of its deposit is given under rule 4.6(2)(b), if that day is a business day and if the document is so sent or that notice is given by no later than 2.30pm that day,

(ii) if the document is an application for permission to refer a sentencing case under rule 41.2 (Service of notice of reference and application for permission), on the day on which the document is so sent or on which notice of its deposit is so given if that day is a business day and if that document is sent or the notice given by no later than 5pm that day,

(iii) in an extradition appeal case in the High Court, on the day on which the document is so sent or on which notice of its deposit is so given if that day is a business day and if the document is sent or the notice given by no later than 4.30pm that day (or by no later than midnight at the end of that day if the document is an appeal notice served under rule 50.19 (Service of appeal notice)),

(iv) on the day of its deposit under rule 4.6(2)(b), if that day is a business day and if under rule 4.6(3)(b) no notice of deposit is required, or

(v) otherwise, on the next business day after it was sent, deposited or such notice was given; and

(e) in any case, on the day on which the addressee responds to it, if that is earlier.

(3) Unless something different is shown, a document produced by a computer system for dispatch by post is to be taken as having been sent by first class post, or by the equivalent of first class post, to the addressee on the business day after the day on which it was produced.

(4) Where a document is served on or by the court officer or the Registrar of Criminal Appeals, 'business day' does not include a day on which the relevant court office is closed.

Proof of service

4.12. The person who serves a document may prove that by signing a certificate explaining how and when it was served.

Court's power to give directions about service

4.13.—(1) The court may specify the time as well as the date by which a document must be—

(a) served under rule 4.3 (Service by handing over a document) or rule 4.8 (Service by person in custody); or

(b) sent or deposited by electronic means, if it is served under rule 4.6.

(2) The court may treat a document as served if the addressee responds to it even if it was not served in accordance with the rules in this Part.

PART 5

FORMS AND COURT RECORDS

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FORMS

Applications, etc. by forms or electronic means

5.1.—(1) This rule applies where a rule, a practice direction or the court requires a person to—

(a) make an application or give a notice;

(b) supply information for the purposes of case management by the court; or

(c) supply information needed for other purposes by the court.

(2) Unless the court otherwise directs, such a person must—

(a) use such electronic arrangements as the court officer may make for that purpose, in accordance with those arrangements; or

(b) if no such arrangements have been made, use the appropriate form issued under the Practice Direction or the Criminal Costs Practice Direction, in accordance with those Directions.

Forms in Welsh

5.2.—(1) Any Welsh language form issued under the Practice Direction or the Criminal Costs Practice Direction is for use in connection with proceedings in courts in Wales.

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

(3) Where only a Welsh form, or only the corresponding English form, is served—

(a) the following words in Welsh and English must be added:

"Darperir y ddogfen hon yn Gymraeg / Saesneg os bydd arnoch ei heisiau. Dylech wneud cais yn ddi-oed i (swyddog y llys) (rhodder yma'r cyfeiriad)

This document will be provided in Welsh / English if you require it. You should apply immediately to (the court officer) (address)"; and

(b) the court officer, or the person who served the form, must, on request, supply the corresponding form in the other language to the person served.

Signature of forms

5.3.—(1) This rule applies where a form provides for its signature.

(2) Unless other legislation otherwise requires, or the court otherwise directs, signature may be by any written or electronic authentication of the form by, or with the authority of, the signatory.

[Note. Section 7 of the Electronic Communications Act 2000(**a**) *provides for the use of an electronic signature in an electronic communication.]*

COURT RECORDS

Duty to make records

5.4.—(1) For each case, as appropriate, the court officer must record, by such means as the Lord Chancellor directs—

(a) each charge or indictment against the defendant;

(b) the defendant's plea to each charge or count;

(c) each acquittal, conviction, sentence, determination, direction or order;

(d) each decision about bail;

(e) the power exercised where the court commits or adjourns the case to another court—

(i) for sentence, or

(ii) for the defendant to be dealt with for breach of a community order, a deferred sentence, a conditional discharge, or a suspended sentence of imprisonment, imposed by that other court;

(f) the court's reasons for a decision, where legislation requires those reasons to be recorded;

(g) any appeal;

(h) each party's presence or absence at each hearing;

(i) any consent that legislation requires before the court can proceed with the case, or proceed to a decision;

(j) in a magistrates' court—

(i) any indication of sentence given by the court,

(ii) the registration of a fixed penalty notice for enforcement as a fine, and any related endorsement on a driving record,

(iii) the power exercised where the court sends the defendant to the Crown Court for trial for an offence,

(iv) any statement made by the court under section 70(5) of the Proceeds of Crime Act 2002(**b**) (statement that if the court were not committing the defendant for consideration of a confiscation order then it would have committed the defendant to the Crown Court for sentence for an offence under section 14, 16 or 16A of the Sentencing Act 2020(**c**)),

(v) any opinion given by the court under section 18(4) or 19(3) of the Sentencing Act 2020 (opinion that if the court were not committing the defendant for sentence under

(**a**) 2000 c. 7.

(**b**) 2002 c. 29; section 70 was amended by section 41 of, and paragraph 75 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), section 410 of, and paragraphs 181 and 195 of Schedule 24 to, the Sentencing Act 2020 (c. 17) and section 46 of, and paragraph 19 of Schedule 13 to, the Counter-Terrorism and Sentencing Act 2021 (c. 11).

(**c**) 2020 c. 17; section 16A was inserted by section 46 of, and paragraph 26 of Schedule 13 to, the Counter-Terrorism and Sentencing Act 2021 (c. 11).

section 18 or 19 of the 2020 Act then it could, or would be required to, commit the defendant to the Crown Court for sentence for the offence under one of sections 14, 15, 16, 16A or 17 of that Act), and

(vi) the exercise of a power to which paragraph (3) applies (judges exercising powers of District Judges (Magistrates' Courts));

(k) in the Crown Court—

(i) any request for assistance or other communication about the case received from a juror,

(ii) the date and time at which the court gives the jury directions about the law under rule 25.14(2) or (3)(a),

(iii) the date and time at which the court gives the jury other assistance in writing under rule 25.14(5), and

(iv) the date, time and subject matter of submissions and rulings that relate to such directions and assistance;

(l) the identity of—

(i) the prosecutor,

(ii) the defendant,

(iii) any other applicant to whom these Rules apply,

(iv) any interpreter or intermediary,

(v) the parties' legal representatives, if any, and

(vi) the judge, magistrate or magistrates, justices' legal adviser or other person who made each recorded decision;

(m) where a defendant is entitled to attend a hearing, any agreement by the defendant to waive that right;

(n) where interpretation is required for a defendant, any agreement by that defendant to do without the written translation of a document; and

(o) any order made by the court on an application under rule 5.8(8) which prohibits a supply of information by the court officer without the court's permission.

(2) Such records must include—

(a) each party's and representative's address, including any electronic address and telephone number available;

(b) the defendant's date of birth, if available; and

(c) the date of each event and decision recorded.

(3) Where a judge acting under section 66 of the Courts Act 2003(**a**) (Judges having powers of District Judges (Magistrates' Courts)) exercises the power of a magistrates' court, the court officer then assisting that judge must—

(a) record, by such means as the Lord Chancellor directs, the magistrates' court power exercised by that judge; and

(b) as soon as practicable arrange the transmission to the magistrates' court of—

(i) that record, and

(ii) a record of the circumstances in which that power was exercised.

(4) Where a court record appears to the court officer to be incorrect the officer must correct it if—

(a) the parties agree on the terms of the correction; or

(**a**) 2003 c. 39; section 66 was amended by section 32 of, and paragraph 6 of Schedule 2 to, the Armed Forces Act 2011 (c. 18) and section 61 of, and paragraph 90 of Schedule 10 and paragraph 4 of Schedule 14 to, the Crime and Courts Act 2013 (c. 22).

(b) the court so directs.

(5) Where a court ("the receiving court"), or a party to the proceedings before that court, questions the accuracy of a record of a decision by a court ("the transferring court") which sent a case for trial, committed, remitted or transferred a case for sentence or other determination, or from which an appeal has been brought to the receiving court—

(a) the court officer for the transferring court must review that record;

(b) if that record appears to be correct then the court officer for the transferring court must so inform the receiving court as soon as practicable, explaining that conclusion; and

(c) if that record appears to be incorrect then the court officer must correct it.

[Note. For the duty to keep court records, see sections 5 and 8 of the Public Records Act 1958(**a**)*.*

Requirements to record the court's reasons for its decision are contained in: section 5 of the Bail Act 1976(**b**)*; section 47(1) of the Road Traffic Offenders Act 1988*(**c**)*; sections 20, 33A and 33BB of the Youth Justice and Criminal Evidence Act 1999*(**d**)*; section 174 of the Criminal Justice Act 2003*(**e**)*; and rule 6.8.*

The prosecution of some offences requires the consent of a specified authority. Requirements for the defendant's consent to proceedings in his or her absence are contained in sections 23 and 128 of the Magistrates' Courts Act 1980(**f**)*.*

In the circumstances for which it provides, section 20 of the Magistrates' Courts Act 1980(**g**) *allows the court to give an indication of whether a custodial or non-custodial sentence is more likely in the event of a guilty plea at trial in that court: see also rule 9.11(3). Rules 3.16 and 9.13 provide for sentencing indications in other circumstances in magistrates' courts.*

Requirements to register fixed penalty notices and to record any related endorsement of a driving record are contained in sections 57, 57A and 71 of the Road Traffic Offenders Act 1988(**h**)*.*

(**a**) 1958 c. 51; section 5 was amended by sections 67 and 86 of, and paragraph 2 of Schedule 5 to, the Freedom of Information Act 2000 (c. 36); and section 8 was amended by sections 27 and 35 of, and Schedule 2 to, the Administration of Justice Act 1969 (c. 58), section 1 of, and paragraph 19 of Schedule 2 to, the Administration of Justice Act 1970 (c. 31), section 56 of, and Schedule 11 to, the Courts Act 1971 (c. 23), section 152 of, and Schedule 7 to, the Senior Courts Act 1981 (c. 54) and sections 56 and 59 of, and Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**b**) 1976 c. 63; section 5 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 60 of the Criminal Justice Act 1982 (c. 48), paragraph 1 of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 53 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 129(1) of the Criminal Justice and Police Act 2001 (c. 16), paragraph 182 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36, and Parts 2, 4 and 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27).

(**c**) 1988 c. 53.

(**d**) 1999 c. 23; section 20(6) was amended by paragraph 384(a) of Schedule 8 to the Courts Act 2003 (c. 39); section 33A was inserted by section 47 of the Police and Justice Act 2006 (c. 48). Section 33BB is inserted by section 104(1) of the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed.

(**e**) 2003 c. 44; section 174 was substituted by section 64 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**f**) 1980 c. 43; section 23 was amended by section 125 of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 1990 (c. 41) and paragraphs 1 and 8 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 128 was amended by section 59 to, and paragraphs 2, 3 and 4 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 48 of the Police and Criminal Evidence Act 1984 (c. 60), section 170(1) of, and paragraphs 65 and 69 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 125(3) of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 1990 (c. 41), sections 49, 52 and 80 of, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25), paragraph 75 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44). It is modified by section 91(5) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**g**) 1980 c. 43; section 20 was amended by section 100 of, and paragraph 25 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53), paragraph 63 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraphs 1 and 6 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**h**) 1988 c. 53; section 57(3) and (4) was amended by regulation 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); section 57A was added by section 9 of the Road Safety Act 2006 (c. 49) and amended by section 10 of that Act; and section 71 was amended by section 63 of, and paragraph 25(1) of Schedule 3 to, the Vehicle Excise and Registration Act 1994 (c. 22), sections 90(1) and 106 of, and paragraphs 140 and 150(1) and (2) of Schedule 13, and table 7 of Schedule 15 to, the Access to Justice Act 1999 (c. 22), section 109(1) of, and paragraph 317(1) and (2) of Schedule 8 to, the Courts Act 2003 (c. 39) and section 9(6) of, and paragraphs 2 and 22 of Schedule 2 to, the Road Safety Act 2006 (c. 49).

Under section 66 of the Courts Act 2003, every holder of a judicial office listed in that section has the powers of a justice of the peace who is a District Judge (Magistrates' Courts) in relation to criminal causes and matters. The list includes Circuit judges and judges of the High Court and Court of Appeal.

For agreement to do without a written translation in a case in which the defendant requires interpretation, see rule 3.8(5).

Where a court record accurately records a court's decision but a party (a) wants the court to change that decision, or (b) questions the court's power to make that decision, see rules 28.4 (Variation of sentence) and 44.3 (Reopening a case in a magistrates' court; Setting aside a conviction or varying a costs, etc. order).]

Recording and transcription of proceedings in the Crown Court

5.5.—(1) Where someone may appeal to the Court of Appeal, paragraphs (2) to (4) apply and the court officer must—

(a) arrange for the recording of the proceedings in the Crown Court, unless the court otherwise directs; and

(b) arrange for the transcription of such a recording if—

(i) the Registrar wants such a transcript, or

(ii) anyone else wants such a transcript (but that is subject to the restrictions in paragraph (2)).

(2) Unless the court otherwise directs, a person who transcribes a recording of proceedings under such arrangements—

(a) may only supply a transcript of a recording of a hearing in private to—

(i) the Registrar, or

(ii) an individual who was present at that hearing;

(b) if the recording of a hearing in public contains information to which reporting restrictions apply, may only supply a transcript containing that information to—

(i) the Registrar, or

(ii) a recipient to whom that supply will not contravene those reporting restrictions; but

(c) subject to paragraph (2)(a) and (b), must supply any person with any transcript for which that person asks—

(i) in accordance with the transcription arrangements made by the court officer, and

(ii) on payment by that person of any fee prescribed.

(3) A party who wants to hear a recording of proceedings must—

(a) apply—

(i) in writing to the Registrar, if an appeal notice has been served where Part 36 applies (Appeal to the Court of Appeal: general rules), or

(ii) orally or in writing to the Crown Court officer;

(b) explain the reasons for the request; and

(c) pay any fee prescribed.

(4) If the Crown Court or the Registrar so directs, the Crown Court officer must allow that party to hear a recording of—

(a) a hearing in public; and

(b) a hearing in private, if the applicant was present at that hearing.

(5) Where the court exercises at a hearing a power to which Part 47 applies (Investigation orders and warrants)—

(a) the court officer must arrange for the recording of that hearing unless the court otherwise directs; and

(b) paragraphs (6) to (9) apply.

(6) A party or person affected by the exercise of that power who wants to hear such a recording or who wants a transcript of such a recording must—

(a) apply in writing to the court officer;

(b) explain the reasons for the request; and

(c) pay any fee prescribed.

(7) On an application under paragraph (6) to hear a recording the court officer may allow the applicant to do so—

(a) where the hearing was in public;

(b) where the hearing was in private only if the applicant was present at that hearing; and

(c) subject to any direction by the court.

(8) On an application under paragraph (6) for a transcript of a recording the court officer may arrange for transcription—

(a) where the hearing was in public;

(b) where the hearing was in private only if the applicant was present at that hearing; and

(c) subject to any direction by the court.

(9) A person who transcribes such a recording—

(a) must supply a transcript of a hearing in public to any applicant under paragraph (6), subject to paragraph (9)(b);

(b) if the recording of a hearing in public contains information to which reporting restrictions apply, may only supply a transcript containing that information to a recipient to whom that supply will not contravene those restrictions;

(c) may only supply a transcript of a hearing in private to a recipient who was present at that hearing; and

(d) must supply any such transcript—

(i) in accordance with the transcription arrangements made by the court officer, and

(ii) on payment of any fee prescribed.

[Note. Under section 32 of the Criminal Appeal Act 1968(**a**) *Criminal Procedure Rules may provide for the making of a record of any proceedings in respect of which an appeal lies to the Court of Appeal and for the making and supply of a transcript of such a record.*

For the circumstances in which reporting restrictions may apply, see the provisions listed in the note to rule 6.1. In summary, reporting restrictions prohibit the publication of the information to which they apply where that publication is likely to lead members of the public to acquire the information concerned.]

Custody of case materials

5.6. Unless the court otherwise directs, in respect of each case the court officer must—

(a) keep—

(i) any evidence, application, representation or other material served by the parties, and

(ii) any evidence or other material prepared for the court; or

(b) arrange for the whole or any part to be kept by some other appropriate person, subject to—

(**a**) 1968 c. 19.

(i) any condition imposed by the court, and

(ii) the rules in Part 34 (Appeal to the Crown Court) and Part 36 (Appeal to the Court of Appeal: general rules) about keeping exhibits pending any appeal.

ACCESS TO INFORMATION IN COURT RECORDS

The open justice principle

5.7.—(1) Where rules 5.8, 5.9, 5.10 and 5.11 apply, as well as furthering the overriding objective in accordance with rules 1.2 and 1.3 the court officer and the court must have regard to the importance of—

(a) dealing with criminal cases in public;

(b) allowing a public hearing to be reported to the public; and

(c) the rights of a person affected by a direction or order made, or warrant issued, by the court to understand why that decision was made.

(2) In rules 5.10 and 5.11 this requirement is called 'the open justice principle'.

Request for information about a case

5.8.—(1) This rule—

(a) applies where anyone, including a member of the public or a reporter, requests information about a case including information contained in materials kept by the court officer for the purposes of the case; and

(b) applies where a party or other person wants the court to prohibit a supply of information without the court's permission which affects that party or person and which otherwise would be required by this rule; but

(c) does not apply if rule 5.12 applies (Request for certificate, extract or information under other legislation).

(2) A person requesting information must—

(a) ask the court officer;

(b) specify the information requested; and

(c) pay any fee prescribed.

(3) A request for information—

(a) may be made orally or in writing, and need not explain why the information is requested, if this rule requires the court officer to supply that information; but

(b) must be in writing, unless the court otherwise permits, and must explain why the information is requested, if this rule does not so require.

(4) Subject to paragraph (5), the court officer must supply to the person making the request—

(a) the date of a hearing in public;

(b) the statement of each alleged offence (but not the particulars of offence) and any plea entered;

(c) the court's decision—

(i) at a hearing in public,

(ii) to grant or withhold bail, or to impose or vary a bail condition (but not the terms of any such condition), or

(iii) about the committal, sending or transfer of the case to another court;

(d) whether the case is under appeal;

(e) the outcome of the case;

(f) the identity of—

(i) the prosecutor,

(ii) the defendant, including the defendant's date of birth,

(iii) the parties' representatives, including their addresses, and

(iv) the judge, magistrate or magistrates, or justices' legal adviser by whom a decision at a hearing in public was made;

(g) such other information about the case as is required by arrangements to which paragraph (6)(c) refers;

(h) details of any reporting or access restriction ordered by the court; and

(i) notice that reporting restrictions may apply to the publication of information supplied under this rule.

(5) The court officer must not supply the information requested if—

(a) the supply of that information is prohibited by—

(i) a reporting restriction or other order or requirement to withhold information from the public, or

(ii) an order made on an application under paragraph (8);

(b) that information is—

(i) the date of a hearing in public of which a party has yet to be notified, or

(ii) a recording arranged under rule 5.5 (Recording and transcription of proceedings in the Crown Court), or a copy or transcript of such a recording;

(c) that information concerns a trial in which the verdict was more than 6 months ago; or

(d) that information is not readily available to the court officer (for example, because of the location or conditions of its storage).

(6) Where the court officer must supply the information requested the supply may be—

(a) by word of mouth;

(b) in writing, including by written certificate or extract from a court record; or

(c) by such other arrangements as the Lord Chancellor directs, including supply by electronic means.

(7) Where this rule does not require the court officer to supply the information requested then unless that information can be supplied under rule 5.9—

(a) the court officer must refer the request to the court; and

(b) rule 5.10 applies.

(8) Where a party or other person wants the court to prohibit a supply of information without the court's permission which affects that party or person and which otherwise would be required by this rule—

(a) that party or person must serve an application on the court officer;

(b) the application must—

(i) specify the information to which the applicant wants the prohibition to apply,

(ii) explain why that information affects that party or person, and

(iii) explain why the applicant wants the court to prohibit the supply of that information without the court's permission; and

(c) rule 5.10 applies.

[Note. See also rule 5.7 (The open justice principle).]

Request for information by a party or person directly affected by a case

5.9.—(1) This rule applies where a party, or a person directly affected by a direction or order made or warrant issued by the court, wants information about their case including information contained in materials kept by the court officer for the purposes of that case.

(2) Such a party or person must—

(a) ask the court officer;

(b) specify the information requested; and

(c) pay any fee prescribed.

(3) The request—

(a) may be made orally or in writing, and need not explain why the information is requested, if this rule requires the court officer to supply that information; but

(b) must be in writing, unless the court otherwise permits, and must explain why the information is requested, if this rule does not so require.

(4) Subject to paragraph (5), the court officer must supply to the party or person making the request—

(a) information about the terms of any direction or order made, or warrant issued, which was—

(i) served on, or addressed or directed to, that party or person, or

(ii) made on an application by that party or person; and

(b) information received from that party or person (which might be, for example, to establish what information the court holds, or in case of a loss of that information by the party or person making the request).

(5) The court officer must not supply the information requested if that information—

(a) concerns the grounds on which a direction or order was made, or a warrant issued, in the absence of the party or person making the request;

(b) is a recording arranged under rule 5.5 (Recording and transcription of proceedings in the Crown Court), or a copy or transcript of such a recording; or

(c) is not readily available to the court officer (for example, because of the location or conditions of its storage).

(6) Where the court officer must supply the information requested the supply may be, at the choice of the party or person making the request—

(a) by word of mouth;

(b) in writing, including by written certificate or extract from a court record; or

(c) by a copy of a document served by, or on, that party or person (but not of a document not so served).

(7) Where this rule does not require the court officer to supply the information requested—

(a) the court officer must refer the request to the court; and

(b) rule 5.10 applies.

[Note. See also rule 5.7 (The open justice principle).]

Request or application determined by the court

5.10.—(1) This rule applies where—

(a) the court officer refers to the court a request for information under rule 5.8 (Request for information about a case) or rule 5.9. (Request for information by a party or person directly affected by a case); or

(b) a party or other person applies to the court under rule 5.8(8) to prohibit a supply of information without the court's permission.

(2) The court officer must—

(a) serve a request for information on a party or person likely to be affected by it, including—

(i) the applicant for any direction, order or warrant that the request concerns which was made or issued in the absence of the party or person making the request,

(ii) the applicant under rule 5.8(8) for a prohibition that affects the request (or may do so, where that application has yet to be determined), and

(iii) anyone else, and to such extent, as the court directs; and

(b) notify the party or person making the request of—

(i) the date of its service under this rule, and

(ii) the identity of each person served with it, if the court so directs.

(3) If a party or person served with a request for information objects to the supply of the information requested the objector must—

(a) give notice of the objection not more than 20 business days after service of the request, or within any longer period allowed by the court;

(b) serve that notice on the court officer and on the party or person making the request; and

(c) if the objector wants a hearing, explain why one is needed.

(4) A notice of objection to a request for information must explain—

(a) whether the objection is to the supply of the whole of the information requested, or only to the supply of a specified part or specified parts;

(b) whether the objection applies without limit of time, or only for a specified period (for example, until a date or event specified by the objector); and

(c) the grounds of the objection.

(5) Where a notice of objection to a request for information includes material that the objector thinks ought not be revealed to the party or person making the request, the objector must—

(a) omit that material from the notice served on that party or person;

(b) mark the material to show that it is only for the court; and

(c) with that material include an explanation of why it has been withheld.

(6) The court must not determine a request for information, and information requested must not be supplied, until—

(a) each party or person served with the request has had at least 20 business days, or any longer period allowed by the court, in which to object or make other representations; and

(b) the court is satisfied that in all the circumstances every such party or person has had a reasonable opportunity to do so.

(7) The court may determine a request for information or an application under rule 5.8(8)—

(a) at a hearing in public or private, or without a hearing; but

(b) any hearing must be in private, unless the court otherwise directs—

(i) where a request for information concerns a direction, order or warrant made or issued in the absence of the party or person making the request, or

(ii) on an application under rule 5.8(8).

(8) Where a notice of objection to a request for information includes material that the objector thinks ought not be revealed to the party or person making the request—

(a) any hearing of the request may take place, wholly or in part, in the absence of the party or person making it; and

(b) at any such hearing the general rule is that the court must consider, in the following sequence—

(i) representations first by the party or person making the request and then by the objector, in the presence of both, and then

(ii) further representations by the objector, in the absence of the party or person making the request

but the court may direct other arrangements for the hearing.

(9) In deciding whether to order a supply of information requested or to prohibit a supply of information by the court officer without the court's permission the court must have regard to—

(a) the open justice principle;

(b) any reporting restriction;

(c) rights and obligations under other legislation;

(d) the importance of any public interest in the withholding of that information, or in its supply only in part or subject to conditions (which public interest might be, for example, in preventing injustice, protecting others' rights, protecting the confidentiality of a criminal investigation or protecting national security); and

(e) the extent to which that information is otherwise available to the party or person making the request.

(10) Where the court orders the supply of information the supply may be, at the court's direction and on such terms as the court directs—

(a) by word of mouth;

(b) in writing, including by written certificate or extract from a court record;

(c) by a copy of a document; or

(d) by allowing access to a document, including a recording (other than a recording to which rule 5.5 applies (Recording and transcription of proceedings in the Crown Court)).

[Note. See also rule 5.7 (The open justice principle).

The court's decision under this rule may be affected by—

(a) a reporting restriction imposed by legislation or by the court (Part 6 lists the reporting restrictions that might apply);

(b) Articles 6, 8 and 10 of the European Convention on Human Rights;

(c) the Rehabilitation of Offenders Act 1974(**a**) *(section 5 of the Act*(**b**) *lists sentences and rehabilitation periods);*

(d) section 18 of the Criminal Procedure and Investigations Act 1996(**c**)*, which affects the supply of information about material, other than evidence, disclosed by the prosecutor;*

(e) Part 3 of the Data Protection Act 2018(**d**) *(sections 43(3) and 117 of which make exceptions for criminal proceedings from some other provisions of that Act); and*

(f) sections 33, 34 and 35 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**e**)*, which affect the supply of information about applications for legal aid.]*

Publication of information about court hearings, etc.

5.11.—(1) Where a case is due to be heard in public, the court officer must—

(a) publish the information listed in paragraph (2)—

(i) if that information is available to the court officer, and

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(**a**) 1974 c. 53.
(**b**) 1974 c. 53; section 5 was amended by section 15 of, and paragraphs 77 and 78 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4) and by sections 126 and 139 of, and paragraph 2 of Schedule 21 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
(**c**) 1996 c. 25.
(**d**) 2018 c. 12.
(**e**) 2012 c. 10.

(ii) unless the publication of that information is prohibited by a reporting restriction or other order or requirement to withhold information from the public; and

(b) publish that information for no longer than 5 business days—

(i) by notice displayed somewhere prominent in the vicinity of a court room in which the hearing is due to take place, and

(ii) by such arrangements as the Lord Chancellor directs, including arrangements for publication by electronic means, but only to the extent needed to comply with the open justice principle.

(2) The information that paragraph (1) requires the court officer to publish is—

(a) the date, time and place of the hearing;

(b) the identity of the defendant;

(c) by notice under paragraph (1)(b)(i), such other information as it may be practicable to publish concerning—

(i) the type of hearing,

(ii) the identity of the prosecutor,

(iii) the identity of the court, and

(iv) any reporting or access restriction that applies; and

(d) by arrangements under paragraph (1)(b)(ii), such other information as it may be practicable to publish concerning—

(i) the details listed in paragraph (2)(c), and

(ii) the statement of each alleged offence (but not the particulars of offence).

(3) Where 15 business days have expired after service on the defendant of a written charge and other documents under rule 24.9 (Single justice procedure: special rules), the court officer must—

(a) publish the information listed in paragraph (4) if—

(i) the information is available to the court officer, and

(ii) the publication of the information is not prohibited by a reporting restriction; and

(b) publish that information for no longer than 5 business days by such arrangements as the Lord Chancellor directs, including arrangements for publication by electronic means, but only to the extent needed to comply with the open justice principle.

(4) The information that paragraph (3) requires the court officer to publish is—

(a) the identity of the defendant;

(b) the identity of the prosecutor;

(c) the statement of each alleged offence (but not the particulars of offence); and

(d) such other information as it may be practicable to publish about any reporting restriction that applies.

(5) If it is not practicable to publish the information about reporting or access restrictions that this rule requires then the court officer must publish a notice or notices by such arrangements as the Lord Chancellor directs—

(a) warning that such restrictions may apply to a case information about which is published under this rule;

(b) explaining the general effect of such restrictions; and

(c) explaining how further information about such restrictions may be obtained, generally and in relation to an individual case.

[Note. See also rule 5.7 (The open justice principle).]

Request for certificate, extract or information under other legislation

5.12.—(1) This rule applies where legislation other than these Rules—

(a) allows a certificate of conviction or acquittal, or an extract from records kept by the court officer, to be introduced in evidence in criminal proceedings; or

(b) requires or permits information about a case, including information contained in materials kept by the court officer for the purposes of the case, to be supplied by the court officer to a specified person for a specified purpose.

(2) A person who wants such a certificate or extract, or such information, must—

(a) apply in writing to the court officer;

(b) specify the certificate, extract or information required;

(c) explain under what legislation and for what purpose it is required; and

(d) pay any fee prescribed.

(3) If the application satisfies the requirements of that legislation, the court officer must supply the certificate, extract or information requested—

(a) to a party; and

(b) unless the court otherwise directs, to any other applicant.

[Note. Under sections 73 to 75 of the Police and Criminal Evidence Act 1984(**a**)*, a certificate of conviction or acquittal, and certain other details from records to which this Part applies, may be admitted in evidence in criminal proceedings.*

Examples of legislation to which paragraph (1)(b) of this rule applies include (this is not a complete list)—

(a) section 17 of the Criminal Appeal Act 1995(**b**)*, under which information may be required by the Criminal Cases Review Commission;*

(b) section 115 of the Crime and Disorder Act 1998(**c**)*, under which information may be supplied to specified authorities for the purposes of that Act;*

(c) section 14 of the Offender Management Act 2007(**d**)*, under which information may be supplied to specified persons for offender management purposes; and*

(d) article 7 of the Age of Criminal Responsibility (Scotland) Act 2019 (Consequential Provisions and Modifications) Order 2021(**e**)*, under which information may be required to assist in a review of Scottish criminal records concerning a time at which the subject of those records was under 12 years old.*

(**a**) 1984 c. 60; section 73 was amended by section 90(1) of, and paragraphs 125 and 128 of Schedule 13 to, the Access to Justice Act 1999 (c. 22), paragraph 285 of Schedule 8 to the Courts Act 2003 (c. 39) and paragraph 13 of Schedule 17 to the Coroners and Justice Act 2009 (c. 25); and section 74 was amended by paragraph 85 of Schedule 36, and Part 5 of Schedule 37, to the Criminal Justice Act 2003 (c. 44) and paragraph 14 of Schedule 17 to the Coroners and Justice Act 2009 (c. 25).

(**b**) 1995 c. 35; section 17 was amended by section 1 of the Criminal Cases Review Commission (Information) Act 2016 (c. 17).

(**c**) 1998 c. 37; section 115 was amended by paragraphs 150 and 151 of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43), paragraph 35 of Schedule 1 to S.I. 2000/90, section 97 of the Police Reform Act 2002 (c. 30), paragraph 25 of Schedule 1 to S.I. 2002/2469, section 219 of the Housing Act 2004 (c. 34), section 22 of, and paragraphs 1 and 7 of Schedule 9 to, the Police and Justice Act 2006 (c. 48), paragraph 29 of the Schedule to S.I. 2007/961, section 29 of the Transport for London Act 2008 (c. i), paragraph 13 of Schedule 1 to S.I. 2008/912, paragraphs 109 and 111 of Schedule 2 to S.I. 2010/866, section 98 of, and paragraphs 231 and 238 of Schedule 16 to, the Police Reform and Social Responsibility Act 2011 (c. 13), paragraphs 83 and 90 of Schedule 5 to the Health and Social Care Act 2012 (c. 7), article 26 of, and paragraph 30 of Schedule 2 to, S.I. 2013/602, paragraphs 78 and 80 of Schedule 1 and paragraphs 103 and 106 of Schedule 2 to the Policing and Crime Act 2017 (c. 3) and paragraph 1 of Schedule 1 and paragraphs 51 and 57 of Schedule 4 to the Health and Care Act 2022 (c. 31).

(**d**) 2007 c. 21; section 14 was amended by sections 38 and 39 of, and paragraphs 24 and 26 of Schedule 9 and paragraph 37 of Schedule 10 to, the Criminal Justice and Courts Act 2015 (c. 2).

(**e**) S.I. 2021/1458.

Under section 92 of the Sexual Offences Act 2003(**a**)*, a certificate which records a conviction for an offence and a statement by the convicting court that that offence is listed in Schedule 3 to the Act is evidence of those facts for certain purposes of that Act.*

A certificate of conviction or acquittal, and certain other information, required for other purposes, may be obtained from the Secretary of State under sections 112, 113A and 113B of the Police Act 1997(**b**)*.*

This rule applies where certificates or extracts from court records are required for use in evidence or for some other purpose specified in legislation. Where this rule does not apply, information about a case may be obtained under rule 5.8.]

PART 6

REPORTING, ETC. RESTRICTIONS

Contents of this Part

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GENERAL RULES

When this Part applies

6.1.—(1) This Part applies where the court can—

(a) impose a restriction on—

(i) reporting what takes place at a public hearing, or

(**a**) 2003 c. 42.

(**b**) 1997 c. 50; section 112 was amended by section 50 of the Criminal Justice and Immigration Act 2008 (c. 4), sections 93, 97 and 112 of, and Part 8 of Schedule 8 to, the Policing and Crime Act 2009 (c. 26) and sections 80 and 84 of the Protection of Freedoms Act 2012 (c. 9). Section 113A was added by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15), modified by regulation 4 of S.I. 2010/1146, and amended by paragraph 14 of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006 (c. 47), section 50 of the Criminal Justice and Immigration Act 2008 (c. 4), sections 97 and 112 of, and Part 8 of Schedule 8 to, the Policing and Crime Act 2009 (c. 26), sections 80 and 115 of, and paragraphs 35 and 36 of Schedule 9 and Part 5 of Schedule 10 to, the Protection of Freedoms Act 2012 (c. 9), articles 2 and 3 of S.I. 2009/203 and articles 36 and 37 of S.I. 2012/3006. Section 113B was added by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15), modified by regulations 5 to 7 of S.I. 2010/1146, and amended by paragraph 14 of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006 (c. 47), paragraph 149 of Schedule 16 to the Armed Forces Act 2006 (c. 52), section 50 of the Criminal Justice and Immigration Act 2008 (c. 4), sections 97 and 112 of, and Part 8 of Schedule 8 to, the Policing and Crime Act 2009 (c. 26), sections 79, 80, 82 and 115 of, and paragraphs 35 and 37 of Schedule 9 and Parts 5 and 6 of Schedule 10 to, the Protection of Freedoms Act 2012 (c. 9), articles 2 and 4 of S.I. 2009/203, regulation 8 of S.I. 2010/1146 and articles 36, 37 and 39 of S.I. 2012/3006.

(ii) public access to what otherwise would be a public hearing;

(b) vary or remove a reporting or access restriction that is imposed by legislation;

(c) withhold information from the public during a public hearing;

(d) order a trial in private; or

(e) allow there to take place during a hearing—

(i) sound recording, or

(ii) communication by electronic means.

(2) This Part does not apply to arrangements required by legislation, or directed by the court, in connection with—

(a) sound recording during a hearing, or the transcription of such a recording; or

(b) measures to assist a witness or defendant to give evidence.

[Note. The court can impose reporting restrictions under—

(a) section 4(2) of the Contempt of Court Act 1981(**a**) *(postponed report of public hearing);*

(b) section 11 of the Contempt of Court Act 1981 (matter withheld from the public during a public hearing);

(c) section 58 of the Criminal Procedure and Investigations Act 1996(**b**) *(postponed report of derogatory assertion in mitigation);*

(d) section 45 of the Youth Justice and Criminal Evidence Act 1999(**c**) *(identity of a person under 18);*

(e) section 45A of the Youth Justice and Criminal Evidence Act 1999(**d**) *(identity of a witness or victim under 18);*

(f) section 46 of the Youth Justice and Criminal Evidence Act 1999(**e**) *(identity of a vulnerable adult witness);*

(g) section 82 of the Criminal Justice Act 2003(**f**) *(order for retrial after acquittal); or*

(h) section 75 of the Serious Organised Crime and Police Act 2005(**g**) *(identity of a defendant who assisted the police).*

There are reporting restrictions imposed by legislation that the court can vary or remove, under—

(a) section 49 of the Children and Young Persons Act 1933(**h**) *(youth court proceedings);*

(b) section 8C of the Magistrates' Courts Act 1980(**i**) *(pre-trial ruling in magistrates' courts);*

(c) section 11 of the Criminal Justice Act 1987(**j**) *(preparatory hearing in the Crown Court);*

(**a**) 1981 c. 49.
(**b**) 1996 c. 25.
(**c**) 1999 c. 23.
(**d**) 1999 c. 23; section 45A was inserted by section 78 of the Criminal Justice and Courts Act 2015 (c. 2).
(**e**) 1999 c. 23.
(**f**) 2003 c. 44.
(**g**) 2005 c. 15.
(**h**) 1933 c. 12; section 49 was substituted by section 49 of the Criminal Justice and Public Order Act 1994 (c. 33) and amended by section 45 of the Crime (Sentences) Act 1997 (c. 43), section 119 of, and paragraph 1 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 48 of, and paragraphs 1 and 3 of Schedule 2 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 165 of, and paragraph 2 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraph 2 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44), sections 208 and 210 of, and paragraphs 15 and 19 of Schedule 21, and Schedule 23 to, the Legal Services Act 2007 (c. 29) and sections 6 and 149 of, and paragraphs 1, 3 and 100 of Schedule 4 and Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4). It is further amended by section 74 of, and paragraph 5 of Schedule 7 to, the Criminal Justice and Court Services Act 2000 (c. 43) with effect from a date to be appointed.
(**i**) 1980 c. 43; section 8C was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by paragraphs 12 and 15 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
(**j**) 1987 c. 38; section 11 was amended by paragraphs 1 and 6 of Schedule 3 to the Criminal Procedure and Investigations Act 1996 (c. 25), section 24 of, and paragraphs 38 and 40 of Schedule 4 to, the Access to Justice Act 1999 (c. 22), section 311 of, and paragraph 58 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and section 40(4) of, and paragraph 46 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(d) section 1 of the Sexual Offences (Amendment) Act 1992(**a**) *(identity of complainant of sexual offence);*

(e) section 37 of the Criminal Procedure and Investigations Act 1996(**b**) *(preparatory hearing in the Crown Court);*

(f) section 41 of the Criminal Procedure and Investigations Act 1996(**c**) *(pre-trial ruling in the Crown Court);*

(g) section 52A of, and paragraph 3 of Schedule 3 to, the Crime and Disorder Act 1998(**d**) *(allocation and sending for trial proceedings);*

(h) section 47 of the Youth Justice and Criminal Evidence Act 1999(**e**) *(special measures direction);*

(i) section 141F of the Education Act 2002(**f**) *(restrictions on reporting alleged offences by teachers);*

(j) section 71 of the Criminal Justice Act 2003(**g**) *(prosecution appeal against Crown Court ruling); and*

(k) section 4A of, and paragraph 1 of Schedule 1 to, the Female Genital Mutilation Act 2003(**h**) *(identity of person against whom a female genital mutilation offence is alleged to have been committed).*

There are reporting restrictions imposed by legislation that the court has no power to vary or remove, under—

(a) section 1 of the Judicial Proceedings (Regulation of Reports) Act 1926(**i**) *(indecent or medical matter);*

(b) section 2 of the Contempt of Court Act 1981(**j**) *(risk of impeding or prejudicing active proceedings).*

Access to a youth court is restricted under section 47 of the Children and Young Persons Act 1933(**k**)*. See also rule 24.2 (Trial and sentence in a magistrates' court – general rules).*

Under section 36 of the Children and Young Persons Act 1933(**l**)*, no-one under 14 may be present in court when someone else is on trial, or during proceedings preliminary to a trial, unless that person is required as a witness, or for the purposes of justice, or the court permits.*

The court can restrict access to the courtroom under—

(**a**) 1992 c. 34; section 1 was amended by section 48 of, and paragraphs 6 and 7 of Schedule 2 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23).

(**b**) 1996 c. 25; section 37 was amended by section 24 of, and paragraph 49 of Schedule 4 to, the Access to Justice Act 1999 (c. 22), section 311 of the Criminal Justice Act 2003 (c. 44) and section 40(4) of, and paragraph 61 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(**c**) 1996 c. 25; section 41 was amended by section 311 of the Criminal Justice Act 2003 (c. 44).

(**d**) 1998 c. 37; section 52A was inserted by paragraphs 15 and 19 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by paragraphs 46 and 47 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Paragraph 3 of Schedule 3 was amended by section 24 of, and paragraphs 53 and 55 of Schedule 4 to, the Access to Justice Act 1999 (c. 22), paragraphs 68 and 71 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and paragraphs 46 and 50 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**e**) 1999 c. 23; section 47 was amended by section 52 of, and paragraph 37 of Schedule 14 to, the Police and Justice Act 2006 (c. 48).

(**f**) 2002 c. 32; section 141F was inserted by section 13 of the Education Act 2011 (c. 21).

(**g**) 2003 c. 44; section 71 was amended by section 40(4) of, and paragraph 82 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and paragraph 65 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**h**) 2003 c. 31; section 4A and Schedule 1 were inserted by section 71 of the Serious Crime Act 2015 (c. 9).

(**i**) 1926 c. 61; section 1 was amended by sections 38 and 46 of the Criminal Justice Act 1982 (c. 48), paragraph 2 of Schedule 8 to the Family Law Act 1996 (c. 27) and paragraph 8 of Schedule 27 to the Civil Partnership Act 2004 (c. 33). It is further amended by paragraph 7 of Schedule 26 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(**j**) 1981 c. 49; section 2 was amended by paragraph 31 of Schedule 20 to the Broadcasting Act 1990 (c. 42).

(**k**) 1933 c. 12; section 47 was amended by Parts II and III of Schedule 7 to the Justices of the Peace Act 1949 (c. 101), paragraph 40 of Schedule 11 to the Criminal Justice Act 1991 (c. 53), sections 47(7) and 120(2) of, and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37) and paragraphs 15 and 18 of Schedule 21 to the Legal Services Act 2007 (c. 29). It is further amended by paragraph 2 of Schedule 4 to the Youth Justice and Criminal Evidence Act 1999 (c. 23), with effect from a date to be appointed.

(**l**) 1933 c. 12; section 36 was amended by section 73 of, and Part III of Schedule 15 to, the Access to Justice Act 1999 (c. 22).

(a) section 8(4) of the Official Secrets Act 1920(**a**)*, during proceedings for an offence under the Official Secrets Acts 1911 and 1920;*

(b) section 37 of the Children and Young Persons Act 1933(**b**)*, where the court receives evidence from a person under 18;*

(c) section 75 of the Serious Organised Crime and Police Act 2005(**c**)*, where the court reviews a sentence passed on a defendant who assisted an investigation.*

The court has an inherent power, in exceptional circumstances—

(a) to allow information, for example a name or address, to be withheld from the public at a public hearing;

(b) to restrict public access to what otherwise would be a public hearing, for example to control disorder;

(c) to hear a trial in private, for example for reasons of national security.

Under section 9(1) of the Contempt of Court Act 1981(**d**)*, it is a contempt of court without the court's permission to—*

(a) use in court, or bring into court for use, a device for recording sound;

(b) publish a recording of legal proceedings made by means of such a device; or

(c) use any such recording in contravention of any condition on which permission was granted.

Under section 41 of the Criminal Justice Act 1925(**e**)*, it is an offence to take or attempt to take a photograph, or with a view to publication to make or attempt to make a portrait or sketch, of any judge, juror, witness or party, in the courtroom, or in the building or in the precincts of the building in which the court is held, or while that person is entering or leaving the courtroom, building or precincts; or to publish such a photograph, portrait or sketch.*

Section 32 of the Crime and Courts Act 2013(**f**) *(Enabling the making, and use, of films and other recordings of proceedings) allows for exceptions to be made to the prohibitions imposed by section 9 of the 1981 Act and section 41 of the 1925 Act.*

By reason of sections 15 and 45 of the Senior Courts Act 1981(**g**), *the Court of Appeal and the Crown Court each has an inherent power to deal with a person for contempt of court for disrupting the proceedings. Under section 12 of the Contempt of Court Act 1981*(**h**)*, a magistrates' court has a similar power.*

See also—

(a) rule 5.5, under which the court officer must make arrangements for recording proceedings in the Crown Court;

(b) Part 18, which applies to live links and other measures to assist a witness or defendant to give evidence;

(c) rule 45.10, which applies to costs orders against a non-party for serious misconduct; and

(d) Part 48, which contains rules about contempt of court.]

(**a**) 1920 c. 75; section 8 was amended by section 32 of the Magistrates' Courts Act 1980 (c. 43).
(**b**) 1933 c. 12; section 37 was amended by paragraphs 15 and 16 of Schedule 21 to the Legal Services Act 2007 (c. 29) and is further amended by paragraph 2 of Schedule 4 to the Youth Justice and Criminal Evidence Act 1999 (c. 23), with effect from a date to be appointed.
(**c**) 2005 c. 15.
(**d**) 1981 c. 49.
(**e**) 1925 c. 86; section 41 was amended by section 56(4) of, and Part IV of Schedule 11 to, the Courts At 1971 (c. 23), sections 38 and 46 of the Criminal Justice Act 1982 (c. 48) and section 47 of the Constitutional Reform Act 2005 (c. 4).
(**f**) 2013 c. 22.
(**g**) 1981 c. 54.
(**h**) 1981 c. 49; section 12 was amended by section 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), section 17(3) of, and Part I of Schedule 4 to, the Criminal Justice Act 1991 (c. 53); section 65(3) and (4) of, and paragraph 6(4) of Schedule 3 to, the Criminal Justice Act 1993 (c. 36) and section 165 of, and paragraph 83 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).

Exercise of court's powers to which this Part applies

6.2.—(1) When exercising a power to which this Part applies, as well as furthering the overriding objective, in accordance with rule 1.3, the court must have regard to the importance of—

(a) dealing with criminal cases in public; and

(b) allowing a public hearing to be reported to the public.

(2) The court may determine an application or appeal under this Part—

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

(b) without a hearing.

(3) But the court must not exercise a power to which this Part applies unless each party and any other person directly affected, including any reporter notified by means of such arrangements as the Lord Chancellor directs—

(a) is present; or

(b) has had an opportunity—

(i) to attend, or

(ii) to make representations.

[Note. See also section 121 of the Magistrates' Courts Act 1980(**a**) *and rule 24.2 (general rules about trial and sentence in a magistrates' court).*

See rule 6.3 (Court's power to vary requirements under this Part).]

Court's power to vary requirements under this Part

6.3.—(1) The court may—

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

(b) require an application to be made in writing instead of orally;

(c) consider an application or representations made orally instead of in writing; and

(d) dispense with a requirement to—

(i) give notice, or

(ii) serve an application.

(2) Someone who wants an extension of time must—

(a) apply when making the application or representations for which it is needed; and

(b) explain the delay.

REPORTING AND ACCESS RESTRICTIONS

Reporting and access restrictions

6.4.—(1) This rule applies where the court can—

(a) impose a restriction on—

(i) reporting what takes place at a public hearing, or

(ii) public access to what otherwise would be a public hearing; or

(b) withhold information from the public during a public hearing.

(**a**) 1980 c. 43; section 121 was amended by paragraph 16 of Schedule 8 to the Criminal Justice Act 1988 (c. 33), paragraph 237 of Schedule 8 and Schedule 10 to the Courts Act 2003 (c. 39), paragraph 99 of Schedule 10 to the Crime and Courts Act 2013 (c. 22), section 49 of the Criminal Justice and Courts Act 2015 (c. 2) and paragraph 56 of Schedule 24 to the Sentencing Act 2020 (c. 17).

(2) Unless other legislation otherwise provides, the court may do so—

(a) on application by a party; or

(b) on its own initiative.

(3) A party who wants the court to do so must—

(a) apply as soon as reasonably practicable;

(b) notify—

(i) each other party,

(ii) reporters, by means of such arrangements as the Lord Chancellor directs, and

(iii) such other person (if any) as the court directs;

(c) specify the proposed terms of the order, and for how long it should last;

(d) explain—

(i) what power the court has to make the order, and

(ii) why an order in the terms proposed is necessary;

(e) where the application is for a reporting direction under section 45A of the Youth Justice and Criminal Evidence Act 1999(**a**) (Power to restrict reporting of criminal proceedings for lifetime of witnesses and victims under 18), explain—

(i) how the circumstances of the person whose identity is concerned meet the conditions prescribed by that section, having regard to the factors which that section lists; and

(ii) why such a reporting direction would be likely to improve the quality of any evidence given by that person, or the level of co-operation given by that person to any party in connection with the preparation of that party's case, taking into account the factors listed in that section; and

(f) where the application is for a reporting direction under section 46 of the Youth Justice and Criminal Evidence Act 1999(**b**) (Power to restrict reports about certain adult witnesses in criminal proceedings), explain—

(i) how the witness is eligible for assistance, having regard to the factors listed in that section, and

(ii) why such a reporting direction would be likely to improve the quality of the witness' evidence, or the level of co-operation given by the witness to the applicant in connection with the preparation of the applicant's case, taking into account the factors which that section lists.

[Note. Under section 45A(10) or section 46(9) of the Youth Justice and Criminal Evidence Act 1999, if the conditions prescribed by those sections are met the court may make an excepting direction dispensing, to any extent specified, with the restrictions imposed by a reporting direction made under those sections.]

Varying or removing restrictions

6.5.—(1) This rule applies where the court can vary or remove a reporting or access restriction.

(2) Unless other legislation otherwise provides, the court may do so—

(a) on application by a party or person directly affected; or

(b) on its own initiative.

(3) A party or person who wants the court to do so must—

(a) apply as soon as reasonably practicable;

(b) notify—

(**a**) 1999 c. 23; section 45A was inserted by section 78 of the Criminal Justice and Courts Act 2015 (c. 2).
(**b**) 1999 c. 23.

(i) each other party,

(ii) reporters, by means of such arrangements as the Lord Chancellor directs, and

(iii) such other person (if any) as the court directs;

(c) specify the restriction; and

(d) explain, as appropriate, why it should be varied or removed.

(4) A person who wants to appeal to the Crown Court under section 141F of the Education Act 2002(**a**) must—

(a) serve an appeal notice on—

(i) the Crown Court officer, and

(ii) each other party;

(b) serve on the Crown Court officer, with the appeal notice, a copy of the application to the magistrates' court;

(c) serve the appeal notice not more than 15 business days after the magistrates' court's decision against which the appellant wants to appeal; and

(d) in the appeal notice, explain, as appropriate, why the restriction should be maintained, varied or removed.

(5) Rule 34.11 (Constitution of the Crown Court) applies on such an appeal.

[Note. Under section 141F(7) of the Education Act 2002, a party to an application to a magistrates' court to remove the statutory restriction on reporting an alleged offence by a teacher may appeal to the Crown Court against the decision of the magistrates' court. With the Crown Court's permission, any other person may appeal against such a decision.]

Trial in private

6.6.—(1) This rule applies where the court can order a trial in private.

(2) A party who wants the court to do so must—

(a) apply in writing not less than 5 business days before the trial is due to begin; and

(b) serve the application on—

(i) the court officer, and

(ii) each other party.

(3) The applicant must explain—

(a) the reasons for the application;

(b) how much of the trial the applicant proposes should be in private; and

(c) why no measures other than trial in private will suffice, such as—

(i) reporting restrictions,

(ii) an admission of facts,

(iii) the introduction of hearsay evidence,

(iv) a direction for a special measure under section 19 of the Youth Justice and Criminal Evidence Act 1999,

(v) a witness anonymity order under section 86 of the Coroners and Justice Act 2009, or

(vi) arrangements for the protection of a witness.

(4) Where the application includes information that the applicant thinks ought not be revealed to another party, the applicant must—

(**a**) 2002 c. 32; section 141F was inserted by section 13 of the Education Act 2011 (c. 21) and amended by paragraph 19 of Schedule 11 to the Criminal Justice and Courts Act 2015 (c. 2).

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

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

(c) in that other part, explain why the applicant has withheld that information from that other party.

(5) The court officer must at once—

(a) display notice of the application somewhere prominent in the vicinity of the courtroom; and

(b) give notice of the application to reporters by such other arrangements as the Lord Chancellor directs.

(6) The application must be determined at a hearing which—

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

(b) if the court so directs, may be, wholly or in part, in the absence of a party from whom information has been withheld; and

(c) in the Crown Court, must be after the defendant is arraigned but before the jury is sworn.

(7) At the hearing of the application—

(a) the general rule is that the court must consider, in the following sequence—

(i) representations first by the applicant and then by each other party, in all the parties' presence, and then

(ii) further representations by the applicant, in the absence of a party from whom information has been withheld; but

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

(8) The court must not hear a trial in private until—

(a) the business day after the day on which it orders such a trial, or

(b) the disposal of any appeal against, or review of, any such order, if later.

Representations in response

6.7.—(1) This rule applies where a party, or person directly affected, wants to make representations about an application or appeal.

(2) Such a party or person must—

(a) serve the representations on—

(i) the court officer,

(ii) the applicant,

(iii) each other party, and

(iv) such other person (if any) as the court directs;

(b) do so as soon as reasonably practicable after notice of the application; and

(c) ask for a hearing, if that party or person wants one, and explain why it is needed.

(3) Representations must—

(a) explain the reasons for any objection; and

(b) specify any alternative terms proposed.

Order about restriction or trial in private

6.8.—(1) This rule applies where the court—

(a) orders, varies or removes a reporting or access restriction; or

(b) orders a trial in private.

(2) The court officer must—

(a) record the court's reasons for the decision; and

(b) as soon as reasonably practicable, arrange for notice of the decision to be—

(i) displayed somewhere prominent in the vicinity of the courtroom, and

(ii) communicated to reporters by such other arrangements as the Lord Chancellor directs.

SOUND RECORDING AND ELECTRONIC COMMUNICATION

Sound recording and electronic communication

6.9.—(1) This rule applies where the court can give permission to—

(a) bring into a hearing for use, or use during a hearing, a device for—

(i) recording sound, or

(ii) communicating by electronic means; or

(b) publish a sound recording made during a hearing.

(2) The court may give such permission—

(a) on application; or

(b) on its own initiative.

(3) A person who wants the court to give such permission must—

(a) apply as soon as reasonably practicable;

(b) notify—

(i) each party, and

(ii) such other person (if any) as the court directs; and

(c) explain why the court should permit the use or publication proposed.

(4) As a condition of the applicant using such a device, the court may direct arrangements to minimise the risk of its use—

(a) contravening a reporting restriction;

(b) disrupting the hearing; or

(c) compromising the fairness of the hearing, for example by affecting—

(i) the evidence to be given by a witness, or

(ii) the verdict of a jury.

(5) Such a direction may require that the device is used only—

(a) in a specified part of the courtroom;

(b) for a specified purpose;

(c) for a purpose connected with the applicant's activity as a member of a specified group, for example representatives of news-gathering or reporting organisations; or

(d) at a specified time, or in a specified way.

Forfeiture of unauthorised sound recording

6.10.—(1) This rule applies where someone without the court's permission—

(a) uses a device for recording sound during a hearing; or

(b) publishes a sound recording made during a hearing.

(2) The court may exercise its power to forfeit the device or recording—

(a) on application by a party, or on its own initiative; and

(b) provisionally, despite rule 6.2(3), to allow time for representations.

(3) A party who wants the court to forfeit a device or recording must—

(a) apply as soon as reasonably practicable;

(b) notify—

(i) as appropriate, the person who used the device, or who published the recording, and

(ii) each other party; and

(c) explain why the court should exercise that power.

[Note. Under section 9(3) of the Contempt of Court Act 1981(**a**)*, the court can forfeit any device or recording used or made in contravention of section 9(1) of the Act.]*

PART 7

STARTING A PROSECUTION IN A MAGISTRATES' COURT

Contents of this Part

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Allegation of offence	rule 7.3
Summons, warrant and requisition	rule 7.4
Notice of defendant in custody	rule 7.5
Arrangements for court to receive defendant in custody	rule 7.6

When this Part applies

7.1.—(1) This Part applies in a magistrates' court where—

(a) a prosecutor wants the court to issue a summons or warrant under section 1 of the Magistrates' Courts Act 1980(**b**);

(b) a prosecutor with the power to do so issues—

(i) a written charge and requisition, or

(ii) a written charge and single justice procedure notice

under section 29 of the Criminal Justice Act 2003(**c**);

(c) a person who is in custody is charged with an offence; or

(d) the prosecutor alleges an offence against a defendant who is due to attend, or attends, the court in response to another allegation.

(2) In this Part, 'authorised prosecutor' means a prosecutor authorised under section 29 of the Criminal Justice Act 2003 to issue a written charge and requisition or single justice procedure notice.

(**a**) 1981 c. 49.

(**b**) 1980 c. 43; section 1 was amended by section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), sections 43 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39), section 31 of, and paragraph 12 of Schedule 7 to, the Criminal Justice Act 2003 (c. 44), section 153 of the Police Reform and Social Responsibility Act 2011 (c. 13), section 50 of, and paragraphs 2 and 3 of Schedule 11 to, the Criminal Justice and Courts Act 2015 (c. 2) and section 67 of, and paragraph 2 of Schedule 12 to, the Space Industry Act 2018 (c. 5). It is further amended by paragraphs 7 and 8 of Schedule 36 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(**c**) 2003 c. 44; section 29 has been brought into force for certain purposes only (see S.I. 2007/1999, 2008/1424, 2009/2879, 2010/3005, 2011/2188, 2012/825 and 2014/633). It was amended by section 50 of, and paragraph 130 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11), section 59 of, and paragraph 196 of Schedule 4 to, the Serious Organised Crime and Police Act 2005 (c. 15), section 15 of, and paragraph 187 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22), S.I. 2014/834 and section 46 of the Criminal Justice and Courts Act 2015 (c. 2).

[Note. Under section 1 of the Magistrates' Courts Act 1980, on receiving a formal statement (described in that section as an 'information') alleging that someone has committed an offence, the court may issue—

(a) a summons requiring that person to attend court; or

(b) a warrant for that person's arrest, if—

(i) the alleged offence must or may be tried in the Crown Court,

(ii) the alleged offence is punishable with imprisonment, or

(iii) the person's address cannot be established sufficiently clearly to serve a summons or requisition.

The powers of the court to which this Part applies may be exercised by a single justice of the peace.

Under section 29 of the Criminal Justice Act 2003, a prosecutor authorised under that section may issue a written charge alleging that someone has committed an offence, and either—

(a) a requisition requiring that person to attend court; or

(b) a notice that the single justice procedure under section 16A of the Magistrates' Courts Act 1980(**a**) *and rule 24.9 of these Rules applies.*

Section 30 of the 2003 Act(**b**) *contains other provisions about written charges, requisitions and single justice procedure notices.*

A person detained under a power of arrest may be charged if the custody officer decides that there is sufficient evidence to do so. See sections 37 and 38 of the Police and Criminal Evidence Act 1984(**c**)*.]*

Application for summons, etc.

7.2.—(1) A prosecutor who wants the court to issue a summons must—

(a) serve on the court officer a written application; or

(b) unless other legislation prohibits this, present an application orally to the court, with a written statement of the allegation or allegations made by the prosecutor.

(2) A prosecutor who wants the court to issue a warrant must—

(a) serve on the court officer—

(i) a written application, or

(ii) a copy of a written charge that has been issued; or

(b) present to the court either of those documents.

(3) An application for the issue of a summons or warrant must—

(a) set out the allegation or allegations made by the applicant in terms that comply with rule 7.3(1) (Allegation of offence in application or charge); and

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(**a**) 1980 c. 43; section 16A was inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2).

(**b**) 2003 c. 44; section 30 has been brought into force for certain purposes only (see S.I. 2007/1999, 2008/1424, 2009/2879, 2010/3005, 2011/2188, 2012/825 and 2014/633). It was amended by article 3 of, and paragraphs 45 and 46 of the Schedule to, S.I. 2004/2035 and section 47 of the Criminal Justice and Courts Act 2015 (c. 2).

(**c**) 1984 c. 60; section 37 was amended by section 108(7) of, and Schedule 15 to, the Children Act 1989 (c. 41), sections 72 and 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), sections 29(4) and 168(3) of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 28 of, and paragraphs 1 and 2 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44), section 23(1) of, and paragraphs 1 and 2 of Schedule 1 to, the Drugs Act 2005 (c. 17) and sections 11 and 52 of, and paragraph 9 of Schedule 14 to, the Police and Justice Act 2006 (c. 48). Section 38 was amended by section 108(5) of, and paragraph 53 of Schedule 13 to, the Children Act 1989 (c. 41), section 59 of the Criminal Justice Act 1991 (c. 53), sections 24, 28 and 168(2) of, and paragraph 54 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 57 of the Criminal Justice and Court Services Act 2000 (c. 43), section 5 of, and paragraph 44 of Schedule 32 and paragraph 5 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), section 23 of, and paragraphs 1 and 3 of Schedule 1 to, the Drugs Act 2005 (c. 17) and paragraph 34 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(b) demonstrate—

(i) that the application is made in time, if legislation imposes a time limit, and

(ii) that the applicant has the necessary consent, if legislation requires it.

(4) As well as complying with paragraph (3), an application for the issue of a warrant must—

(a) demonstrate that the offence or offences alleged can be tried in the Crown Court;

(b) demonstrate that the offence or offences alleged can be punished with imprisonment; or

(c) concisely outline the applicant's grounds for asserting that the defendant's address is not sufficiently established for a summons to be served.

(5) Paragraph (6) applies unless the prosecutor is—

(a) a public authority within the meaning of section 17 of the Prosecution of Offences Act 1985(**a**); or

(b) a person acting—

(i) on behalf of such an authority, or

(ii) in that person's capacity as an official appointed by such an authority.

(6) Where this paragraph applies, as well as complying with paragraph (3), and with paragraph (4) if applicable, an application for the issue of a summons or warrant must—

(a) concisely outline the grounds for asserting that the defendant has committed the alleged offence or offences;

(b) disclose—

(i) details of any previous such application by the same applicant in respect of any allegation now made, and

(ii) details of any current or previous proceedings brought by another prosecutor in respect of any allegation now made; and

(c) include a statement that to the best of the applicant's knowledge, information and belief—

(i) the allegations contained in the application are substantially true,

(ii) the evidence on which the applicant relies will be available at the trial,

(iii) the details given by the applicant under paragraph (6)(b) are true, and

(iv) the application discloses all the information that is material to what the court must decide.

(7) Where the statement required by paragraph (6)(c) is made orally—

(a) the statement must be on oath or affirmation, unless the court otherwise directs; and

(b) the court must arrange for a record of the making of the statement.

(8) An authorised prosecutor who issues a written charge must notify the court officer immediately.

(9) A single document may contain—

(a) more than one application; or

(b) more than one written charge.

(10) Where an offence can be tried only in a magistrates' court, then unless other legislation otherwise provides—

(a) a prosecutor must serve an application for the issue of a summons or warrant on the court officer or present it to the court; or

(b) an authorised prosecutor must issue a written charge,

(**a**) 1985 c. 23; section 17 was amended by section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and paragraphs 1 and 4 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

not more than 6 months after the offence alleged.

(11) Where an offence can be tried in the Crown Court then—

(a) a prosecutor must serve an application for the issue of a summons or warrant on the court officer or present it to the court; or

(b) an authorised prosecutor must issue a written charge,

within any time limit that applies to that offence.

(12) The court may determine an application to issue or withdraw a summons or warrant—

(a) without a hearing, as a general rule, or at a hearing (which must be in private unless the court otherwise directs);

(b) in the absence of—

(i) the prosecutor,

(ii) the defendant; and

(c) with or without representations by the defendant.

(13) If the court so directs, a party to an application to issue or withdraw a summons or warrant may attend a hearing by live link.

(14) The court may decline to issue a summons or warrant if, for example—

(a) a court has previously determined an application by the same prosecutor which alleged the same or substantially the same offence against the same defendant on the same or substantially the same asserted facts;

(b) the prosecutor fails to disclose all the information that is material to what the court must decide;

(c) the prosecutor has—

(i) reached a binding agreement with the defendant not to prosecute, or

(ii) made representations that no prosecution would be brought, on which the defendant has acted to the defendant's detriment;

(d) the prosecutor asserts facts incapable of proof in a criminal court as a matter of law;

(e) the prosecution would constitute an assertion that the decision of another court or authority was wrong where that decision has been, or could have been, or could be, questioned in other proceedings or by other lawful means; or

(f) the prosecutor's dominant motive would render the prosecution an abuse of the process of the court.

[Note. In some legislation, including the Magistrates' Courts Act 1980, an application for the issue of a summons or warrant is described as an 'information' and serving an application on the court officer or presenting it to the court is described as 'laying' that information.

Where an offence can be tried only in a magistrates' court the general time limit for serving or presenting an application for a summons or warrant, and for issuing a written charge, is prescribed by section 127 of the Magistrates' Courts Act 1980(**a**) *and section 30(5) of the Criminal Justice Act 2003*(**b**)*. However, the legislation that creates the offence may prescribe a different time limit, which may be calculated by reference to the date of the offence or by reference to another event specified by that legislation. If the application contains insufficient information to show that it is in time the court may refuse to issue a summons or warrant.*

In section 17 of the Prosecution of Offences Act 1985 'public authority' means (a) a police force as defined by that Act, (b) the Crown Prosecution Service or any other government department, (c) a local authority or other authority or body constituted for purposes of the public service or of local government, or carrying on under national ownership any industry or undertaking or part of

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(**a**) 1980 c. 43.

(**b**) 2003 c. 44; section 30(5) was amended by section 47 of the Criminal Justice and Courts Act 2015 (c. 2).

an industry or undertaking, or (d) any other authority or body whose members are appointed by Her Majesty or by any Minister of the Crown or government department or whose revenues consist wholly or mainly of money provided by Parliament.

Part 46 (Representatives) contains rules allowing a member, officer or employee of a prosecutor, on the prosecutor's behalf, to—

(a) serve on the court officer or present to the court an application for the issue of a summons or warrant; or

(b) issue a written charge and requisition.

See Part 3 for the court's general powers of case management, including power to consider applications and give directions for (among other things) the amendment of an allegation or charge and for separate trials.

See also Part 32 (Breach, revocation and amendment of community and other orders). Rule 32.2(2) (Application by responsible officer) applies rules 7.2 to 7.4 to the procedure with which that rule deals.]

Allegation of offence

7.3.—(1) An allegation of an offence in an application for the issue of a summons or warrant or in a charge must contain—

(a) a statement of the offence that—

(i) describes the offence in ordinary language, and

(ii) identifies any legislation that creates it; and

(b) such particulars of the conduct constituting the commission of the offence as to make clear what the prosecutor alleges against the defendant, including the value of any damage or theft alleged where that value is known and where it affects the exercise of the court's powers.

(2) More than one incident of the commission of the offence may be included in the allegation if those incidents taken together amount to a course of conduct having regard to the time, place or purpose of commission.

(3) Where rule 7.1(1)(d) applies (additional allegation in existing prosecution), the prosecutor must—

(a) set out the additional allegation in terms that comply with paragraph (1);

(b) as soon as practicable—

(i) serve the additional allegation on the court officer and the defendant, or

(ii) present the additional allegation orally to the court, with a written statement of that allegation;

(c) demonstrate that the allegation is made in time, if legislation imposes a time limit; and

(d) demonstrate that the prosecutor has the necessary consent, if legislation requires it.

[Note. In some circumstances the court may allow the prosecutor to amend an allegation of an offence, including to allege a different offence. In those circumstances the allegation may be amended after any time limit for prosecuting the different offence has expired if the amendment is based on substantially the same facts as the allegation first made. See Part 3 for the court's general powers of case management, including power to consider an application and give directions for (among other things) the amendment of an allegation.]

Summons, warrant and requisition

7.4.—(1) A summons, warrant or requisition may be issued in respect of more than one offence.

(2) A summons or requisition must—

(a) contain notice of when and where the defendant is required to attend the court;

(b) specify each offence in respect of which it is issued;

(c) in the case of a summons, identify—

(i) the court that issued it, unless that is otherwise recorded by the court officer,

(ii) the court office for the court that issued it, and

(iii) the prosecutor, unless the prosecutor is a public authority; and

(d) in the case of a requisition, identify the person under whose authority it is issued.

(3) A summons may be contained in the same document as an application for the issue of that summons.

(4) A requisition may be contained in the same document as a written charge.

(5) Where the court issues a summons—

(a) the prosecutor must—

(i) serve it on the defendant, and

(ii) notify the court officer; or

(b) the court officer must—

(i) serve it on the defendant, and

(ii) notify the prosecutor.

(6) Where an authorised prosecutor issues a requisition that prosecutor must—

(a) serve on the defendant—

(i) the requisition, and

(ii) the written charge; and

(b) serve a copy of each on the court officer.

(7) Unless it would be inconsistent with other legislation, a replacement summons or requisition may be issued without a fresh application or written charge where the one replaced—

(a) was served under rule 4.4 (Service by leaving or posting a document); but

(b) is shown not to have been received by the addressee.

(8) Where a summons or requisition is served on a defendant under 18—

(a) the prosecutor or court officer who serves it must serve a copy on a parent or guardian of the defendant as well; and

(b) if the court requires the parent or guardian to attend, the copy may impose that requirement, or a separate summons or requisition may be issued for that purpose.

[Note. Part 13 contains other rules about warrants.

Section 47 of the Magistrates' Courts Act 1980(**a**) *and section 30(5) of the Criminal Justice Act 2003 make special provision about time limits under other legislation for the issue and service of a summons or requisition, where service by post is not successful.*

Under section 34A of the Children and Young Persons Act 1933(**b**)*, unless the court is satisfied that it would be unreasonable to require such attendance having regard to the circumstances of the case (i) the court may require the parent or guardian of a defendant under 18 to attend court with the defendant, and (ii) the court must do so if the defendant is under 16.]*

(**a**) 1980 c. 43; section 47 was amended by section 109(1) of, and paragraph 207 of Schedule 8 to, the Courts Act 2003 (c. 39).

(**b**) 1933 c. 12; section 34A was inserted by section 56 of the Criminal Justice Act 1991 (c. 53) and amended by section 107 of, and paragraph 1 of Schedule 5 to, the Local Government Act 2000 (c. 22) and regulations 3 and 5 of S.I. 2016/413.

Notice of defendant in custody

7.5.—(1) This rule and rule 7.6 (Arrangements for court to receive defendant in custody) apply where—

(a) a defendant in custody must be brought before a court—

(i) under section 46 of the Police and Criminal Evidence Act 1984(**a**) (Detention after charge), or

(ii) after arrest on a warrant issued under section 1 of the Magistrates' Courts Act 1980(**b**) (Issue of summons to accused or warrant for his arrest); and

(b) a police custody officer so notifies the court officer.

(2) The police custody officer must provide the court officer with—

(a) the defendant's name and date of birth;

(b) the offence charged and confirmation of the date and time of charge;

(c) confirmation that the information required by rule 8.3 (Content of initial details) is available and will be served before the defendant's case is heard;

(d) confirmation that the prosecutor has been notified;

(e) confirmation that the following have been notified and are available—

(i) any interpreter required,

(ii) the defendant's legal representative, if any, and

(iii) any local or other authority, including any youth offending team, responsible for the defendant's care or welfare;

(f) the police custody officer's proposal for the means by which the defendant will be brought before the court, either by live link or in person, and—

(i) if the proposal is for the defendant to attend court by live link, details of any material circumstance listed in rule 3.35 (Live link direction: exercise of court's powers), or

(ii) if the proposal is for the defendant to attend court in person, the identity of the authority responsible for transporting the defendant and the expected time of arrival; and

(g) details of any disability or other vulnerability of the defendant of which the police custody officer is aware and which is not apparent from other information supplied.

[Note. Under section 46 of the Police and Criminal Evidence Act 1984 a defendant who is charged with an offence and, after being charged, is kept in police or local authority detention must be brought before a magistrates' court as soon as is practicable that day, or the next day which is not Christmas Day, Good Friday or a Sunday.]

Arrangements for court to receive defendant in custody

7.6.—(1) Subject to paragraph (3), the court officer must arrange for a defendant of whom notice is given under rule 7.5 (Notice of defendant in custody) to be brought before a court in person or by live link as soon as is practicable that day and in any event—

(a) by 3.30pm if that day is a business day;

(b) by 12.30pm if that day is a Saturday or a bank holiday; or

(c) in either case, later if, but only if, a disability or vulnerability of the defendant so requires.

(**a**) 1984 c. 60; section 46 was amended by section 109 of, and paragraph 282 of Schedule 8 to, the Courts Act 2003 (c. 39).

(**b**) 1980 c. 43; section 1 was amended by section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), sections 43 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39), section 31 of, and paragraph 12 of Schedule 7 to, the Criminal Justice Act 2003 (c. 44), section 153 of the Police Reform and Social Responsibility Act 2011 (c. 13), section 50 of, and paragraphs 2 and 3 of Schedule 11 to, the Criminal Justice and Courts Act 2015 (c. 2) and section 67 of, and paragraph 2 of Schedule 12 to, the Space Industry Act 2018 (c. 5). It is further amended by paragraphs 7 and 8 of Schedule 36 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(2) In making the arrangements required by paragraph (1) the court officer must—

(a) consult with those affected including—

(i) the police custody officer,

(ii) court members,

(iii) justices' legal advisers and other court officers, and

(iv) the prosecutor; and

(b) as far as is practicable rearrange court business to ensure that the time available will allow all cases heard that day to conclude by 4.30pm (or later if, but only if, a disability or vulnerability of the defendant the subject of this rule so requires).

(3) If the arrangements otherwise required by paragraph (1) cannot practicably be made then the court officer must arrange for the defendant to be brought before a court as soon as is practicable on the next day which is not Christmas Day, Good Friday or a Sunday.

(4) When arrangements for the defendant to be brought before a court have been made the court officer promptly must so inform—

(a) the police custody officer; and

(b) as applicable, others consulted under paragraph (2)(a).

PART 8

INITIAL DETAILS OF THE PROSECUTION CASE

Contents of this Part

When this Part applies	rule 8.1
Providing initial details of the prosecution case	rule 8.2
Content of initial details	rule 8.3
Use of initial details	rule 8.4

When this Part applies

8.1. This Part applies in a magistrates' court.

Providing initial details of the prosecution case

8.2.—(1) The prosecutor must serve initial details of the prosecution case on the court officer—

(a) as soon as practicable; and

(b) in any event, no later than the beginning of the day of the first hearing.

(2) Where a defendant requests those details, the prosecutor must serve them on the defendant—

(a) as soon as practicable; and

(b) in any event, no later than the beginning of the day of the first hearing.

(3) Where a defendant does not request those details, the prosecutor must make them available to the defendant at, or before, the beginning of the day of the first hearing.

Content of initial details

8.3. Initial details of the prosecution case must include—

(a) where, immediately before the first hearing in the magistrates' court, the defendant was in police custody for the offence charged—

(i) a summary of the circumstances of the offence, and

(ii) the defendant's criminal record, if any; or

(b) where paragraph (a) does not apply—

(i) a summary of the circumstances of the offence,

(ii) any account given by the defendant in interview, whether contained in that summary or in another document,

(iii) any written witness statement or exhibit that the prosecutor then has available and considers material to plea, or to the allocation of the case for trial, or to sentence,

(iv) the defendant's criminal record, if any, and

(v) any available statement of the effect of the offence on a victim, a victim's family or others.

Use of initial details

8.4.—(1) This rule applies where—

(a) the prosecutor wants to introduce information contained in a document listed in rule 8.3; and

(b) the prosecutor has not—

(i) served that document on the defendant, or

(ii) made that information available to the defendant.

(2) The court must not allow the prosecutor to introduce that information unless the court first allows the defendant sufficient time to consider it.

PART 9

ALLOCATION AND SENDING FOR TRIAL

Contents of this Part

General rules

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Exercise of magistrates' court's powers rule 9.2
Matters to be specified on sending for trial rule 9.3
Duty of justices' legal adviser rule 9.4
Duty of magistrates' court officer rule 9.5

Sending without allocation for Crown Court trial

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Committal for sentence in connection with sending for trial

Committal for sentence for offence related to an offence sent for trial rule 9.15

Sending back, etc. for magistrates' court trial

GENERAL RULES

When this Part applies

9.1.—(1) This Part applies to—

(a) the allocation and sending of cases for trial under—

(i) sections 17A to 26 of the Magistrates' Courts Act 1980(**a**), and

(ii) sections 50A to 52 of the Crime and Disorder Act 1998(**b**); and

(b) the return of cases for trial under—

(i) section 46ZA of the Senior Courts Act 1981(**c**), and

(ii) paragraph 6 of Schedule 3 to the Crime and Disorder Act 1998(**d**).

(2) Rules 9.6 and 9.7 apply in a magistrates' court where the court must, or can, send a defendant to the Crown Court for trial, without allocating the case for trial there.

(3) Rules 9.8 to 9.14 apply in a magistrates' court where the court must allocate the case to a magistrates' court or to the Crown Court for trial.

(4) Rule 9.15 applies in a magistrates' court where, after applying other rules in this Part, the court can commit for sentence to the Crown Court a defendant who pleads guilty to an offence related to one sent for trial there.

(5) Rule 9.16 applies in the Crown Court where the court can return a defendant to a magistrates' court for trial.

[Note. At the first hearing in a magistrates' court the court may (and in some cases must) order trial in that court, or may (and in some cases must) send the defendant to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998(**e**)*. The decision depends upon—*

(a) the classification of the offence (and the general rule, subject to exceptions, is that an offence classified as triable only on indictment must be sent to the Crown Court for trial; an offence classified as triable only summarily must be tried in a magistrates' court; and

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(**a**) 1980 c. 43; sections 17A to 17C were inserted by section 49 of the Criminal Procedure and Investigations Act 1996 (c. 25). Sections 17A, 17D, 17E, 18 to 21 and 23 to 26 were amended or inserted by Schedule 3 to the Criminal Justice Act 2003 (c. 44). Sections 17A, 17D, 20, 20A, 24 and 24A were further amended by paragraphs 44, 45, 46, 47, 48 and 49 respectively of Schedule 24 to the Sentencing Act 2020 (c. 17). Section 19 was further amended by section 378 of, and paragraph 88 of Schedule 16 to, the Armed Forces Act 2006 (c. 52), sections 144, 177 and 178 of, and paragraph 4 of Schedule 17, paragraph 80 of Schedule 21 and Schedule 23 to, the Coroners and Justice Act 2009 (c. 25) and S.I. 2019/780. Section 22 was amended by sections 38 and 170 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 of the Aggravated Vehicle-Taking Act 1992 (c. 11) and sections 46 and 168 of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33). Section 22A was inserted by section 176 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12) and amended by section 52 of the Criminal Justice and Courts Act 2015 (c. 2).

(**b**) 1998 c. 37; sections 50A to 52 were inserted or amended by Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 51 was further amended by section 52 of the Criminal Justice and Courts Act 2015 (c. 2). Section 51A was further amended by sections 49 and 65 of, and paragraph 5 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 156 of Schedule 24 to the Sentencing Act 2020 (c. 17). Section 51B was further amended by section 50 of, and paragraph 69 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11), section 39 of, and paragraphs 46 and 48 of Schedule 5 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and S.I. 2014/834. Section 51C was further amended by S.I. 2006/244. Section 52 was further amended by section 177 of, and paragraph 78 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25).

(**c**) 1981 c. 54; section 46ZA was inserted by section 11 of the Judicial Review and Courts Act 2022 (c. 35).

(**d**) 1998 c. 37; paragraph 6 of Schedule 3 was amended by sections 90 and 106 of, and paragraph 179 of Schedule 13 and Schedule 15 to, the Access to Justice Act 1999 (c. 22), sections 41 of, and paragraphs 15 and 20 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), S.I. 2005/886 and paragraphs 20 and 23 of the Schedule to the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).

(**e**) 1998 c. 37; section 51 was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4). Section 51A was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 6 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

an offence classified as triable either way, on indictment or summarily, must be allocated to one or the other court for trial, subject to the defendant's right to choose Crown Court trial: see in particular sections 50A, 51 and 51A of the 1998 Act(**a**) *and section 19 of the Magistrates' Courts Act 1980*(**b**)*);*

(b) the defendant's age (and the general rule, subject to exceptions, is that an offence alleged against a defendant under 18 must be tried in a magistrates' court sitting as a youth court: see in particular sections 24 and 24A of the 1980 Act(**c**)*);*

(c) whether the defendant is awaiting Crown Court trial for another offence;

(d) whether another defendant, charged with the same offence, is awaiting Crown Court trial for that offence;

(e) in some cases (destroying or damaging property; aggravated vehicle taking), whether the value involved is more or less than £5,000; and

(f) in a case of low-value shoplifting, whether the defendant chooses Crown Court trial: see section 22A of the 1980 Act(**d**)*.*

A magistrates' court's powers of sending and allocation, including its powers (i) to receive a defendant's indication of an intention to plead guilty (see rules 9.7, 9.8 and 9.13) and (ii) to give an indication of likely sentence (see rule 9.11), may be exercised by a single justice: see sections 51 and 51A(11) of the 1998 Act, and sections 17E, 18(5) and 24D of the 1980 Act(**e**)*.*

The circumstances in which the Crown Court can send back or refer a case for magistrates' court trial are summarised in the note to rule 9.16.]

Exercise of magistrates' court's powers

9.2.—(1) This rule applies to the exercise of a magistrates' court's powers to which this Part applies.

(2) The general rule is that the court must exercise its powers at a hearing in public, but it may exercise any power it has to—

(a) withhold information from the public; or

(b) order a hearing in private.

(3) The general rule is that the court must exercise its powers in the defendant's presence, but it may exercise the powers to which the following rules apply in the defendant's absence on the conditions specified—

(a) where rule 9.7 (Sending for Crown Court trial) applies, if the defendant is represented;

(b) where rule 9.8 (Adult defendant: request for plea), rule 9.9 (Adult defendant: guilty plea) or rule 9.13 (Young defendant) applies, if—

(i) the defendant is represented, and

(**a**) 1998 c. 37; section 50A was inserted by paragraphs 15 and 17 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**b**) 1980 c. 43; section 19 was substituted by paragraphs 1 and 5 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by sections 144, 177 and 178 of, and paragraph 4 of Schedule 17, paragraph 80 of Schedule 21 and Part 5 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).

(**c**) 1980 c. 43; section 24 was amended by paragraph 47 of Schedule 14 to the Criminal Justice Act 1982 (c. 48), sections 17, 68 and 101 of, and paragraph 6 of Schedule 8 and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), paragraph 40 of Schedule 10, and Schedule 11, to the Criminal Justice and Public Order Act 1994 (c. 33), sections 47 and 119 of, and paragraph 40 of Schedule 8, to the Crime and Disorder Act 1998 (c. 37), paragraph 64 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 42 of, and paragraphs 1 and 9 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44) and sections 49 and 65 of, and paragraph 1 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38). Section 24A was inserted by paragraphs 1 and 10 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**d**) 1980 c. 43; section 22A was inserted by section 176 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12) and amended by section 52 of the Criminal Justice and Courts Act 2015 (c. 2).

(**e**) 1980 c. 43; section 17E was inserted by paragraphs 1 and 3 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 18 was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), section 49 of the Criminal Procedure and Investigations Act 1996 (c. 25), and paragraphs 1 and 4 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 24D was inserted by paragraphs 1 and 10 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(ii) the defendant's disorderly conduct makes his or her presence in the courtroom impracticable;

(c) where rule 9.10 (Adult defendant: not guilty plea) or rule 9.11 (Adult defendant: allocation for magistrates' court trial) applies, if—

(i) the defendant is represented and waives the right to be present, or

(ii) the defendant's disorderly conduct makes his or her presence in the courtroom impracticable; and

(d) where rule 9.15 (Committal for sentence for offence related to an offence sent for trial) applies, unless—

(i) it appears to the court to be contrary to the interests of justice to do so, and

(ii) the court considers that there is an acceptable reason for the defendant's absence.

(4) The court may exercise its power to adjourn—

(a) if either party asks; or

(b) on its own initiative.

(5) Where the court on the same occasion deals with two or more offences alleged against the same defendant, the court must deal with those offences in the following sequence—

(a) any to which rule 9.6 applies (Prosecutor's notice requiring Crown Court trial);

(b) any to which rule 9.7 applies (sending for Crown Court trial, without allocation there), in this sequence—

(i) any the court must send for trial, then

(ii) any the court can send for trial; and

(c) any to which rule 9.14 applies (Allocation and sending for Crown Court trial).

(6) Where the court on the same occasion deals with two or more defendants charged jointly with an offence that can be tried in the Crown Court then in the following sequence—

(a) the court must explain, in terms each defendant can understand (with help, if necessary), that if the court sends one of them to the Crown Court for trial then the court must send for trial in the Crown Court, too, any other of them—

(i) who is charged with the same offence as the defendant sent for trial, or with an offence which the court decides is related to that offence,

(ii) who does not wish to plead guilty to each offence with which he or she is charged, and

(iii) (if that other defendant is under 18, and the court would not otherwise have sent him or her for Crown Court trial) where the court decides that sending is necessary in the interests of justice

even if the court by then has decided to allocate that other defendant for magistrates' court trial; and

(b) the court may ask the defendants questions to help it decide in what order to deal with them.

(7) After following paragraph (5), if it applies, where the court on the same occasion—

(a) deals with two or more defendants charged jointly with an offence that can be tried in the Crown Court;

(b) allocates any of them to a magistrates' court for trial; and

(c) then sends another one of them to the Crown Court for trial,

the court must deal again with each one whom, on that occasion, it has allocated for magistrates' court trial.

[Note. See sections 50A, 51, 51A and 52 of the Crime and Disorder Act 1998(**a**) *and sections 17A, 17B, 17C, 18, 23, 24A, 24B and 24C of the Magistrates' Courts Act 1980*(**b**)*.*

Under sections 57A to 57E of the 1998 Act(**c**)*, the court may require a defendant to attend by live link a hearing to which this Part applies.*

Where a defendant waives the right to be present then the court may nonetheless require his or her attendance by summons or warrant: see section 26 of the 1980 Act(**d**)*.*

Under section 52A of the 1998 Act(**e**)*, reporting restrictions apply to the proceedings to which rules 9.6 to 9.14 apply.*

Part 46 contains rules allowing a representative to act on a defendant's behalf for the purposes of these Rules.

Part 3 contains rules about the court's powers of case management.]

Matters to be specified on sending for trial

9.3.—(1) Where the court sends a defendant to the Crown Court for trial, it must specify—

(a) each offence to be tried;

(b) in respect of each, the power exercised to send the defendant for trial for that offence; and

(c) the Crown Court centre at which the trial will take place.

(2) In a case in which the prosecutor serves a notice to which rule 9.6(1)(a) applies (notice requiring Crown Court trial in a case of serious or complex fraud), the court must specify the Crown Court centre identified by that notice.

(3) In any other case, in deciding the Crown Court centre at which the trial will take place, the court must take into account—

(a) the convenience of the parties and witnesses;

(b) how soon a suitable courtroom will be available; and

(c) the directions on the allocation of Crown Court business contained in the Practice Direction.

[Note. See sections 51 and 51D of the Crime and Disorder Act 1998(**f**)*.]*

Duty of justices' legal adviser

9.4.—(1) This rule applies—

(a) only in a magistrates' court; and

(b) unless the court—

(i) includes a District Judge (Magistrates' Courts), and

(**a**) 1998 c. 37; section 52 was amended by paragraphs 68 and 69 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**b**) 1980 c. 43; sections 17A, 17B and 17C were inserted by section 49 of the Criminal Procedure and Investigations Act 1996 (c. 25). Section 17A was amended by paragraph 62 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraphs 1 and 2 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 23 was amended by section 125 of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 1990 (c. 41) and paragraphs 1 and 8 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Sections 24A, 24B and 24C were inserted by paragraphs 1 and 10 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**c**) 1998 c. 37; sections 57A to 57E were substituted for section 57 as originally enacted by section 45 of the Police and Justice Act 2006 (c. 48), and amended by sections 106, 109 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25). Section 57A was further amended by paragraphs 36 and 39 of Schedule 12 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**d**) 1980 c. 43; section 26 was amended by paragraphs 1 and 12 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**e**) 1998 c. 37; section 52A was inserted by paragraphs 15 and 19 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by paragraphs 46 and 47 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**f**) 1998 c. 37; section 51D was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(ii) otherwise directs.

(2) On the court's behalf, a justices' legal adviser may—

(a) read the allegation of the offence to the defendant; and

(b) give any explanation and ask any question required by the rules in this Part.

[Note. For the functions of a justices' legal adviser, see sections 28 and 29 of the Courts Act 2003(**a**)*. See also rule 2.12 (Duties of justices' legal adviser).]*

Duty of magistrates' court officer

9.5.—(1) The magistrates' court officer must—

(a) serve notice of a sending for Crown Court trial on—

(i) the Crown Court officer, and

(ii) the parties;

(b) in that notice record—

(i) the matters specified by the court under rule 9.3 (Matters to be specified on sending for trial),

(ii) any decision by the defendant under rule 9.7 (Sending for Crown Court trial) to require Crown Court trial for low-value shoplifting,

(iii) any indication given by the defendant under rule 9.7 of intended guilty plea,

(iv) any decision by the defendant under rule 9.11 (Adult defendant: allocation to magistrates' court for trial) to decline magistrates' court trial,

(v) any opinion stated by the court under rule 9.15 (Committal for sentence for offence related to an offence sent for trial), and

(vi) the date on which any custody time limit will expire;

(c) record any indication of likely sentence to which rule 9.11 or rule 9.13 applies; and

(d) give the court such other assistance as it requires.

(2) The magistrates' court officer must include with the notice served on the Crown Court officer—

(a) the initial details of the prosecution case served by the prosecutor under rule 8.2;

(b) a record of any—

(i) listing or case management direction affecting the Crown Court,

(ii) direction about reporting restrictions,

(iii) decision about bail, for the purposes of section 5 of the Bail Act 1976(**b**),

(iv) recognizance given by a surety, or

(v) representation order; and

(c) if relevant, any available details of any—

(i) interpreter,

(ii) intermediary, or

(iii) other supporting adult, where the defendant is assisted by such a person.

(**a**) 2003 c. 39; section 28 was amended by section 15 of, and paragraphs 308 and 327 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).

(**b**) 1976 c. 63; section 5 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 60 of the Criminal Justice Act 1982 (c. 48), paragraph 1 of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 53 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 129(1) of the Criminal Justice and Police Act 2001 (c. 16), paragraph 182 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36, and Parts 2, 4 and 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27).

[Note. See sections 51 and 51D of the Crime and Disorder Act 1998(**a**)*, and section 20A of the Magistrates' Courts Act 1980*(**b**)*.]*

SENDING WITHOUT ALLOCATION FOR CROWN COURT TRIAL

Prosecutor's notice requiring Crown Court trial

9.6.—(1) This rule applies where a prosecutor with power to do so requires a magistrates' court to send for trial in the Crown Court—

(a) a case of serious or complex fraud; or

(b) a case which will involve a child witness.

(2) The prosecutor must serve notice of that requirement—

(a) on the magistrates' court officer and on the defendant; and

(b) before trial in a magistrates' court begins under Part 24 (Trial and sentence in a magistrates' court).

(3) The notice must identify—

(a) the power on which the prosecutor relies; and

(b) the Crown Court centre at which the prosecutor wants the trial to take place.

(4) The prosecutor—

(a) must, when choosing a Crown Court centre, take into account the matters listed in rule 9.3(3) (court deciding to which Crown Court centre to send a case); and

(b) may change the centre identified before the case is sent for trial.

[Note. Under section 51B of the Crime and Disorder Act 1998(**c**)*, the Director of Public Prosecutions or a Secretary of State may require the court to send a case for trial in the Crown Court if, in that prosecutor's opinion, the evidence of the offence charged—*

(a) is sufficient for the person charged to be put on trial for the offence; and

(b) reveals a case of fraud of such seriousness or complexity that it is appropriate that the management of the case should without delay be taken over by the Crown Court.

Under section 51C of the Crime and Disorder Act 1998(**d**)*, the Director of Public Prosecutions may require the court to send for trial in the Crown Court a case involving one of certain specified violent or sexual offences if, in the Director's opinion—*

(a) the evidence of the offence would be sufficient for the person charged to be put on trial for that offence;

(b) a child would be called as a witness at the trial; and

(c) for the purpose of avoiding any prejudice to the welfare of the child, the case should be taken over and proceeded with without delay by the Crown Court.

'Child' for these purposes is defined by section 51C(7) of the 1998 Act.]

(**a**) 1998 c. 37; section 51 was substituted and section 51D inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). They were amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**b**) 1980 c. 43; section 20A was inserted by paragraphs 1 and 6 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**c**) 1998 c. 37; section 51B was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 50 of, and paragraph 69 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11) and paragraphs 46 and 48 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**d**) 1998 c. 37; section 51C was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and modified by section 63 of, and paragraph 36 of Schedule 6 to, the Serious Crime Act 2007 (c. 27).

Sending for Crown Court trial

9.7.—(1) This rule applies where a magistrates' court must, or can, send a defendant to the Crown Court for trial without first allocating the case for trial there.

(2) The court must read the allegation of the offence to the defendant.

(3) The court must explain, in terms the defendant can understand (with help, if necessary)—

(a) the allegation, unless it is self-explanatory;

(b) that the offence is one for which the court, as appropriate—

(i) must send the defendant to the Crown Court for trial because the offence is one which can only be tried there or because the court for some other reason is required to send that offence for trial,

(ii) may send the defendant to the Crown Court for trial if the magistrates' court decides that the offence is related to one already sent for trial there, or

(iii) (where the offence is low-value shoplifting and the defendant is 18 or over) must send the defendant to the Crown Court for trial if the defendant wants to be tried there; and

(c) that reporting restrictions apply, which the defendant may ask the court to vary or remove.

(4) In the following sequence, the court must then—

(a) invite the prosecutor to—

(i) identify the court's power to send the defendant to the Crown Court for trial for the offence, and

(ii) make representations about any ancillary matters, including bail and directions for the management of the case in the Crown Court;

(b) invite the defendant to make representations about—

(i) the court's power to send the defendant to the Crown Court, and

(ii) any ancillary matters;

(c) (where the offence is low-value shoplifting and the defendant is 18 or over) offer the defendant the opportunity to require trial in the Crown Court; and

(d) decide whether or not to send the defendant to the Crown Court for trial.

(5) If the court sends the defendant to the Crown Court for trial, it must—

(a) ask whether the defendant intends to plead guilty in the Crown Court and—

(i) if the answer is 'yes', make arrangements for the Crown Court to take the defendant's plea as soon as possible, or

(ii) if the defendant does not answer, or the answer is 'no', make arrangements for a case management hearing in the Crown Court; and

(b) give any other ancillary directions.

[Note. See sections 51, 51A and 51E of the Crime and Disorder Act 1998(**a**)*, and sections 22A and 24A of the Magistrates' Courts Act 1980*(**b**)*.*

See also Part 6 (Reporting, etc. restrictions).]

(**a**) 1998 c. 37; section 51 was substituted, and sections 51A and 51E inserted, by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 51 was amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4). Section 51A was amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 6 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**b**) 1980 c. 43; section 24A was inserted by paragraphs 1 and 10 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 22A was inserted by section 176 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

Adult defendant: request for plea

9.8.—(1) This rule applies where—

(a) the defendant is 18 or over; and

(b) the court must decide whether a case is more suitable for trial in a magistrates' court or in the Crown Court.

(2) The court must read the allegation of the offence to the defendant.

(3) The court must explain, in terms the defendant can understand (with help, if necessary)—

(a) the allegation, unless it is self-explanatory;

(b) that the offence is one which can be tried in a magistrates' court or in the Crown Court;

(c) that the court is about to ask whether the defendant intends to plead guilty;

(d) that if the answer is 'yes', then the court must treat that as a guilty plea and must sentence the defendant, or commit the defendant to the Crown Court for sentence;

(e) that if the defendant does not answer, or the answer is 'no', then—

(i) the court must decide whether to allocate the case to a magistrates' court or to the Crown Court for trial,

(ii) the value involved may require the court to order trial in a magistrates' court (where the offence is one to which section 22 of the Magistrates' Courts Act 1980(**a**) applies), and

(iii) if the court allocates the case to a magistrates' court for trial, the defendant can nonetheless require trial in the Crown Court (unless the offence is one to which section 22 of the Magistrates' Courts Act 1980 applies and the value involved requires magistrates' court trial); and

(f) that reporting restrictions apply, which the defendant may ask the court to vary or remove.

(4) The court must then ask whether the defendant intends to plead guilty.

[Note. See section 17A of the Magistrates' Courts Act 1980(**b**)*.*

For the circumstances in which a magistrates' court may (and, in some cases, must) commit a defendant to the Crown Court for sentence after that defendant has indicated an intention to plead guilty where this rule applies, see sections 18 and 20 of the Sentencing Act 2020(**c**)*.*

See also Part 6 (Reporting, etc. restrictions).]

Adult defendant: guilty plea

9.9.—(1) This rule applies where—

(a) rule 9.8 applies; and

(b) the defendant indicates an intention to plead guilty.

(2) The court must exercise its power to deal with the case—

(a) as if the defendant had just pleaded guilty at a trial in a magistrates' court; and

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(**a**) 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).

(**b**) 1980 c. 43; section 17A was inserted by section 49 of the Criminal Procedure and Investigations Act 1996 (c. 25) and amended by paragraph 62 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraphs 1 and 2 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**c**) 2020 c. 17.

(b) in accordance with rule 24.11 (Procedure if the court convicts).

[Note. See section 17A of the Magistrates' Courts Act 1980.]

Adult defendant: not guilty plea

9.10.—(1) This rule applies where—

(a) rule 9.8 applies; and

(b) the defendant—

(i) indicates an intention to plead not guilty, or

(ii) gives no indication of intended plea.

(2) In the following sequence, the court must then—

(a) where the offence is one to which section 22 of the Magistrates' Courts Act 1980 applies, explain in terms the defendant can understand (with help, if necessary) that—

(i) if the court decides that the value involved clearly is less than £5,000, the court must order trial in a magistrates' court,

(ii) if the court decides that it is not clear whether that value is more or less than £5,000, then the court will ask whether the defendant agrees to be tried in a magistrates' court, and

(iii) if the answer to that question is 'yes', then the court must order such a trial and if the defendant is convicted then the maximum sentence is limited;

(b) invite the prosecutor to—

(i) identify any previous convictions of which it can take account, and

(ii) make representations about how the court should allocate the case for trial, including representations about the value involved, if relevant;

(c) invite the defendant to make such representations;

(d) where the offence is one to which section 22 of the Magistrates' Courts Act 1980 applies—

(i) if it is not clear whether the value involved is more or less than £5,000, ask whether the defendant agrees to be tried in a magistrates' court,

(ii) if the defendant's answer to that question is 'yes', or if that value clearly is less than £5,000, order a trial in a magistrates' court,

(iii) if the defendant does not answer that question, or the answer is 'no', or if that value clearly is more than £5,000, apply paragraph (2)(e); and

(e) exercise its power to allocate the case for trial, taking into account—

(i) the adequacy of a magistrates' court's sentencing powers,

(ii) any representations by the parties, and

(iii) any allocation guidelines issued by the Sentencing Council.

[Note. See sections 17A, 18, 19, 22 and 24A of the Magistrates' Courts Act 1980(**a**)*.*

Under section 22 of the 1980 Act, some offences, which otherwise could be tried in a magistrates' court or in the Crown Court, must be tried in a magistrates' court in the circumstances described in this rule.

(**a**) 1980 c. 43; section 18 was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), section 49 of the Criminal Procedure and Investigations Act 1996 (c. 25), and paragraphs 1 and 4 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 19 was substituted by paragraphs 1 and 5 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by sections 144, 177 and 178 of, and paragraph 4 of Schedule 17, paragraph 80 of Schedule 21 and Part 5 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).

The convictions of which the court may take account are those specified by section 19 of the 1980 Act.

The Sentencing Council may issue allocation guidelines under section 122 of the Coroners and Justice Act 2009(**a**)*. The definitive allocation guideline which first took effect on 1st March, 2016 provides:*

'Venue for trial

It is important to ensure that all cases are tried at the appropriate level.

(1) In general, either way offences should be tried summarily unless—

(a) the outcome would clearly be a sentence in excess of the court's powers for the offence(s) concerned after taking into account personal mitigation and any potential reduction for a guilty plea; or

(b) for reasons of unusual legal, procedural or factual complexity, the case should be tried in the Crown Court. This exception may apply in cases where a very substantial fine is the likely sentence (see Criminal Practice Directions 5.16 and 5.9.5). Other circumstances where this exception will apply are likely to be rare and case specific; the court will rely on the submissions of the parties to identify relevant cases.

(2) In cases with no factual or legal complications the court should bear in mind its power to commit for sentence after a trial and may retain jurisdiction notwithstanding that the likely sentence might exceed its powers.

(3) Cases may be tried summarily even where the defendant is subject to a Crown Court Suspended Sentence Order or Community Order. (The power to commit the case to the Crown Court to be dealt with under paragraph 11(2) of Schedule 16 or paragraph 24 of Schedule 10 to the Sentencing Code can be exercised if the defendant is convicted.)

(4) All parties should be asked by the court to make representations as to whether the case is suitable for summary trial. The court should refer to definitive guidelines (if any) to assess the likely sentence for the offence in the light of the facts alleged by the prosecution case, taking into account all aspects of the case including those advanced by the defence, including any personal mitigation to which the defence wish to refer.

Where the court decides that the case is suitable to be dealt with in the magistrates' court, it must warn the defendant that all sentencing options remain open and, if the defendant consents to summary trial and is convicted by the court or pleads guilty, the defendant may be committed to the Crown Court for sentence.']

Adult defendant: allocation for magistrates' court trial

9.11.—(1) This rule applies where—

(a) rule 9.10 applies; and

(b) the court allocates the case to a magistrates' court for trial.

(2) The court must explain, in terms the defendant can understand (with help, if necessary) that—

(a) the court considers the case more suitable for trial in a magistrates' court than in the Crown Court;

(b) if the defendant is convicted at a magistrates' court trial, then in some circumstances the court may commit the defendant to the Crown Court for sentence;

(c) if the defendant does not agree to a magistrates' court trial, then the court must send the defendant to the Crown Court for trial; and

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(**a**) 2009 c. 25.

(d) before deciding whether to accept magistrates' court trial, the defendant may ask the court for an indication of whether a custodial or non-custodial sentence is more likely in the event of a guilty plea at such a trial, but the court need not give such an indication.

(3) If the defendant asks for such an indication of sentence and the court gives such an indication—

(a) the court must then ask again whether the defendant intends to plead guilty;

(b) if, in answer to that question, the defendant indicates an intention to plead guilty, then the court must exercise its power to deal with the case—

(i) as if the defendant had just pleaded guilty to an offence that can be tried only in a magistrates' court, and

(ii) in accordance with rule 24.11 (Procedure if the court convicts); and

(c) if, in answer to that question, the defendant indicates an intention to plead not guilty, or gives no indication of intended plea, in the following sequence the court must then—

(i) ask whether the defendant agrees to trial in a magistrates' court,

(ii) if the defendant's answer to that question is 'yes', order such a trial, and

(iii) if the defendant does not answer that question, or the answer is 'no', apply rule 9.14.

(4) If the defendant asks for an indication of sentence but the court gives none, or if the defendant does not ask for such an indication, in the following sequence the court must then—

(a) ask whether the defendant agrees to trial in a magistrates' court;

(b) if the defendant's answer to that question is 'yes', order such a trial; and

(c) if the defendant does not answer that question, or the answer is 'no', apply rule 9.14.

[Note. See section 20 of the Magistrates' Courts Act 1980(**a**)*.*

For the circumstances in which a magistrates' court may (and, in some cases, must) commit a defendant to the Crown Court for sentence after that defendant has been convicted at a magistrates' court trial, see sections 14, 15, 17 and 20 of the Sentencing Act 2020(**b**)*.*

For the circumstances in which an indication of sentence to which this rule applies restricts the sentencing powers of a court, see section 20A of the 1980 Act(**c**)*.*

Where the court orders trial in a magistrates' court, see also rules 3.16 to 3.18 about preparation for trial.]

Adult defendant: prosecutor's application for Crown Court trial

9.12.—(1) This rule applies where—

(a) rule 9.11 applies;

(b) the defendant agrees to trial in a magistrates' court; but

(c) the prosecutor wants the court to exercise its power to send the defendant to the Crown Court for trial instead.

(2) The prosecutor must—

(a) apply before trial in a magistrates' court begins under Part 24 (Trial and sentence in a magistrates' court); and

(b) notify—

(i) the defendant, and

(**a**) 1980 c. 43; section 20 was amended by section 100 of, and paragraph 25 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53), paragraph 63 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraphs 1 and 6 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**b**) 2020 c. 17.

(**c**) 1980 c. 43; section 20A was inserted by paragraphs 1 and 6 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(ii) the magistrates' court officer.

(3) The court must determine an application to which this rule applies before it deals with any other pre-trial application.

[Note. See sections 8A and 25 of the Magistrates' Courts Act 1980(**a**)*. Under section 25(2B), the court may grant an application to which this rule applies only if it is satisfied that the sentence which a magistrates' court would have power to impose would be inadequate.]*

Young defendant

9.13.—(1) This rule applies where—

(a) the defendant is under 18; and

(b) the court must decide whether to send the defendant for Crown Court trial instead of ordering trial in a youth court.

(2) The court must read the allegation of the offence to the defendant.

(3) The court must explain, in terms the defendant can understand (with help, if necessary)—

(a) the allegation, unless it is self-explanatory;

(b) that the offence is one which can be tried in the Crown Court instead of in a youth court;

(c) that the court is about to ask whether the defendant intends to plead guilty;

(d) that if the answer is 'yes', then the court must treat that as a guilty plea and must sentence the defendant, or commit the defendant to the Crown Court for sentence;

(e) that if the defendant does not answer, or the answer is 'no', then the court must decide whether to send the defendant for Crown Court trial instead of ordering trial in a youth court;

(f) that before answering and at any time until the court decides whether to send the defendant for Crown Court trial or order trial in a youth court—

(i) the defendant may ask the court for an indication of whether a custodial or non-custodial sentence is more likely in the event of a guilty plea there and then, but

(ii) the court need not give such an indication; and

(g) that reporting restrictions apply, which the defendant may ask the court to vary or remove.

(4) The defendant may then ask the court for such an indication of sentence.

(5) Whether the defendant asks for and the court gives such an indication or not, the court must then ask whether the defendant intends to plead guilty.

(6) If the defendant's answer to that question is 'yes', the court must exercise its power to deal with the case—

(a) as if the defendant had just pleaded guilty at a trial in a youth court; and

(b) in accordance with rule 24.11 (Procedure if the court convicts).

(7) If the defendant does not answer that question, or the answer is 'no', in the following sequence the court must then—

(a) invite the prosecutor to make representations about whether Crown Court or youth court trial is more appropriate;

(b) invite the defendant to make such representations; and

(**a**) 1980 c. 43; section 8A was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by S.I. 2006/2493 and paragraphs 12 and 14 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 25 was amended by section 31 of, and paragraph 3 of Schedule 1 and Schedule 2 to, the Prosecution of Offences Act 1985 (c. 23), paragraph 6 of Schedule 8 to the Criminal Justice Act 1991 (c. 53), paragraphs 1 and 5 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25), section 42 of the Criminal Justice Act 2003 (c. 44) and paragraphs 1 and 11 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

(c) exercise its power to allocate the case for trial in the Crown Court or a youth court, taking into account—

(i) the offence and the circumstances of the offence,

(ii) the suitability of a youth court's sentencing powers,

(iii) where the defendant is jointly charged with an adult, whether it is necessary in the interests of justice for them to be tried together in the Crown Court, and

(iv) any representations by the parties.

[Note. See section 24A of the Magistrates' Courts Act 1980(**a**)*.*

For the circumstances in which a magistrates' court may (and, in some cases, must) commit a defendant who is under 18 to the Crown Court for sentence after that defendant has indicated a guilty plea, see sections 16, 17, 19 and 20 of the Sentencing Act 2020(**b**)*.*

Where the court orders trial in a youth court, see also rules 3.16 to 3.18 about preparation for trial.]

Allocation and sending for Crown Court trial

9.14.—(1) This rule applies where—

(a) under rule 9.10 or rule 9.13, the court allocates the case to the Crown Court for trial;

(b) under rule 9.11, the defendant does not agree to trial in a magistrates' court; or

(c) under rule 9.12, the court grants the prosecutor's application for Crown Court trial.

(2) In the following sequence, the court must—

(a) invite the prosecutor to make representations about any ancillary matters, including bail and directions for the management of the case in the Crown Court;

(b) invite the defendant to make any such representations; and

(c) exercise its powers to—

(i) send the defendant to the Crown Court for trial, and

(ii) give any ancillary directions.

[Note. See sections 21 and 24A of the Magistrates' Courts Act 1980(**c**) *and section 51 of the Crime and Disorder 1998*(**d**)*. See also rule 9.3 (matters to be specified on sending for trial).]*

COMMITTAL FOR SENTENCE IN CONNECTION WITH SENDING FOR TRIAL

Committal for sentence for offence related to an offence sent for trial

9.15.—(1) This rule applies where—

(a) on a previous occasion the court has sent the defendant to the Crown Court for trial for an offence in exercise of a power to which rule 9.7, 9.13 or 9.14 applies;

(b) on the present occasion, under rule 9.9 or 9.13 the defendant indicates an intention to plead guilty to, and is convicted of, an offence which the court decides is related to the offence for which the defendant was previously sent for trial;

(c) the court decides to commit the defendant to the Crown Court for sentence for the related offence under—

(**a**) 1980 c. 43; section 24A was inserted by paragraphs 1 and 10 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).
(**b**) 2020 c. 17.
(**c**) 1980 c. 43; section 21 was amended by paragraphs 1 and 7 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).
(**d**) 1998 c. 37; section 51 was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(i) section 18 of the Sentencing Act 2020(**a**), if the defendant is over 18, or

(ii) section 19 of the 2020 Act(**b**), if the defendant is under 18; and

(d) in the court's opinion, if it were not committing the defendant for sentence under section 18 or 19 of the 2020 Act then it could, or would be required to, commit the defendant to the Crown Court for sentence for the related offence under—

(i) section 14 or 15 of that Act, if the defendant is over 18, or

(ii) section 16, 16A or 17 of that Act(**c**), if the defendant is under 18.

(2) The court must state that opinion for the Crown Court.

[Note. See sections 18(4) and 19(3) of the Sentencing Act 2020 for the court's powers to state the opinion to which this rule refers.

Under section 51E of the Crime and Disorder Act 1998(**d**)—

(a) an offence classified as triable either way is related to an offence for which a defendant has been sent for trial in the Crown Court if both offences are based on the same prosecution evidence (and see rule 10.2(4)(c) in the rules about indictments); and

(b) an offence classified as triable only summarily is related to an offence for which a defendant has been sent for trial in the Crown Court if both offences arise out of the same or connected circumstances.

Under section 51 of the 1998 Act(**e**)—

(a) if a magistrates' court sends a defendant to the Crown Court for trial for an offence and on the same occasion deals with a related offence then the general rule is that the court must send the defendant to the Crown Court for trial for the related offence, too; but

(b) if the court sends a defendant to the Crown Court for trial for an offence on one occasion and on a later occasion deals with a related offence then it may send the defendant to the Crown Court for trial for the related offence, too, or it may finish dealing with that offence itself and, if it convicts the defendant, may commit the defendant for sentence to the Crown Court instead.

For the circumstances in which a magistrates' court may (and, in some cases, must) commit a defendant to the Crown Court for sentence or for the making of other orders beyond a magistrates' court's powers, see sections 14, 15, 16, 16A, 17, 18, 19, 20 and 24 of the Sentencing Act 2020 and paragraph 11 of Schedule 16 to that Act. See also rules 24.11 (Procedure if the court convicts) and 28.13 (Sentencing, etc. after committal to the Crown Court). The note to rule 28.13 summarises the statutory provisions that apply.]

SENDING BACK, ETC. FOR MAGISTRATES' COURT TRIAL

Sending back or referring case for magistrates' court trial

9.16.—(1) This rule applies where a magistrates' court sends the defendant to the Crown Court for trial and—

(a) under section 46ZA of the Senior Courts Act 1981(**f**), the Crown Court can send the defendant back to a magistrates' court for trial for a summary offence or for an offence triable either way; or

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(**a**) 2020 c. 17.

(**b**) 2020 c. 17; section 19 was amended by section 46 of, and paragraph 26 of Schedule 13 to, the Counter-Terrorism and Sentencing Act 2021 (c. 11).

(**c**) 2020 c. 17; section 16A was inserted by section 46 of, and paragraph 26 of Schedule 13 to, the Counter-Terrorism and Sentencing Act 2021 (c. 11).

(**d**) 1998 c. 37; section 51E was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**e**) 1998 c. 37; section 51 was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 52 of the Criminal Justice and Courts Act 2015 (c. 2).

(**f**) 1981 c. 54; section 46ZA was inserted by section 11 of the Judicial Review and Courts Act 2022 (c. 35).

(b) under paragraph 6 of Schedule 3 to the Crime and Disorder Act 1998(**a**), where a summary offence remains outstanding the Crown Court must so inform the magistrates' court.

(2) Where paragraph (1)(a) applies—

(a) the Crown Court may exercise its power to send back—

(i) at a hearing, in public or in private, or without a hearing,

(ii) in the defendant's absence, but only if the defendant consents to being absent on its exercise, and

(iii) in the prosecutor's absence, but only if the prosecutor has had at least 5 business days in which to make representations; and

(b) if the defendant is under 18, the Crown Court must—

(i) consider sending the defendant back, and

(ii) explain why, if it does not do so.

(3) Where paragraph (1)(a) applies and the Crown Court sends the defendant back—

(a) the Crown Court must—

(i) specify the date on which the defendant must attend at or be taken to the magistrates' court, and

(ii) decide whether to grant or withhold bail;

(b) the Crown Court officer must make available to the magistrates' court officer a record of the Crown Court's order under paragraph (3)(a) and details of any—

(i) case management direction affecting the magistrates' court,

(ii) direction about reporting restrictions,

(iii) period for which the defendant was in custody during proceedings in the Crown Court,

(iv) decision about bail, for the purposes of section 5 of the Bail Act 1976(**b**),

(v) recognizance given by a surety,

(vi) representation order,

(vii) interpreter, intermediary, or supporting adult, and

(viii) information supplied by the parties for the purposes of case management by the court; and

(c) the Crown Court officer must at the same time serve on each party notice of the sending back and of the Crown Court's order, unless that party was present when the order was made.

(4) Where paragraph (1)(b) applies—

(a) the Crown Court must exercise its power at a hearing; and

(b) unless the defendant pleads guilty to the summary offence, the Crown Court officer must notify the magistrates' court officer of the outcome of the proceedings.

[Note. An offence may be classified as triable only on indictment; triable only summarily (a summary offence); or triable either way (on indictment or summarily). Offences classified either

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(**a**) 1998 c. 37; paragraph 6 of Schedule 3 was amended by sections 90 and 106 of, and paragraph 179 of Schedule 13 and Schedule 15 to, the Access to Justice Act 1999 (c. 22), sections 41 of, and paragraphs 15 and 20 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), S.I. 2005/886 and paragraphs 20 and 23 of the Schedule to the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).

(**b**) 1976 c. 63; section 5 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 60 of the Criminal Justice Act 1982 (c. 48), paragraph 1 of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 53 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 129(1) of the Criminal Justice and Police Act 2001 (c. 16), paragraph 182 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36, and Parts 2, 4 and 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27).

as triable only on indictment or as triable either way collectively are described as indictable offences.

Under section 46ZA(2) of the Senior Courts Act 1981 the Crown Court cannot send the defendant back to a magistrates' court for trial—

(a) where the defendant is 18 or over, or is a corporation, and the offence is triable only on indictment; or

(b) where the defendant is under 18 and the offence is homicide or one of the other offences listed in section 51A(12) of the Crime and Disorder Act 1998.

Under section 46ZA(3) of the 1981 Act the Crown Court cannot send an adult or corporate defendant back to a magistrates' court for trial for an offence triable either way unless the defendant consents.

Under section 46ZA(5) of the 1981 Act, in deciding whether to send a defendant back the Crown Court must take into account (a) any other related offence before the Crown Court (whether the same, or a different, person is accused or has been convicted of the other offence), and (b) any allocation guideline.

Under section 46ZA(6) of the 1981 Act, on sending a defendant back the Crown Court may give such directions as appear to be necessary with respect to the custody of the defendant or for the defendant's release on bail until the defendant can appear or be brought before the magistrates' court.

Under paragraph 6(7) of Schedule 3 to the Crime and Disorder Act 1998, the Crown Court must inform the magistrates' court of the outcome of the proceedings in the Crown Court where—

(a) the offences for which the defendant was sent for trial include a summary offence;

(b) that summary offence is not tried in the Crown Court under a power to do so;

(c) in the Crown Court the defendant is convicted of an indictable offence;

(d) the Crown Court considers that the summary offence is related to any indictable offence for which the defendant was sent for trial;

(e) under paragraph 6(4), the defendant does not plead guilty in the Crown Court to the summary offence; and

(f) under paragraph 6(6), the prosecutor does not wish to withdraw the prosecution for that offence.

Under paragraph 6(5) of Schedule 3 to the 1998 Act, the Crown Court then has no other powers, for example to send the defendant back to the magistrates' court on bail or in custody.

See also rule 28.10 (Committal or remission, etc. for sentence), which applies to the exercise of the Crown Court's powers under sections 25, 25A and 26 of the Sentencing Act 2020(**a**) *to remit a convicted defendant to a magistrates' court for sentence.]*

PART 10

THE INDICTMENT

Contents of this Part

When this Part applies	rule 10.1
The indictment: general rules	rule 10.2
Draft indictment generated electronically on sending for trial	rule 10.3

(**a**) 2020 c. 17; section 25 was amended and section 25A was inserted by section 11 of the Judicial Review and Courts Act 2022 (c. 35). Section 26 was amended by paragraph 14 of Schedule 2 to that 2022 Act.

Draft indictment served by the prosecutor after sending for trial rule 10.4
Draft indictment served by the prosecutor with a High Court judge's permission rule 10.5
Draft indictment approved with deferred prosecution agreement rule 10.6
Draft indictment served by the prosecutor on re-instituting proceedings rule 10.7
Draft indictment served by the prosecutor at the direction of the Court of Appeal rule 10.8
Application to a High Court judge for permission to serve a draft indictment rule 10.9

When this Part applies

10.1. This Part applies where—

(a) a magistrates' court sends a defendant to the Crown Court for trial under section 51 or section 51A of the Crime and Disorder Act 1998(**a**);

(b) a prosecutor wants a High Court judge's permission to serve a draft indictment;

(c) the Crown Court approves a proposed indictment under paragraph 2 of Schedule 17 to the Crime and Courts Act 2013(**b**) and rule 11.4 (Deferred prosecution agreements: Application to approve the terms of an agreement);

(d) a prosecutor wants to re-institute proceedings in the Crown Court under section 22B of the Prosecution of Offences Act 1985(**c**); or

(e) the Court of Appeal orders a retrial, under section 8 of the Criminal Appeal Act 1968(**d**) or under section 77 of the Criminal Justice Act 2003(**e**).

[Note. See also sections 3, 4 and 5 of the Indictments Act 1915(**f**) *and section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933*(**g**)*. Under section 2(1) of the 1933 Act, a draft indictment (in the Act, a 'bill of indictment') becomes an indictment when it is 'preferred' in accordance with these rules. See rule 10.2.*

Part 3 contains rules about the court's general powers of case management, including power to consider applications and give directions for (among other things) the amendment of an indictment and for separate trials under section 5 of the Indictments Act 1915. See in particular rule 3.29 (Application for joint or separate trials, etc.).

(**a**) 1998 c. 37; section 51 was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4). Section 51A was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 6 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**b**) 2013 c. 22.

(**c**) 1985 c. 23; section 22B was inserted by section 45 of the Crime and Disorder Act 1998 (c. 37) and amended by paragraph 17 of Schedule 36 to the Criminal Justice Act 2003 (c. 44) and section 112 of, and Part 13 of Schedule 8 to, the Policing and Crime Act 2009 (c. 26).

(**d**) 1968 c. 19; section 8 was amended by Section 12 of, and paragraph 38 of Schedule 2 to, the Bail Act 1976 (c. 63), section 56 of, and Part IV of Schedule 11 to, the Courts Act 1971 (c. 23), section 65 of, and paragraph 36 of Schedule 3 to, the Mental Health (Amendment) Act 1982 (c. 51), section 148 of, and paragraph 23 of Schedule 4 to, the Mental Health Act 1983 (c. 20), section 43 of the Criminal Justice Act 1988 (c. 33), section 168 of, and paragraph 19 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 58 of the Access to Justice Act 1999 (c. 22), sections 41 and 332 of, and paragraph 43 of Schedule 3 to, and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and section 32 of, and paragraph 2 of Schedule 4 to, the Mental Health Act 2007 (c. 12).

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

(**f**) 1915 c. 90; section 4 was amended by section 83 of, and Part I of Schedule 10 to, the Criminal Justice Act 1948 (c. 58) and section 10 of, and Part III of Schedule 3 to, the Criminal Law Act 1967 (c. 58). Section 5 was amended by section 12 of, and paragraph 8 of Schedule 2 to, the Bail Act 1976 (c. 63), section 31 of, and Schedule 2 to, the Prosecution of Offences Act 1985 (c. 23) and section 331 of, and paragraph 40 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(**g**) 1933 c. 36; section 2 was amended by Part IV of Schedule 11 to, the Courts Act 1971 (c. 23), Schedule 5 to, the Senior Courts Act 1981 (c. 54), Schedule 2 to the Prosecution of Offences Act 1985 (c. 23), paragraph 1 of Schedule 2 to the Criminal Justice Act 1987 (c. 38), paragraph 10 of Schedule 15 to the Criminal Justice Act 1988 (c. 33), paragraph 8 of Schedule 6 to the Criminal Justice Act 1991 (c. 53), Schedule 1 to the Statute Law (Repeals) Act 1993 (c. 50), paragraph 17 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25), paragraph 5 of Schedule 8 to the Crime and Disorder Act 1998 (c. 37), paragraph 34 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), paragraph 1 of the Schedule to S.I. 2004/2035, section 12 of, and paragraph 7 of Schedule 1 to, the Constitutional Reform Act 2005 (c. 4), sections 116 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25), paragraph 32 of Schedule 17 to the Crime and Courts Act 2013 (c. 22) and section 82 of the Deregulation Act 2015 (c. 20).

Under section 51D of the Crime and Disorder Act 1998(**a**)*, the magistrates' court must notify the Crown Court of the offence or offences for which the defendant is sent for trial. Part 9 (Allocation and sending for trial) contains relevant rules.*

A Crown Court judge may approve a proposed indictment on approving a deferred prosecution agreement. Part 11 (Deferred prosecution agreements) contains relevant rules.

A prosecutor may apply to a High Court judge for permission to serve a draft indictment under rule 10.9.

Under section 22B of the Prosecution of Offences Act 1985, one of the prosecutors listed in that section may re-institute proceedings that have been stayed under section 22(4) of that Act(**b**) *on the expiry of an overall time limit (where such a time limit has been prescribed). Section 22B(2) requires the service of a draft indictment within 3 months of the date on which the Crown Court ordered the stay, or within such longer period as the court allows.*

The Court of Appeal may order a retrial under section 8 of the Criminal Appeal Act 1968 (on a defendant's appeal against conviction) or under section 77 of the Criminal Justice Act 2003 (on a prosecutor's application for the retrial of a serious offence after acquittal). Section 8 of the 1968 Act and section 84 of the 2003 Act require the arraignment of a defendant within 2 months. See also rules 27.7 and 39.14.

Where a magistrates' court sends a defendant to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998, in some circumstances the Crown Court may try the defendant for other offences: see section 2(2) of the Administration of Justice (Miscellaneous Provisions) Act 1933 (indictable offences founded on the prosecution evidence), section 40 of the Criminal Justice Act 1988(**c**) *(specified summary offences founded on that evidence) and paragraph 6 of Schedule 3 to the Crime and Disorder Act 1998 (power of Crown Court to deal with related summary offence sent to that court). An offence of theft under section 1 of the Theft Act 1968 which is low-value shoplifting under section 22A of the Magistrates' Courts Act 1980*(**d**) *is a summary offence unless the defendant chooses to be tried in the Crown Court.]*

The indictment: general rules

10.2.—(1) The indictment on which the defendant is arraigned under rule 3.32 (Arraigning the defendant on the indictment) must be in writing and must contain, in a paragraph called a 'count'—

(a) a statement of the offence charged that—

(i) describes the offence in ordinary language, and

(ii) identifies any legislation that creates it; and

(b) such particulars of the conduct constituting the commission of the offence as to make clear what the prosecutor alleges against the defendant.

(**a**) 1998 c. 37; section 51D was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**b**) 1985 c. 23; section 22 was amended by paragraph 104 of Schedule 15 to the Criminal Justice Act 1988 (c. 33), section 43 of the Crime and Disorder Act 1998 (c. 37), paragraph 36 of Schedule 11 to the Criminal Justice Act 1991 (c. 53), paragraph 27 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33), section 71 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 67(3) of the Access to Justice Act 1999 (c. 22), section 70 of, and paragraph 57 of Schedule 3 and paragraphs 49 and 51 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and paragraph 22 of Schedule 12 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**c**) 1988 c. 33; section 40 was amended by section 4 of, and paragraph 39 of Schedule 3 to, the Road Traffic (Consequential Provisions) Act 1988 (c. 54), section 168 of, and paragraph 35 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 47 of, and paragraph 34 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25), section 119 of, and paragraph 66 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) and paragraph 60 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).

(**d**) 1980 c. 43; section 22A was inserted by section 176 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

(2) More than one incident of the commission of the offence may be included in a count if those incidents taken together amount to a course of conduct having regard to the time, place or purpose of commission.

(3) The counts must be numbered consecutively.

(4) An indictment may contain—

(a) any count charging substantially the same offence as one for which the defendant was sent for trial;

(b) any count contained in a draft indictment served with the permission of a High Court judge or at the direction of the Court of Appeal; and

(c) any other count charging an offence that the Crown Court can try and which is based on the prosecution evidence that has been served, including a summary offence to which section 40 of the Criminal Justice Act 1988 applies.

(5) For the purposes of section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933—

(a) a draft indictment constitutes a bill of indictment; and

(b) the draft, or bill, is preferred before the Crown Court and becomes the indictment—

(i) where rule 10.3 applies (Draft indictment generated electronically on sending for trial), immediately before the first count (or the only count, if there is only one) is read to or placed before the defendant to take the defendant's plea under rule 3.32(1)(e),

(ii) when the prosecutor serves the draft indictment on the Crown Court officer, where rule 10.4 (Draft indictment served by the prosecutor after sending for trial), rule 10.5 (Draft indictment served by the prosecutor with a High Court judge's permission), rule 10.7 (Draft indictment served by the prosecutor on re-instituting proceedings) or rule 10.8 (Draft indictment served by the prosecutor at the direction of the Court of Appeal) applies,

(iii) when the Crown Court approves the proposed indictment, where rule 10.6 applies (Draft indictment approved by the Crown Court with deferred prosecution agreement), or

(iv) when the prosecutor serves on the Crown Court officer a draft indictment to which rule 25.16(3)(e) applies (substituted indictment for sentencing purposes).

(6) An indictment—

(a) must be in one of the forms issued under the Practice Direction unless—

(i) rule 10.3 applies; or

(ii) the Crown Court otherwise directs; and

(b) must include at the head of the document in which it is set out the date of that document and a statement that it contains, as appropriate—

(i) the first indictment in the case,

(ii) a proposed amended indictment,

(iii) a substituted indictment,

(iv) an additional indictment,

(v) a trial indictment, or

(vi) an indictment required by rule 25.16(3)(e) (substituted indictment for sentencing purposes).

(7) Unless the Crown Court otherwise directs, the court officer must—

(a) endorse any paper copy of the indictment made for the court with—

(i) a note to identify it as a copy of the indictment, and

(ii) the date on which the draft indictment became the indictment under paragraph (5); and

(b) where rule 10.4, 10.5, 10.7 or 10.8 applies, serve a copy of the indictment on all parties.

(8) The Crown Court may extend the time limit under rule 10.4, 10.5, 10.7 or 10.8, even after it has expired.

[Note. Under section 2(6) of the Administration of Justice (Miscellaneous Provisions) Act 1933, Criminal Procedure Rules may provide for the manner in which and the time at which 'bills of indictment' are to be 'preferred'.

Under rule 3.29 (Application for joint or separate trials, etc.), the court may order separate trials of counts in the circumstances listed in that rule.]

Draft indictment generated electronically on sending for trial

10.3.—(1) Unless the Crown Court otherwise directs before the defendant is arraigned, this rule applies where—

(a) a magistrates' court sends a defendant to the Crown Court for trial;

(b) the magistrates' court officer serves on the Crown Court officer the notice required by rule 9.5 (Duty of magistrates' court officer); and

(c) by means of such electronic arrangements as the court officer may make for the purpose, there is presented to the Crown Court as a count—

(i) each allegation of an indictable offence specified in the notice, and

(ii) each allegation specified in the notice to which section 40 of the Criminal Justice Act 1988 applies (specified summary offences founded on the prosecution evidence).

(2) Where this rule applies—

(a) each such allegation constitutes a count;

(b) the allegation or allegations so specified together constitute a draft indictment;

(c) before the draft indictment so constituted is preferred before the Crown Court under rule 10.2(5)(b)(i) the prosecutor may substitute for any count an amended count to the same effect and charging the same offence;

(d) if under rule 3.19 (Service of prosecution evidence) the prosecutor has served copies of the documents containing the evidence on which the prosecution case relies then, before the draft indictment is preferred before the Crown Court under rule 10.2(5)(b)(i), the prosecutor may substitute or add—

(i) any count charging substantially the same offence as one specified in the notice, and

(ii) any other count charging an offence which the Crown Court can try and which is based on the prosecution evidence so served; and

(e) a prosecutor who substitutes or adds a count under paragraph (2)(c) or (d) must serve that count on the Crown Court officer and the defendant.

[Note. An 'indictable offence' is (i) an offence classified as triable on indictment exclusively, or (ii) an offence classified as triable either on indictment or summarily. See also the note to rule 9.1 (Allocation and sending for trial: When this Part applies).

Section 40 of the Criminal Justice Act 1988 lists summary offences which may be included in an indictment if the charge—

(a) is founded on the same facts or evidence as a count charging an indictable offence; or

(b) is part of a series of offences of the same or similar character as an indictable offence which is also charged.]

Draft indictment served by the prosecutor after sending for trial

10.4.—(1) This rule applies where—

(a) a magistrates' court sends a defendant to the Crown Court for trial; and

(b) rule 10.3 (Draft indictment generated electronically on sending for trial) does not apply.

(2) The prosecutor must serve a draft indictment on the Crown Court officer not more than 20 business days after serving under rule 3.19 (Service of prosecution evidence) copies of the documents containing the evidence on which the prosecution case relies.

Draft indictment served by the prosecutor with a High Court judge's permission

10.5.—(1) This rule applies where—

(a) the prosecutor applies to a High Court judge under rule 10.9 (Application to a High Court judge for permission to serve a draft indictment); and

(b) the judge gives permission to serve a proposed indictment.

(2) Where this rule applies—

(a) that proposed indictment constitutes the draft indictment; and

(b) the prosecutor must serve the draft indictment on the Crown Court officer not more than 20 business days after the High Court judge's decision.

Draft indictment approved with deferred prosecution agreement

10.6.—(1) This rule applies where—

(a) the prosecutor applies to the Crown Court under rule 11.4 (Deferred prosecution agreements: Application to approve the terms of an agreement); and

(b) the Crown Court approves the proposed indictment served with that application.

(2) Where this rule applies, that proposed indictment constitutes the draft indictment.

Draft indictment served by the prosecutor on re-instituting proceedings

10.7.—(1) This rule applies where the prosecutor wants to re-institute proceedings in the Crown Court under section 22B of the Prosecution of Offences Act 1985.

(2) The prosecutor must serve a draft indictment on the Crown Court officer not more than 3 months after the proceedings were stayed under section 22(4) of that Act(**a**).

Draft indictment served by the prosecutor at the direction of the Court of Appeal

10.8.—(1) This rule applies where the Court of Appeal orders a retrial.

(2) The prosecutor must serve a draft indictment on the Crown Court officer not more than 28 days after that order.

Application to a High Court judge for permission to serve a draft indictment

10.9.—(1) This rule applies where a prosecutor wants a High Court judge's permission to serve a draft indictment.

(2) Such a prosecutor must—

(a) apply in writing;

(b) serve the application on—

(i) the court officer, and

(**a**) 1985 c. 23; section 22(4) was amended by section 43 of the Crime and Disorder Act 1998 (c. 37).

(ii) the proposed defendant, unless the judge otherwise directs; and

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

(3) The application must—

(a) attach—

(i) the proposed indictment,

(ii) copies of the documents containing the evidence on which the prosecutor relies, including any written witness statement or statements complying with rule 16.2 (Content of written witness statement) and any documentary exhibit to any such statement,

(iii) a copy of any indictment on which the defendant already has been arraigned, and

(iv) if not contained in such an indictment, a list of any offence or offences for which the defendant already has been sent for trial;

(b) include—

(i) a concise statement of the circumstances in which, and the reasons why, the application is made, and

(ii) a concise summary of the evidence contained in the documents accompanying the application, identifying each passage in those documents said to evidence each offence alleged by the prosecutor and relating that evidence to each count in the proposed indictment; and

(c) contain a statement that, to the best of the prosecutor's knowledge, information and belief—

(i) the evidence on which the prosecutor relies will be available at the trial, and

(ii) the allegations contained in the application are substantially true

unless the application is made by or on behalf of the Director of Public Prosecutions or the Director of the Serious Fraud Office.

(4) A proposed defendant served with an application who wants to make representations to the judge must—

(a) serve the representations on the court officer and on the prosecutor;

(b) do so as soon as practicable, and in any event within such period as the judge directs; and

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

(5) The judge may determine the application—

(a) without a hearing, or at a hearing in public or in private; and

(b) with or without receiving the oral evidence of any proposed witness.

(6) At any hearing, if the judge so directs a statement required by paragraph (3)(c) must be repeated on oath or affirmation.

(7) If the judge gives permission to serve a draft indictment, the decision must be recorded in writing and endorsed on, or annexed to, the proposed indictment.

[Note. See section 2(6) of the Administration of Justice (Miscellaneous Provisions) Act 1933(**a**)*.]*

PART 11

DEFERRED PROSECUTION AGREEMENTS

Contents of this Part

(**a**) 1933 c. 36; section 2(6) was amended by Part IV of Schedule 11 to the Courts Act 1971 (c. 23), paragraph 1 of the Schedule to S.I. 2004/2035 and section 82 of the Deregulation Act 2015 (c. 20).

When this Part applies rule 11.1
Exercise of court's powers rule 11.2
Application to approve a proposal to enter an agreement rule 11.3
Application to approve the terms of an agreement rule 11.4
Application on breach of agreement rule 11.5
Application to approve a variation of the terms of an agreement rule 11.6
Application to lift suspension of prosecution rule 11.7
Notice to discontinue prosecution rule 11.8
Application to postpone the publication of information by the prosecutor rule 11.9
Duty of court officer, etc. rule 11.10
Court's power to vary requirements under this Part rule 11.11

When this Part applies

11.1.—(1) This Part applies to proceedings in the Crown Court under Schedule 17 to the Crime and Courts Act 2013(**a**).

(2) In this Part—

(a) 'agreement' means a deferred prosecution agreement under paragraph 1 of that Schedule;

(b) 'prosecutor' means a prosecutor designated by or under paragraph 3 of that Schedule; and

(c) 'defendant' means the corporation, partnership or association with whom the prosecutor proposes to enter, or enters, an agreement.

[Note. Under Schedule 17 to the Crime and Courts Act 2013, a designated prosecutor may make a deferred prosecution agreement with a defendant, other than an individual, whom the prosecutor is considering prosecuting for an offences or offences listed in that Schedule. Under such an agreement, the defendant agrees to comply with its terms and the prosecutor agrees that, if the Crown Court approves those terms, then paragraph 2 of the Schedule will apply and—

(a) the prosecutor will serve a draft indictment charging the defendant with the offence or offences the subject of the agreement;

(b) the prosecution will be suspended under that paragraph, and the suspension may not be lifted while the agreement is in force; and

(c) no-one may prosecute the defendant for the offence or offences charged while the agreement is in force, or after it expires if the defendant complies with it.

The Code for prosecutors issued under paragraph 6 of that Schedule contains guidance on the exercise of prosecution functions in relation to a deferred prosecution agreement.]

Exercise of court's powers

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

(a) must be in private, under rule 11.3 (Application to approve a proposal to enter an agreement);

(b) may be in public or private, under rule 11.4 (Application to approve the terms of an agreement), rule 11.6 (Application to approve a variation of the terms of an agreement) or rule 11.9 (Application to postpone the publication of information by the prosecutor); and

(c) must be in public, under rule 11.5 (Application on breach of agreement) or rule 11.7 (Application to lift suspension of prosecution), unless the court otherwise directs.

(**a**) 2013 c. 22.

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

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

(a) both parties are present;

(b) the prosecutor provides the court with a written declaration that, for the purposes of the application—

(i) the investigator enquiring into the alleged offence or offences has certified that no information has been supplied which the investigator knows to be inaccurate, misleading or incomplete, and

(ii) the prosecutor has complied with the prosecution obligation to disclose material to the defendant; and

(c) the defendant provides the court with a written declaration that, for the purposes of the application—

(i) the defendant has not supplied any information which the defendant knows to be inaccurate, misleading or incomplete, and

(ii) the individual through whom the defendant makes the declaration has made reasonable enquiries and believes the defendant's declaration to be true.

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

(a) in the prosecutor's absence; or

(b) in the absence of the defendant, unless the defendant has had at least 20 business days in which to make representations.

(5) If the court approves a proposal to enter an agreement—

(a) the general rule is that any further application to which this Part applies must be made to the same judge; but

(b) the court may direct other arrangements.

(6) The court may adjourn a hearing—

(a) if either party asks, or on its own initiative; and

(b) in particular, if the court requires more information about—

(i) the facts of an alleged offence,

(ii) the terms of a proposal to enter an agreement, or of a proposed agreement or variation of an agreement, or

(iii) the circumstances in which the prosecutor wants the court to decide whether the defendant has failed to comply with the terms of an agreement.

(7) The court may—

(a) hear an application under rule 11.4 immediately after an application under rule 11.3, if the court approves a proposal to enter an agreement; and

(b) hear an application under rule 11.7 immediately after an application under rule 11.5, if the court terminates an agreement.

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

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

Application to approve a proposal to enter an agreement

11.3.—(1) This rule applies where a prosecutor wants the court to approve a proposal to enter an agreement.

(2) The prosecutor must—

(a) apply in writing after the commencement of negotiations between the parties but before the terms of agreement have been settled; and

(b) serve the application on—

(i) the court officer, and

(ii) the defendant.

(3) The application must—

(a) identify the parties to the proposed agreement;

(b) attach a proposed indictment setting out such of the offences listed in Part 2 of Schedule 17 to the Crime and Courts Act 2013 as the prosecutor is considering;

(c) include or attach a statement of facts proposed for inclusion in the agreement, which must give full particulars of each alleged offence, including details of any alleged financial gain or loss;

(d) include any information about the defendant that would be relevant to sentence in the event of conviction for the offence or offences;

(e) specify the proposed expiry date of the agreement;

(f) describe the proposed terms of the agreement, including details of any—

(i) monetary penalty to be paid by the defendant, and the time within which any such penalty is to be paid,

(ii) compensation, reparation or donation to be made by the defendant, the identity of the recipient of any such payment and the time within which any such payment is to be made,

(iii) surrender of profits or other financial benefit by the defendant, and the time within which any such sum is to be surrendered,

(iv) arrangement to be made in relation to the management or conduct of the defendant's business,

(v) co-operation required of the defendant in any investigation related to the offence or offences,

(vi) other action required of the defendant,

(vii) arrangement to monitor the defendant's compliance with a term,

(viii) consequence of the defendant's failure to comply with a term, and

(ix) prosecution costs to be paid by the defendant, and the time within which any such costs are to be paid;

(g) in relation to those terms, explain how they comply with—

(i) the requirements of the code issued under paragraph 6 of Schedule 17 to the Crime and Courts Act 2013, and

(ii) any sentencing guidelines or guideline cases which apply;

(h) contain or attach the defendant's written consent to the proposal; and

(i) explain why—

(i) entering into an agreement is likely to be in the interests of justice, and

(ii) the proposed terms of the agreement are fair, reasonable and proportionate.

(4) If the proposed statement of facts includes assertions that the defendant does not admit, the application must—

(a) specify the facts that are not admitted; and

(b) explain why that is immaterial for the purposes of the proposal to enter an agreement.

[Note. See paragraphs 5 and 7 of Schedule 17 to the Crime and Courts Act 2013.]

Application to approve the terms of an agreement

11.4.—(1) This rule applies where—

(a) the court has approved a proposal to enter an agreement on an application under rule 11.3; and

(b) the prosecutor wants the court to approve the terms of the agreement.

(2) The prosecutor must—

(a) apply in writing as soon as practicable after the parties have settled the terms; and

(b) serve the application on—

(i) the court officer, and

(ii) the defendant.

(3) The application must—

(a) attach the agreement;

(b) indicate in what respect, if any, the terms of the agreement differ from those proposed in the application under rule 11.3;

(c) contain or attach the defendant's written consent to the agreement;

(d) explain why—

(i) the agreement is in the interests of justice, and

(ii) the terms of the agreement are fair, reasonable and proportionate;

(e) attach a draft indictment, charging the defendant with the offence or offences the subject of the agreement; and

(f) include any application for the hearing to be in private.

(4) If the court approves the agreement and the draft indictment, the court officer must—

(a) endorse any paper copy of the indictment made for the court with—

(i) a note to identify it as the indictment approved by the court, and

(ii) the date of the court's approval; and

(b) treat the case as if it had been suspended by order of the court.

[Note. See paragraph 8 of Schedule 17 to the Crime and Courts Act 2013. See also rule 11.9 (Application to postpone the publication of information by the prosecutor).

Under paragraph 2(1) of Schedule 17 to the 2013 Act and section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933(**a**)*, the draft indictment to which this rule applies becomes an indictment when the court approves the agreement and consents to the service of that draft. Part 10 contains rules about indictments.*

Under paragraph 2(2) of Schedule 17 to the 2013 Act, on approval of the draft indictment the proceedings are automatically suspended.

Under paragraph 13(2) of Schedule 17 to the 2013 Act, where the court approves an agreement the statement of facts contained in that agreement is to be treated as an admission by the

(**a**) 1933 c. 36; section 2 was amended by Part IV of Schedule 11 to the Courts Act 1971 (c. 23), Schedule 5 to the Senior Courts Act 1981 (c. 54), Schedule 2 to the Prosecution of Offences Act 1985 (c. 23), paragraph 1 of Schedule 2 to the Criminal Justice Act 1987 (c. 38), paragraph 10 of Schedule 15 to the Criminal Justice Act 1988 (c. 33), paragraph 8 of Schedule 6 to the Criminal Justice Act 1991 (c. 53), Schedule 1 to the Statute Law (Repeals) Act 1993 (c. 50), paragraph 17 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c. 25), paragraph 5 of Schedule 8 to the Crime and Disorder Act 1998 (c. 37), paragraph 34 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), paragraph 1 of the Schedule to S.I. 2004/2035, section 12 of, and paragraph 7 of Schedule 1 to, the Constitutional Reform Act 2005 (c. 4), sections 116 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25), paragraph 32 of Schedule 17 to the Crime and Courts Act 2013 (c. 22) and section 82 of the Deregulation Act 2015 (c. 20).

defendant under section 10 of the Criminal Justice Act 1967(**a**) *(proof by formal admission) in any criminal proceedings against the defendant for the alleged offence.]*

Application on breach of agreement

11.5.—(1) This rule applies where—

(a) the prosecutor believes that the defendant has failed to comply with the terms of an agreement; and

(b) the prosecutor wants the court to decide—

(i) whether the defendant has failed to comply, and

(ii) if so, whether to terminate the agreement, or to invite the parties to agree proposals to remedy that failure.

(2) The prosecutor must—

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

(b) serve the application on—

(i) the court officer, and

(ii) the defendant.

(3) The application must—

(a) specify each respect in which the prosecutor believes the defendant has failed to comply with the terms of the agreement, and explain the reasons for the prosecutor's belief; and

(b) attach a copy of any document containing evidence on which the prosecutor relies.

(4) A defendant who wants to make representations in response to the application must serve the representations on—

(a) the court officer; and

(b) the prosecutor,

not more than 20 business days after service of the application.

[Note. See paragraph 9 of Schedule 17 to the Crime and Courts Act 2013. See also rule 11.9 (Application to postpone the publication of information by the prosecutor).]

Application to approve a variation of the terms of an agreement

11.6.—(1) This rule applies where the parties have agreed to vary the terms of an agreement because—

(a) on an application under rule 11.5 (Application on breach of agreement), the court has invited them to do so; or

(b) variation of the agreement is necessary to avoid a failure by the defendant to comply with its terms in circumstances that were not, and could not have been, foreseen by either party at the time the agreement was made.

(2) The prosecutor must—

(a) apply in writing, as soon as practicable after the parties have settled the terms of the variation; and

(b) serve the application on—

(i) the court officer, and

(ii) the defendant.

(3) The application must—

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

(a) specify each variation proposed;

(b) contain or attach the defendant's written consent to the variation;

(c) explain why—

(i) the variation is in the interests of justice, and

(ii) the terms of the agreement as varied are fair, reasonable and proportionate; and

(d) include any application for the hearing to be in private.

[Note. See paragraph 10 of Schedule 17 to the Crime and Courts Act 2013. See also rule 11.9 (Application to postpone the publication of information by the prosecutor).]

Application to lift suspension of prosecution

11.7.—(1) This rule applies where—

(a) the court terminates an agreement before its expiry date; and

(b) the prosecutor wants the court to lift the suspension of the prosecution that applied when the court approved the terms of the agreement.

(2) The prosecutor must—

(a) apply in writing, as soon as practicable after the termination of the agreement; and

(b) serve the application on—

(i) the court officer, and

(ii) the defendant.

(3) A defendant who wants to make representations in response to the application must serve the representations on—

(a) the court officer; and

(b) the prosecutor,

not more than 20 business days after service of the application.

[Note. See paragraphs 2(3) and 9 of Schedule 17 to the Crime and Courts Act 2013.]

Notice to discontinue prosecution

11.8.—(1) This rule applies where an agreement expires—

(a) on its expiry date, or on a date treated as its expiry date; and

(b) without having been terminated by the court.

(2) The prosecutor must—

(a) as soon as practicable give notice in writing discontinuing the prosecution on the indictment approved by the court under rule 11.4 (Application to approve the terms of an agreement); and

(b) serve the notice on—

(i) the court officer, and

(ii) the defendant.

[Note. See paragraph 11 of Schedule 17 to the Crime and Courts Act 2013.]

Application to postpone the publication of information by the prosecutor

11.9.—(1) This rule applies where the prosecutor—

(a) makes an application under rule 11.4 (Application to approve the terms of an agreement), rule 11.5 (Application on breach of agreement) or rule 11.6 (Application to approve a variation of the terms of an agreement);

(b) decides not to make an application under rule 11.5, despite believing that the defendant has failed to comply with the terms of the agreement; or

(c) gives a notice under rule 11.8 (Notice to discontinue prosecution).

(2) A party who wants the court to order that the publication of information by the prosecutor about the court's or the prosecutor's decision should be postponed must—

(a) apply in writing, as soon as practicable and in any event before such publication occurs;

(b) serve the application on—

(i) the court officer, and

(ii) the other party; and

(c) in the application—

(i) specify the proposed terms of the order, and for how long it should last, and

(ii) explain why an order in the terms proposed is necessary.

[Note. See paragraph 12 of Schedule 17 to the Crime and Courts Act 2013.

Part 6 of these Rules contains rules about applications for a restriction on reporting what takes place at a public hearing, or public access to what otherwise would be a public hearing.]

Duty of court officer, etc.

11.10.—(1) Unless the court otherwise directs, the court officer must—

(a) arrange for the recording of proceedings on an application to which this Part applies; and

(b) arrange for the transcription of such a recording if—

(i) a party wants such a transcript, or

(ii) anyone else wants such a transcript (but that is subject to the restrictions in paragraph (2)).

(2) Unless the court otherwise directs, a person who transcribes a recording of proceedings under such arrangements—

(a) must not supply anyone other than a party with a transcript of a recording of—

(i) a hearing in private, or

(ii) a hearing in public to which reporting restrictions apply; but

(b) subject to that, must supply any person with any transcript for which that person asks—

(i) in accordance with the transcription arrangements made by the court officer, and

(ii) on payment by that person of any fee prescribed.

(3) The court officer must not identify either party to a hearing in private under rule 11.3 (Application to approve a proposal to enter an agreement) or rule 11.4 (Application to approve the terms of an agreement)—

(a) in any notice displayed in the vicinity of the courtroom; or

(b) in any other information published by the court officer.

Court's power to vary requirements under this Part

11.11.—(1) The court may—

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

(b) allow there to be made orally—

(i) an application under rule 11.4 (Application to approve the terms of an agreement), or

(ii) an application under rule 11.7 (Application to lift suspension of prosecution)

where the court exercises its power under rule 11.2(7) to hear one application immediately after another.

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

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

(b) explain the delay.

PART 12

DISCONTINUING A PROSECUTION

Contents of this Part

When this Part applies	rule 12.1
Discontinuing a case	rule 12.2
Defendant's notice to continue	rule 12.3

When this Part applies

12.1.—(1) This Part applies where—

(a) the Director of Public Prosecutions can discontinue a case in a magistrates' court, under section 23 of the Prosecution of Offences Act 1985(**a**); or

(b) the Director of Public Prosecutions, or another public prosecutor, can discontinue a case sent for trial in the Crown Court, under section 23A of the Prosecution of Offences Act 1985(**b**).

(2) In this Part, 'prosecutor' means one of those authorities.

[Note. Under section 23 of the Prosecution of Offences Act 1985, the Director of Public Prosecutions may discontinue proceedings in a magistrates' court, before the court—

(a) sends the defendant for trial in the Crown Court; or

(b) begins to hear the prosecution evidence, at a trial in the magistrates' court.

Under section 23(4) of the 1985 Act, the Director may discontinue proceedings where a person charged is in custody but has not yet been brought to court.

Under section 23 of the 1985 Act, the defendant has a right to require the proceedings to continue. See rule 12.3.

Under section 23A of the 1985 Act, the Director of Public Prosecutions, or a public authority within the meaning of section 17 of that Act(**c**)*, may discontinue proceedings where the defendant was sent for trial in the Crown Court under section 51 of the Crime and Disorder Act 1998*(**d**)*. In such a case—*

(a) the prosecutor must discontinue before a draft indictment becomes an indictment under rule 10.2(5); and

(b) the defendant has no right to require the proceedings to continue.

(**a**) 1985 c. 23; section 23 was amended by section 119 of, and paragraph 63 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), paragraph 290 of Schedule 8 to the Courts Act 2003 (c. 39) and paragraph 57 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**b**) 1985 c. 23; section 23A was inserted by section 119 of, and paragraph 64 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) and amended by paragraph 57 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

(**c**) 1985 c. 23; section 17 was amended by section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and paragraphs 1 and 4 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**d**) 1998 c. 37; section 51 was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

Where a prosecution does not proceed, the court has power to order the payment of the defendant's costs out of central funds. See rule 45.4.]

Discontinuing a case

12.2.—(1) A prosecutor exercising a power to which this Part applies must serve notice on—

(a) the court officer;

(b) the defendant; and

(c) any custodian of the defendant.

(2) Such a notice must—

(a) identify—

(i) the defendant and each offence to which the notice relates,

(ii) the person serving the notice, and

(iii) the power that that person is exercising; and

(b) explain—

(i) in the copy of the notice served on the court officer, the reasons for discontinuing the case,

(ii) that the notice brings the case to an end,

(iii) if the defendant is in custody for any offence to which the notice relates, that the defendant must be released from that custody, and

(iv) if the notice is under section 23 of the 1985 Act, that the defendant has a right to require the case to continue.

(3) Where the defendant is on bail, the court officer must notify—

(a) any surety; and

(b) any person responsible for monitoring or securing the defendant's compliance with a condition of bail.

Defendant's notice to continue

12.3.—(1) This rule applies where a prosecutor serves a notice to discontinue under section 23 of the 1985 Act.

(2) A defendant who wants the case to continue must serve notice—

(a) on the court officer; and

(b) not more than 25 business days after service of the notice to discontinue.

(3) If the defendant serves such a notice, the court officer must—

(a) notify the prosecutor; and

(b) refer the case to the court.

PART 13

WARRANTS FOR ARREST, DETENTION OR IMPRISONMENT

Contents of this Part

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[Note. Part 30 contains rules about warrants to take goods to pay fines, etc.]

When this Part applies

13.1.—(1) This Part applies where the court can issue a warrant for arrest, detention or imprisonment.

(2) In this Part, 'defendant' means anyone against whom such a warrant is issued.

Terms of a warrant for arrest

13.2. A warrant for arrest must require each person to whom it is directed to arrest the defendant and—

(a) bring the defendant to a court—

(i) specified in the warrant, or

(ii) required or allowed by law; or

(b) release the defendant on bail (with conditions or without) to attend court at a date, time and place—

(i) specified in the warrant, or

(ii) to be notified by the court.

[Note. The principal provisions under which the court can issue a warrant for arrest are—

(a) section 4 of the Criminal Procedure (Attendance of Witnesses) Act 1965(**a**)*;*

(b) section 7 of the Bail Act 1976(**b**)*;*

(c) sections 1 and 97 of the Magistrates' Courts Act 1980(**c**)*; and*

(d) sections 79, 80 and 81(4), (5) of the Senior Courts Act 1981(**d**)*.*

See also section 27A of the Magistrates' Courts Act 1980(**e**) *(power to transfer criminal proceedings) and section 78(2) of the Senior Courts Act 1981*(**f**) *(adjournment of Crown Court case to another place).]*

Terms of a warrant for detention or imprisonment

13.3.—(1) A warrant for detention or imprisonment must—

(a) require each person to whom it is directed to detain the defendant and—

(i) take the defendant to any place specified in the warrant or required or allowed by law, and

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(**a**) 1965 c. 69; section 4 was amended by section 56 of, and paragraph 45 of Schedule 8 to, the Courts Act 1971 (c. 23) and sections 65, 66, 67 and 80 of, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25).

(**b**) 1976 c. 63; section 7(1A) and (1B) were inserted by section 198 of the Extradition Act 2003 (c. 41).

(**c**) 1980 c. 43; section 1 was amended by section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), sections 43 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39), section 31 of, and paragraph 12 of Schedule 7 to, the Criminal Justice Act 2003 (c. 44) and section 153 of the Police Reform and Social Responsibility Act 2011 (c. 13). It is further amended by paragraphs 7 and 8 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed. Section 97 was amended by sections 13 and 14 of, and paragraph 7 of Schedule 2 to, the Contempt of Court Act 1981 (c. 47), section 31 of, and paragraph 2 of Schedule 4 to, the Criminal Justice (International Co-operation) Act 1990 (c. 5), sections 17 and 65 of, and paragraph 6 of Schedule 3 and Part I of Schedule 4 to, the Criminal Justice Act 1991 (c. 53), section 51 of the Criminal Procedure and Investigations Act 1996 (c. 25) and section 169 of the Serious Organised Crime and Police Act 2005 (c. 15).

(**d**) 1981 c. 54; section 80 was amended by paragraph 54 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**e**) 1980 c. 43; section 27A was inserted by section 46 of the Courts Act 2003 (c. 39).

(**f**) 1981 c. 54.

(ii) deliver the defendant to the custodian of that place; and

(b) require that custodian to detain the defendant, as ordered by the court, until in accordance with the law—

(i) the defendant is delivered to the appropriate court or place, or

(ii) the defendant is released.

(2) Where a magistrates' court remands a defendant to police detention under section 128(7)(**a**) or section 136(**b**) of the Magistrates' Courts Act 1980, or to customs detention under section 152 of the Criminal Justice Act 1988(**c**), the warrant it issues must—

(a) be directed, as appropriate, to—

(i) a constable, or

(ii) an officer of Her Majesty's Revenue and Customs; and

(b) require that constable or officer to detain the defendant—

(i) for a period (not exceeding the maximum permissible) specified in the warrant, or

(ii) until in accordance with the law the defendant is delivered to the appropriate court or place.

(3) Where a magistrates' court sentences a defendant to imprisonment or detention and section 11(3) of the Magistrates' Courts Act 1980(**d**) applies (custodial sentence imposed in the defendant's absence), the warrant it issues must—

(a) require each person to whom the warrant is directed—

(i) to arrest the defendant and bring him or her to a court specified in the warrant, and

(ii) unless the court then otherwise directs, after that to act as required by paragraph (1)(a) of this rule; and

(b) require the custodian to whom the defendant is delivered in accordance with that paragraph to act as required by paragraph (1)(b) of this rule.

[Note. Under section 128(7) of the Magistrates' Courts Act 1980, a magistrates' court can remand a defendant to police detention for not more than 3 clear days, if the defendant is an adult, or for not more than 24 hours if the defendant is under 18.

Under section 136 of the 1980 Act, a magistrates' court can order a defendant's detention in police custody until the following 8am for non-payment of a fine, etc.

Under section 152 of the Criminal Justice Act 1988, a magistrates' court can remand a defendant to customs detention for not more than 192 hours if the defendant is charged with a drug trafficking offence.]

Information to be included in a warrant

13.4.—(1) A warrant must identify—

(a) each person to whom it is directed;

(**a**) 1980 c. 43; section 128(7) was amended by section 48 of the Police and Criminal Evidence Act 1984 (c. 60). It is modified by section 91(5) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**b**) 1980 c. 43; section 136 was amended by section 77 of, and paragraph 58 of Schedule 14 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), section 95(2) of the Access to Justice Act 1999 (c. 22) and section 165(1) of, and paragraph 78 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6). It is further amended by sections 74 and 75 of, and paragraphs 58 and 68 of Schedule 7, and Schedule 8 to, the Criminal Justice and Court Services Act 2000 (c. 43), with effect from a date to be appointed.

(**c**) 1988 c. 33; section 152 was amended by paragraphs 1 and 17 of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29) and section 8 of the Drugs Act 2005 (c. 17).

(**d**) 1980 c. 43; section 11(3) was amended by section 123 of, and paragraph 1 of Schedule 8 to, the Criminal Justice Act 1988 (c. 33), section 168 of, and paragraph 39 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 39 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 304 of, and paragraphs 25 and 26 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44) and section 54 of the Criminal Justice and Immigration Act 2008 (c. 4).

(b) the defendant against whom it was issued;

(c) the reason for its issue;

(d) the court that issued it, unless that is otherwise recorded by the court officer; and

(e) the court office for the court that issued it.

(2) A warrant for detention or imprisonment must contain a record of any decision by the court under—

(a) section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**a**) (remands of children otherwise than on bail), including in particular—

(i) whether the defendant must be detained in local authority accommodation or youth detention accommodation,

(ii) the local authority designated by the court,

(iii) any requirement imposed by the court on that authority,

(iv) any condition imposed by the court on the defendant, and

(v) the reason for any such requirement or condition;

(b) section 80 of the Magistrates' Courts Act 1980(**b**) (application of money found on defaulter to satisfy sum adjudged); or

(c) section 82(1) or (4) of the 1980 Act(**c**) (conditions for issue of a warrant).

(3) A warrant for detention or imprisonment must include such an indication of the defendant's physical and mental health as may be needed to alert those to whom the warrant is directed—

(a) to any vulnerability of the defendant; and

(b) to any risk to others that may be posed by the defendant.

(4) The indication required by paragraph (3) may be given by reference to an accompanying document.

(5) A warrant that contains an error is not invalid, as long as—

(a) it was issued in respect of a lawful decision by the court; and

(b) it contains enough information to identify that decision.

[Note. See sections 93(7) and 102(5) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Under section 91 of the Act, instead of granting bail to a defendant under 18 the court may—

(a) remand him or her to local authority accommodation and, after consulting with that authority, impose on the defendant a condition that the court could impose if granting bail; or

(b) remand him or her to youth detention accommodation, if the defendant is at least 12 years old and the other conditions, about the offence and the defendant, prescribed by the Act are met.

Under section 80 of the Magistrates' Courts Act 1980, the court may decide that any money found on the defendant must not be applied towards payment of the sum for which a warrant is issued under section 76 of that Act (enforcement of sums adjudged to be paid).

(**a**) 2012 c. 10.

(**b**) 1980 c. 43; section 80 was amended by section 33(1) of, and paragraph 83 of Schedule 2 to, the Family Law Reform Act 1987 (c. 42) and section 62(3) of, and paragraphs 45 and 49 of Schedule 13 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**c**) 1980 c. 43; section 82 was amended by section 77 of, and paragraph 52 of Schedule 14 to, the Criminal Justice Act 1982 (c. 48), sections 61 and 123 of, and paragraphs 1 and 2 of Schedule 8 to, the Criminal Justice Act 1988 (c. 33), section 55 of and paragraph 10 of Schedule 4 to the Crime (Sentences) Act 1997 (c. 43), paragraph 220 of Schedule 8 to the Courts Act 2003 (c. 39), section 62 of, and paragraphs 45 and 51 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15) and section 179 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12) and section 54 of, and paragraphs 2 and 3 of Schedule 12 to, the Criminal Justice and Courts Act 2015 (c. 2). It is further amended by paragraphs 58 and 63 of Part II of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43) and Part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from dates to be appointed.

See section 82(6) of the 1980 Act. Under section 82(1) and (4), the court may only issue a warrant for the defendant's imprisonment for non-payment of a sum due where it finds that the prescribed conditions are met.

Under section 123 of the 1980 Act(**a**)*, "no objection shall be allowed to any … warrant to procure the presence of the defendant, for any defect in it in substance or in form …".]*

Execution of a warrant

13.5.—(1) A warrant may be executed—

(a) by any person to whom it is directed; or

(b) if the warrant was issued by a magistrates' court, by anyone authorised to do so by section 125(**b**) (warrants), 125A(**c**) (civilian enforcement officers) or 125B(**d**) (execution by approved enforcement agency) of the Magistrates' Courts Act 1980.

(2) The person who executes a warrant must—

(a) explain, in terms the defendant can understand, what the warrant requires, and why;

(b) show the defendant the warrant, if that person has it; and

(c) if the defendant asks—

(i) arrange for the defendant to see the warrant, if that person does not have it, and

(ii) show the defendant any written statement of that person's authority required by section 125A or 125B of the 1980 Act.

(3) The person who executes a warrant of arrest that requires the defendant to be released on bail must—

(a) make a record of—

(i) the defendant's name,

(ii) the reason for the arrest,

(iii) the defendant's release on bail, and

(iv) when and where the warrant requires the defendant to attend court; and

(b) serve the record on—

(i) the defendant, and

(ii) the court officer.

(4) The person who executes a warrant of detention or imprisonment must—

(a) take the defendant—

(i) to any place specified in the warrant, or

(ii) if that is not immediately practicable, to any other place at which the defendant may be lawfully detained (and the warrant then has effect as if it specified that place);

(b) obtain a receipt from the custodian; and

(c) notify the court officer that the defendant has been taken to that place.

(**a**) 1980 c. 43.

(**b**) 1980 c. 43; section 125 was amended by section 33 of the Police and Criminal Evidence Act 1984 (c. 60), section 65(1) of the Criminal Justice Act 1988 (c. 33), sections 95(1), 97(4) and 106 of, and Part V of Schedule 15 and Table (8) to, the Access to Justice Act 1999 (c. 22), section 109(1) of, and paragraph 238 of Schedule 8 to, the Courts Act 2003 (c. 39) and sections 62(3), 86 and 146 of, and paragraphs 45 and 57 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**c**) 1980 c. 43; section 125A was inserted by section 92 of the Access to Justice Act 1999 (c. 22) and amended by articles 46 and 52 of S.I. 2006/1737 and article 8 of, and paragraph 5 of the Schedule to, S.I. 2007/2128 and section 62 of, and paragraphs 45 and 58 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**d**) 1980 c. 43; section 125B was inserted by section 93(2) of the Access to Justice Act 1999 (c. 22) and amended by paragraph 239 of Schedule 8 to the Courts Act 2003 (c. 39) and section 62 of, and paragraphs 45, 59 and 61 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

[Note. Under section 125 of the Magistrates' Courts Act 1980, a warrant issued by a magistrates' court may be executed by any person to whom it is directed or by any constable acting within that constable's police area.

Certain warrants issued by a magistrates' court may be executed anywhere in England and Wales by a civilian enforcement officer, under section 125A of the 1980 Act; or by an approved enforcement agency, under section 125B of the Act. In either case, the person executing the warrant must, if the defendant asks, show a written statement indicating: that person's name; the authority or agency by which that person is employed, or in which that person is a director or partner; that that person is authorised to execute warrants; and, where section 125B applies, that the agency is registered as one approved by the Lord Chancellor.

See also section 125D of the 1980 Act(**a**)*, under which—*

(a) a warrant to which section 125A applies may be executed by any person entitled to execute it even though it is not in that person's possession at the time; and

(b) certain other warrants, including any warrant to arrest a person in connection with an offence, may be executed by a constable even though it is not in that constable's possession at the time.]

Warrants that cease to have effect on payment

13.6.—(1) This rule applies to a warrant issued by a magistrates' court under any of the following provisions of the Magistrates' Courts Act 1980—

(a) section 76(**b**) (enforcement of sums adjudged to be paid);

(b) section 83(**c**) (process for securing attendance of offender);

(c) section 86(**d**) (power of magistrates' court to fix day for appearance of offender at means inquiry, etc.); or

(d) section 136(**e**) (committal to custody overnight at police station for non-payment of sum adjudged by conviction).

(2) The warrant no longer has effect if—

(a) the sum in respect of which the warrant was issued is paid to the person executing it;

(b) that sum is offered to, but refused by, that person; or

(c) that person is shown a receipt for that sum given by—

(i) the court officer, or

(ii) the authority to which that sum is due.

[Note. See sections 79(**f**) *and 125(1) of the Magistrates' Courts Act 1980.]*

(**a**) 1980 c. 43; section 125D was inserted by section 96 of the Access to Justice Act 1999 (c. 22) and amended by sections 62 and 146 of, and paragraphs 45 and 61 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**b**) 1980 c. 43: section 76 was amended by section 7 of the Maintenance Enforcement Act 1991 (c. 17); section 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), and section 62(3) of, and paragraphs 45 and 46 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**c**) 1980 c. 43; section 83 was amended by articles 46 and 47 of S.I. 2006/1737 and sections 97(2) and 106 of, and Part V (table 8) of Schedule 15 to, the Access to Justice Act 1999 (c. 22).

(**d**) 1980 c. 43; section 86 was amended by section 51(2) of the Criminal Justice Act 1982 (c. 48) and section 97(3) of the Access to Justice Act 1999 (c. 22).

(**e**) 1980 c. 43; section 136 was amended by section 77 of, and paragraph 58 of Schedule 14 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), section 95(2) of the Access to Justice Act 1999 (c. 22) and section 165(1) of, and paragraph 78 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6). It is further amended by sections 74 and 75 of, and paragraphs 58 and 68 of Schedule 7, and Schedule 8 to, the Criminal Justice and Court Services Act 2000 (c. 43), with effect from a date to be appointed.

(**f**) 1980 c. 43; section 79 was amended by paragraph 219 of Schedule 8 to the Courts Act 2003 (c. 39) and section 62 of, and paragraphs 45, 47 and 48 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

Warrant issued when the court office is closed

13.7.—(1) This rule applies where the court issues a warrant when the court office is closed.

(2) The applicant for the warrant must, not more than 72 hours later, serve on the court officer—

(a) a copy of the warrant; and

(b) any written material that was submitted to the court.

PART 14

BAIL AND CUSTODY TIME LIMITS

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Application to extend a custody time limit — rule 14.21
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GENERAL RULES

When this Part applies

14.1.—(1) This Part applies where a magistrates' court or the Crown Court can—

(a) grant or withhold bail, or impose or vary a condition of bail; and

(b) where bail has been withheld, extend a custody time limit.

(2) Rules 14.18, 14.19 and 14.20 apply where a magistrates' court can authorise an extension of the period for which a defendant is released on bail before being charged with an offence.

(3) In this Part, 'defendant' includes a person who has been granted bail by a police officer.

[Note. See in particular—

(a) the Bail Act 1976(**a**)*;*

(b) section 128 of the Magistrates' Courts Act 1980(**b**) *(general powers of magistrates' courts in relation to bail);*

(c) section 81 of the Senior Courts Act 1981(**c**) *(general powers of the Crown Court in relation to bail);*

(d) section 115 of the Coroners and Justice Act 2009(**d**) *(exclusive power of the Crown Court to grant bail to a defendant charged with murder);*

(e) section 22 of the Prosecution of Offences Act 1985(**e**) *(provision for custody time limits);*

(f) the Prosecution of Offences (Custody Time Limits) Regulations 1987(**f**) *(maximum periods during which a defendant may be kept in custody pending trial); and*

(g) sections 47ZF and 47ZG of the Police and Criminal Evidence Act 1984(**g**) *(extensions by court of pre-charge bail time limit).*

At the end of this Part there is a summary of the general entitlement to bail, and of the exceptions to that entitlement.]

Exercise of court's powers: general

14.2.—(1) The court must not make a decision to which this Part applies unless—

(a) each party to the decision and any surety directly affected by the decision—

(i) is present, in person or by live link, or

(ii) has had an opportunity to make representations;

(b) on an application for bail by a defendant who is absent and in custody, the court is satisfied that the defendant—

(i) has waived the right to attend, or

(ii) was present when a court withheld bail in the case on a previous occasion and has been in custody continuously since then;

(**a**) 1976 c. 63.

(**b**) 1980 c. 43; section 128 was amended by section 59 to, and paragraphs 2, 3 and 4 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 48 of the Police and Criminal Evidence Act 1984 (c. 60), section 170(1) of, and paragraphs 65 and 69 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 125(3) of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 1990 (c. 41), sections 49, 52 and 80 of, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25), paragraph 75 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44). It is modified by section 91(5) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**c**) 1981 c. 54; section 81(1) was amended by sections 29 and 60 of the Criminal Justice Act 1982 (c. 48), section 15 of, and paragraph 2 of Schedule 12 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 19 of Schedule 9 and paragraph 48 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 48 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 165 of, and paragraph 87 of Schedule 9 and Schedule 12 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraph 54 of Schedule 3, paragraph 4 of Schedule 36 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), articles 2 and 6 of S.I. 2004/1033 and section 177(1) of, and paragraph 76 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25).

(**d**) 2009 c. 25.

(**e**) 1985 c. 23; section 22 was amended by paragraph 104 of Schedule 15 to the Criminal Justice Act 1988 (c. 33), section 43 of the Crime and Disorder Act 1998 (c. 37), paragraph 36 of Schedule 11 to the Criminal Justice Act 1991 (c. 53), paragraph 27 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33), section 71 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 67(3) of the Access to Justice Act 1999 (c. 22), section 70 of, and paragraph 57 of Schedule 3 and paragraphs 49 and 51 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and paragraph 22 of Schedule 12 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**f**) S.I. 1987/299; amended by sections 71 and 80 of, and paragraph 8 of Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and S.I. 1989/767, 1991/1515, 1995/555, 1999/2744, 2000/3284, 2012/1344.

(**g**) 1984 c. 60; sections 47ZF and 47ZG were inserted by section 63 of the Policing and Crime Act 2017 (c. 3).

(c) on a prosecutor's appeal against a grant of bail, application to extend a custody time limit or appeal against a refusal to extend such a time limit—

(i) the court is satisfied that a defendant who is absent has waived the right to attend, or

(ii) the court is satisfied that it would be just to proceed even though the defendant is absent; and

(d) the court is satisfied that sufficient time has been allowed—

(i) for the defendant to consider the information provided by the prosecutor under rule 14.5(2), and

(ii) for the court to consider the parties' representations and make the decision required.

(2) The court may make a decision to which this Part applies at a hearing, in public or in private.

(3) The court may determine without a hearing an application to vary a condition of bail if—

(a) the parties to the application have agreed the terms of the variation proposed; or

(b) on an application by a defendant, the court determines the application no sooner than the fifth business day after the application was served.

(4) The court may adjourn a determination to which this Part applies, if that is necessary to obtain information sufficient to allow the court to make the decision required.

(5) At any hearing at which the court makes one of the following decisions, the court must announce in terms the defendant can understand (with help, if necessary), and by reference to the circumstances of the defendant and the case, its reasons for—

(a) withholding bail, or imposing or varying a bail condition;

(b) granting bail, where the prosecutor opposed the grant; or

(c) where the defendant is under 18—

(i) imposing or varying a bail condition when ordering the defendant to be detained in local authority accommodation, or

(ii) ordering the defendant to be detained in youth detention accommodation.

(6) At any hearing at which the court grants bail, the court must—

(a) tell the defendant where and when to surrender to custody; or

(b) arrange for the court officer to give the defendant, as soon as practicable, notice of where and when to surrender to custody.

(7) This rule does not apply on an application to a magistrates' court to authorise an extension of pre-charge bail.

[Note. See section 5 of the Bail Act 1976 and sections 93(7) and 102(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**a**).

Under sections 57A and 57B of the Crime and Disorder Act 1998(**b**)*, a defendant is to be treated as present in court when, by virtue of a live link direction within the meaning of those provisions, he or she attends a hearing through a live link.*

Under section 91 of the 2012 Act, instead of granting bail to a defendant under 18 the court may—

(a) remand him or her to local authority accommodation and, after consulting with that authority, impose on the defendant a condition that the court could impose if granting bail; or

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(**a**) 2012 c. 10.

(**b**) 1998 c. 37; sections 57A to 57E were substituted for section 57 as originally enacted by section 45 of the Police and Justice Act 2006 (c. 48), and amended by sections 106, 109 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25). Section 57A was further amended by paragraphs 36 and 39 of Schedule 12 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(b) remand him or her to youth detention accommodation, if the defendant is at least 12 years old and the other conditions, about the offence and the defendant, prescribed by the Act are met.

See also rule 14.18 (Exercise of court's powers: extension of pre-charge bail).]

Duty of justices' legal adviser

14.3.—(1) This rule applies—

(a) only in a magistrates' court; and

(b) unless the court—

(i) includes a District Judge (Magistrates' Courts), and

(ii) otherwise directs.

(2) A justices' legal adviser must ask such questions as may be needed to obtain information sufficient to allow the court to make such decisions as are required.

[Note. For the functions of a justices' legal adviser, see sections 28 and 29 of the Courts Act 2003(**a**)*. See also rule 2.12 (Duties of justices' legal adviser).]*

General duties of court officer

14.4.—(1) The court officer must arrange for a note or other record to be made of—

(a) the parties' representations about bail; and

(b) the court's reasons for a decision—

(i) to withhold bail, or to impose or vary a bail condition,

(ii) to grant bail, where the prosecutor opposed the grant, or

(iii) on an application to which rule 14.19 applies (Application to authorise extension of pre-charge bail).

(2) The court officer must serve notice of a decision about bail on—

(a) the defendant (but, in the Crown Court, only where the defendant's legal representative asks for such a notice, or where the defendant has no legal representative);

(b) the prosecutor (but only where the court granted bail, the prosecutor opposed the grant, and the prosecutor asks for such a notice);

(c) a party to the decision who was absent when it was made;

(d) a surety who is directly affected by the decision;

(e) the defendant's custodian, where the defendant is in custody and the decision requires the custodian—

(i) to release the defendant (or will do so, if a requirement ordered by the court is met), or

(ii) to transfer the defendant to the custody of another custodian; and

(f) the court officer for any other court at which the defendant is required by that decision to surrender to custody.

(3) Where the court postpones the date on which a defendant who is on bail must surrender to custody, the court officer must serve notice of the postponed date on—

(a) the defendant; and

(b) any surety.

(**a**) 2003 c. 39; section 28 was amended by section 15 of, and paragraphs 308 and 327 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).

(4) Where a magistrates' court withholds bail in a case to which section 5(6A) of the Bail Act 1976(**a**) applies (remand in custody after hearing full argument on an application for bail), the court officer must serve on the defendant a certificate that the court heard full argument.

(5) Where the court determines without a hearing an application to which rule 14.19 applies (Application to authorise extension of pre-charge bail), the court officer must—

(a) if the court allows the application, notify the applicant; and

(b) if the court refuses the application, notify the applicant and the defendant.

[Note. See section 5 of the Bail Act 1976(**b**)*; section 43 of the Magistrates' Courts Act 1980*(**c**)*; and section 52 of the Mental Health Act 1983*(**d**)*.]*

BAIL

Prosecutor's representations about bail

14.5.—(1) This rule applies whenever the court can grant or withhold bail.

(2) The prosecutor must as soon as practicable—

(a) provide the defendant with all the information in the prosecutor's possession which is material to what the court must decide; and

(b) provide the court with the same information.

(3) A prosecutor who opposes the grant of bail must specify—

(a) each exception to the general right to bail on which the prosecutor relies; and

(b) each consideration that the prosecutor thinks relevant.

(4) A prosecutor who wants the court to impose a condition on any grant of bail must—

(a) specify each condition proposed; and

(b) explain what purpose would be served by such a condition.

[Note. A summary of the general entitlement to bail and of the exceptions to that entitlement is at the end of this Part.]

Reconsideration of police bail by magistrates' court

14.6.—(1) This rule applies where—

(a) a party wants a magistrates' court to reconsider a bail decision by a police officer after the defendant is charged with an offence; and

(b) a defendant wants a magistrates' court to reconsider a bail condition imposed by a police officer before the defendant is charged with an offence.

(2) An application under this rule must be made to—

(a) the magistrates' court—

(**a**) 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 by 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).

(**b**) 1976 c. 63; section 5 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 60 of the Criminal Justice Act 1982 (c. 48), paragraph 1 of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 53 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 129(1) of the Criminal Justice and Police Act 2001 (c. 16), paragraph 182 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36, and Parts 2, 4 and 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27).

(**c**) 1980 c. 43; section 43 was substituted by section 47 of the Police and Criminal Evidence Act 1984 (c. 60) and amended by paragraph 43 of Schedule 10 to the Criminal Justice and Public Order Act 1994 (c. 33) and paragraph 206 of Schedule 8 to the Courts Act 2003 (c. 39).

(**d**) 1983 c. 20; section 52 was amended by paragraph 55 of Schedule 3 and Schedule 37 to the Criminal Justice Act 2003 (c. 44), section 11 of the Mental Health Act 2007 (c. 12) and paragraphs 53 and 57 of Schedule 21 to the Legal Services Act 2007 (c. 29).

(i) to whose custody the defendant is under a duty to surrender, if any, or

(ii) by which the most recent previous extension of pre-charge bail has been authorised, if applicable; or

(b) any magistrates' court acting for the police officer's local justice area, in any other case.

(3) The applicant party must—

(a) apply in writing; and

(b) serve the application on—

(i) the court officer,

(ii) the other party, and

(iii) any surety affected or proposed.

(4) The application must—

(a) specify—

(i) the decision that the applicant wants the court to make,

(ii) each offence charged, or for which the defendant was arrested, and

(iii) the police bail decision to be reconsidered and the reasons given for it;

(b) explain, as appropriate—

(i) why the court should grant bail itself, or withdraw it, or impose or vary a condition, and

(ii) if the applicant is the prosecutor, what material information has become available since the police bail decision was made;

(c) propose the terms of any suggested condition of bail; and

(d) if the applicant wants an earlier hearing than paragraph (7) requires, ask for that, and explain why it is needed.

(5) A prosecutor who applies under this rule must serve on the defendant, with the application, notice that the court has power to withdraw bail and, if the defendant is absent when the court makes its decision, order the defendant's arrest.

(6) A party who opposes an application must—

(a) so notify the court officer and the applicant at once; and

(b) serve on each notice of the reasons for opposition.

(7) Unless the court otherwise directs, the court officer must arrange for the court to hear the application as soon as practicable and in any event—

(a) if it is an application to withdraw bail, no later than the second business day after it was served; and

(b) in any other case, no later than the fifth business day after it was served.

(8) The court may—

(a) vary or waive a time limit under this rule;

(b) allow an application to be in a different form to one issued under the Practice Direction; and

(c) if rule 14.2 allows, determine without a hearing an application to vary a condition.

[Note. Under section 5B of the Bail Act 1976(**a**)*—*

(a) where a defendant has been charged with an offence which can be tried in the Crown Court; or

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(**a**) 1976 c. 63; section 5B was inserted by section 30 of the Criminal Justice and Public Order Act 1994 (c. 33) and amended by section 129(3) of the Criminal Justice and Police Act 2001 (c. 16), section 109 of, and paragraph 183 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39) and section 198 of the Extradition Act 2003 (c. 41).

(b) in an extradition case,

on application by the prosecutor a magistrates' court may withdraw bail granted by a constable, impose conditions of bail, or vary conditions of bail. See also sections 37, 37C(2)(b), 37CA(2)(b), 46A and 47(1B) of the Police and Criminal Evidence Act 1984(**a**).

Under section 43B of the Magistrates' Courts Act 1980(**b**)*, where a defendant has been charged with an offence, on application by the defendant a magistrates' court may grant bail itself, in substitution for bail granted by a custody officer, or vary the conditions of bail granted by a custody officer. See also sections 37, 37C(2)(b), 37CA(2)(b), 46A and 47(1C), (1D) of the Police and Criminal Evidence Act 1984*(**c**).

Under section 47(1E) of the Police and Criminal Evidence Act 1984(**d**)*, where a defendant has been released on bail by a custody officer without being charged with an offence, on application by the defendant a magistrates' court may vary any conditions of that bail. See also rules 14.18 and 14.19 and sections 37, 37C(2)(b), 37CA(2)(b), 46A and 47(1C) of the Act.]*

Notice of application to consider bail

14.7.—(1) This rule applies where—

(a) in a magistrates' court—

(i) a prosecutor wants the court to withdraw bail granted by the court, or to impose or vary a condition of such bail, or

(ii) a defendant wants the court to reconsider such bail before the next hearing in the case; and

(b) in the Crown Court—

(i) a party wants the court to grant bail that has been withheld, or to withdraw bail that has been granted, or to impose a new bail condition or to vary a present one, or

(ii) a prosecutor wants the court to consider whether to grant or withhold bail, or impose or vary a condition of bail, under section 88 or section 89 of the Criminal Justice Act 2003(**e**) (bail and custody in connection with an intended application to the Court of Appeal to which Part 27 (Retrial after acquittal) applies).

(2) Such a party must—

(a) apply in writing;

(b) serve the application on—

(**a**) 1984 c. 60; section 37 was amended by section 108(7) of, and Schedule 15 to, the Children Act 1989 (c. 41), sections 72 and 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), sections 29(4) and 168(3) of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 28 of, and paragraphs 1 and 2 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44), section 23(1) of, and paragraphs 1 and 2 of Schedule 1 to, the Drugs Act 2005 (c. 17) and sections 11 and 52 of, and paragraph 9 of Schedule 14 to, the Police and Justice Act 2006 (c. 48). Section 37C was inserted by section 28 of, and paragraphs 1 and 3 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44). Section 37CA was inserted by section 10 of, and paragraphs 1 and 8 of Schedule 6 to, the Police and Justice Act 2006 (c. 48). Section 46A was inserted by section 29 of the Criminal Justice and Public Order Act 1994 (c. 33), and amended by section 28 of, and paragraphs 1 and 5 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44), sections 10 and 46 of, and paragraphs 1 and 7 of Schedule 6 to, the Police and Justice Act 2006 (c. 48) and sections 107 and 178 of, and Part 3 of Schedule 3 to, the Coroners and Justice Act 2009 (c. 25). Section 47(1B) was inserted by section 28 of, and paragraphs 1 and 6 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44) and amended by section 10 of, and paragraphs 1 and 11 of Schedule 6 to, the Police and Justice Act 2006 (c. 48).

(**b**) 1980 c. 43; section 43B was inserted by section 27 of, and paragraph 3 of Schedule 3 to, the Criminal Justice and Public Order Act 1994 (c. 33).

(**c**) 1984 c. 60; section 47(1C) and (1D) were inserted by section 28 of, and paragraphs 1 and 6 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44), and section 47(1C) was amended by section 10 of, and paragraphs 1 and 11 of Schedule 6 to, the Police and Justice Act 2006 (c. 48).

(**d**) 1984 c. 60; section 47(1E) was inserted by section 28 of, and paragraphs 1 and 6 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44).

(**e**) 2003 c. 44; section 88 was amended by section 148 of, and paragraphs 59 and 63 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4). Section 89 was amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and section 148 of, and paragraphs 59 and 63 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(i) the court officer,

(ii) the other party, and

(iii) any surety affected or proposed; and

(c) serve the application not less than 2 business days before any hearing in the case at which the applicant wants the court to consider it, if such a hearing is already due.

(3) The application must—

(a) specify—

(i) the decision that the applicant wants the court to make,

(ii) each offence charged, and

(iii) each relevant previous bail decision and the reasons given for each;

(b) if the applicant is a defendant, explain—

(i) as appropriate, why the court should not withhold bail, or why it should vary a condition, and

(ii) what further information or legal argument, if any, has become available since the most recent previous bail decision was made;

(c) if the applicant is the prosecutor, explain—

(i) as appropriate, why the court should withdraw bail, or impose or vary a condition, and

(ii) what material information has become available since the most recent previous bail decision was made;

(d) propose the terms of any suggested condition of bail; and

(e) if the applicant wants an earlier hearing than paragraph (6) requires, ask for that, and explain why it is needed.

(4) A prosecutor who applies under this rule must serve on the defendant, with the application, notice that the court has power to withdraw bail and, if the defendant is absent when the court makes its decision, order the defendant's arrest.

(5) A party who opposes an application must—

(a) so notify the court officer and the applicant at once; and

(b) serve on each notice of the reasons for opposition.

(6) Unless the court otherwise directs, the court officer must arrange for the court to hear the application as soon as practicable and in any event—

(a) if it is an application to grant or withdraw bail, no later than the second business day after it was served; and

(b) if it is an application to impose or vary a condition, no later than the fifth business day after it was served.

(7) The court may—

(a) vary or waive a time limit under this rule;

(b) allow an application to be in a different form to one issued under the Practice Direction, or to be made orally; and

(c) if rule 14.2 allows, determine without a hearing an application to vary a condition.

[Note. In addition to the court's general powers in relation to bail—

(a) under section 3(8) of the Bail Act 1976(**a**)*, on application by either party the court may impose a bail condition or vary a condition it has imposed. Until the Crown Court makes*

(**a**) 1976 c. 63; section 3(8) was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45) and paragraph 48 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

its first bail decision in the case, a magistrates' court may vary a condition which it imposed on committing or sending a defendant for Crown Court trial.

(b) under section 5B of the Bail Act 1976(**a**)*, where the defendant is on bail and the offence is one which can be tried in the Crown Court, or in an extradition case, on application by the prosecutor a magistrates' court may withdraw bail, impose conditions of bail or vary the conditions of bail.*

(c) under sections 88 and 89 of the Criminal Justice Act 2003, the Crown Court may remand in custody, or grant bail to, a defendant pending an application to the Court of Appeal for an order for retrial under section 77 of that Act.

Under Part IIA of Schedule 1 to the Bail Act 1976(**b**)*, if the court withholds bail then at the first hearing after that the defendant may support an application for bail with any argument as to fact or law, whether or not that argument has been advanced before. At subsequent hearings, the court need not hear arguments which it has heard previously.]*

Defendant's application or appeal to the Crown Court after magistrates' court bail decision

14.8.—(1) This rule applies where a defendant wants to—

(a) apply to the Crown Court for bail after a magistrates' court has withheld bail; or

(b) appeal to the Crown Court after a magistrates' court has refused to vary a bail condition as the defendant wants.

(2) The defendant must—

(a) apply to the Crown Court in writing as soon as practicable after the magistrates' court's decision; and

(b) serve the application on—

(i) the Crown Court officer,

(ii) the magistrates' court officer,

(iii) the prosecutor, and

(iv) any surety affected or proposed.

(3) The application must—

(a) specify—

(i) the decision that the applicant wants the Crown Court to make, and

(ii) each offence charged;

(b) explain—

(i) as appropriate, why the Crown Court should not withhold bail, or why it should vary the condition under appeal, and

(ii) what further information or legal argument, if any, has become available since the magistrates' court's decision;

(c) propose the terms of any suggested condition of bail;

(d) if the applicant wants an earlier hearing than paragraph (6) requires, ask for that, and explain why it is needed; and

(e) on an application for bail, attach a copy of the certificate of full argument served on the defendant under rule 14.4(4).

(4) The magistrates' court officer must as soon as practicable serve on the Crown Court officer—

(**a**) 1976 c. 63; section 5B was inserted by section 30 of the Criminal Justice and Public Order Act 1994 (c. 33) and amended by section 129(3) of the Criminal Justice and Police Act 2001 (c. 16), section 109 of, and paragraph 183 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39) and section 198 of the Extradition Act 2003 (c. 41).

(**b**) 1976 c. 63; Schedule 1, Part IIA was added by section 154 of the Criminal Justice Act 1988 (c. 33).

(a) a copy of the note or record made under rule 14.4(1) in connection with the magistrates' court's decision; and

(b) the date of the next hearing, if any, in the magistrates' court.

(5) A prosecutor who opposes the application must—

(a) so notify the Crown Court officer and the defendant at once; and

(b) serve on each notice of the reasons for opposition.

(6) Unless the Crown Court otherwise directs, the court officer must arrange for the court to hear the application or appeal as soon as practicable and in any event no later than the business day after it was served.

(7) The Crown Court may vary a time limit under this rule.

[Note. Under section 81 of the Senior Courts Act 1981(**a**)*, the Crown Court may grant bail in a magistrates' court case in which the magistrates' court has withheld bail.*

Under section 16 of the Criminal Justice Act 2003(**b**)*, a defendant may appeal to the Crown Court against a bail condition imposed by a magistrates' court only where—*

(a) the condition is one that the defendant must—

(i) live and sleep at a specified place, or away from a specified place,

(ii) give a surety or a security,

(iii) stay indoors between specified hours,

(iv) comply with electronic monitoring requirements, or

(v) make no contact with a specified person; and

(b) the magistrates' court has determined an application by either party to vary that condition.

In an extradition case, where a magistrates' court withholds bail or imposes bail conditions, on application by the defendant the High Court may grant bail, or vary the conditions, under section 22 of the Criminal Justice Act 1967(**c**)*. For the procedure in the High Court, see Schedule 1 to the Civil Procedure Rules 1998 (RSC Order 79)*(**d**)*.]*

Prosecutor's appeal against grant of bail

14.9.—(1) This rule applies where a prosecutor wants to appeal—

(a) to the Crown Court against a grant of bail by a magistrates' court, in a case in which the defendant has been charged with, or convicted of, an offence punishable with imprisonment; or

(b) to the High Court against a grant of bail—

(i) by a magistrates' court, in an extradition case, or

(**a**) 1981 c. 54; section 81(1) was amended by sections 29 and 60 of the Criminal Justice Act 1982 (c. 48), section 15 of, and paragraph 2 of Schedule 12 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 19 of Schedule 9 and paragraph 48 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 48 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 165 of, and paragraph 87 of Schedule 9 and Schedule 12 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraph 54 of Schedule 3, paragraph 4 of Schedule 36 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), articles 2 and 6 of S.I. 2004/1033 and section 177(1) of, and paragraph 76 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25).

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

(**c**) 1967 c. 80; section 22 was amended by section 56 of, and paragraph 48 of Schedule 8 and Schedule 11 to, the Courts Act 1971 (c. 23), section 12 of, and paragraphs 36 and 37 of Schedule 2 and Schedule 3 to, the Bail Act 1976 (c. 63), section 65 of, and Schedules 12 and 13 to, the Criminal Law Act 1977 (c. 45), paragraph 15 of Schedule 10 to the Criminal Justice and Public Order Act 1994 (c. 33), sections 17 and 332 of, and Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and section 42 of, and paragraph 27 of Schedule 13 to, the Police and Justice Act 2006 (c. 48).

(**d**) S.I. 1998/3132; Schedule 1 RSC Order 79 was amended by S.I. 1999/1008, 2001/256, 2003/3361 and 2005/617.

(ii) by the Crown Court, in a case in which the defendant has been charged with, or convicted of, an offence punishable with imprisonment (but not in a case in which the Crown Court granted bail on an appeal to which paragraph (1)(a) applies).

(2) The prosecutor must tell the court which has granted bail of the decision to appeal—

(a) at the end of the hearing during which the court granted bail; and

(b) before the defendant is released on bail.

(3) The court which has granted bail must exercise its power to remand the defendant in custody pending determination of the appeal.

(4) The prosecutor must serve an appeal notice—

(a) on the court officer for the court which has granted bail and on the defendant; and

(b) not more than 2 hours after telling that court of the decision to appeal.

(5) The appeal notice must specify—

(a) each offence with which the defendant is charged;

(b) the decision under appeal;

(c) the reasons given for the grant of bail; and

(d) the grounds of appeal.

(6) On an appeal to the Crown Court, the magistrates' court officer must, as soon as practicable, serve on the Crown Court officer—

(a) the appeal notice;

(b) a copy of the note or record made under rule 14.4(1) (record of bail decision); and

(c) notice of the date of the next hearing in the court which has granted bail.

(7) If the Crown Court so directs, the Crown Court officer must arrange for the defendant to be assisted by the Official Solicitor in a case in which the defendant—

(a) has no legal representative; and

(b) asks for such assistance.

(8) On an appeal to the Crown Court, the Crown Court officer must arrange for the court to hear the appeal as soon as practicable and in any event no later than the second business day after the appeal notice was served.

(9) The prosecutor—

(a) may abandon an appeal to the Crown Court without the court's permission, by serving a notice of abandonment, signed by or on behalf of the prosecutor, on—

(i) the defendant,

(ii) the Crown Court officer, and

(iii) the magistrates' court officer

before the hearing of the appeal begins; but

(b) after the hearing of the appeal begins, may only abandon the appeal with the Crown Court's permission.

(10) The court officer for the court which has granted bail must instruct the defendant's custodian to release the defendant on the bail granted by that court, subject to any condition or conditions of bail imposed, if—

(a) the prosecutor fails to serve an appeal notice within the time to which paragraph (4) refers; or

(b) the prosecutor serves a notice of abandonment under paragraph (9).

[Note. See section 1 of the Bail (Amendment) Act 1993(**a**)*. The time limit for serving an appeal notice is prescribed by section 1(5) of the Act. It may be neither extended nor shortened.*

For the procedure in the High Court, see Schedule 1 to the Civil Procedure Rules 1998 (RSC Order 79, rule 9) and the Practice Direction which supplements that Order. Under those provisions, the prosecutor must file in the High Court, among other things—

(a) a copy of the appeal notice served by the prosecutor under rule 14.9(4);

(b) notice of the Crown Court decision to grant bail served on the prosecutor under rule 14.4(2); and

(c) notice of the date of the next hearing in the Crown Court.]

Consideration of bail in a murder case

14.10.—(1) This rule applies in a case in which—

(a) the defendant is charged with murder; and

(b) the Crown Court has not yet considered bail.

(2) The magistrates' court officer must arrange with the Crown Court officer for the Crown Court to consider bail as soon as practicable and in any event no later than the second business day after—

(a) a magistrates' court sends the defendant to the Crown Court for trial; or

(b) the first hearing in the magistrates' court, if the defendant is not at once sent for trial.

[Note. See section 115 of the Coroners and Justice Act 2009(**b**)*.]*

Condition of residence

14.11.—(1) The defendant must notify the prosecutor of the address at which the defendant will live and sleep if released on bail with a condition of residence—

(a) as soon as practicable after the institution of proceedings, unless already done; and

(b) as soon as practicable after any change of that address.

(2) The prosecutor must help the court to assess the suitability of an address proposed as a condition of residence.

Electronic monitoring requirements

14.12.—(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) each offence 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;

(**a**) 1993 c. 26; section 1 was amended by sections 200 and 220 of, and Schedule 4 to, the Extradition Act 2003 (c. 41), section 18 of the Criminal Justice Act 2003 (c. 44), section 15 of, and paragraph 231 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4), section 42 of, and paragraph 28 of Schedule 13 to, the Police and Justice Act 2006 (c. 48) and paragraph 32 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**b**) 2009 c. 25.

(b) inform the defendant and, where the defendant is under 16, an appropriate adult, of the monitor's identity 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 and 3AB of the 1976 Act*(**b**) *set out conditions for imposing such requirements.*

Under section 3AC of the 1976 Act(**c**)*, where the court imposes electronic monitoring requirements they must provide for the appointment of a monitor.]*

Accommodation or support requirements

14.13.—(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; or

(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) each offence 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—

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

(ii) the address of any accommodation in which the defendant must live and sleep; 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.

Requirement for a surety or payment, etc.

14.14.—(1) This rule applies where the court imposes as a condition of bail a requirement for—

(**a**) 1976 c. 63; section 3(6ZAA) was substituted, with sub-section (6ZAB), for sub-section (6ZAA) as inserted by section 131 of the Criminal Justice and Police Act 2001 (c. 16) by section 51 of, and paragraphs 1 and 2 of Schedule 11 to, the Criminal Justice and Immigration Act 2008 (c. 4) and amended by paragraphs 1 and 3 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**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) and paragraph 4 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**c**) 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) and amended by paragraphs 1 and 7 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(a) a surety;

(b) a payment; or

(c) the surrender of a document or thing.

(2) The court may direct how such a condition must be met.

(3) Unless the court otherwise directs, if any such condition or direction requires a surety to enter into a recognizance—

(a) the recognizance must specify—

(i) the amount that the surety will be required to pay if the purpose for which the recognizance is entered is not fulfilled, and

(ii) the date, or the event, upon which the recognizance will expire;

(b) the surety must enter into the recognizance in the presence of—

(i) the court officer,

(ii) the defendant's custodian, where the defendant is in custody, or

(iii) someone acting with the authority of either; and

(c) the person before whom the surety enters into the recognizance must at once serve a copy on—

(i) the surety, and

(ii) as appropriate, the court officer and the defendant's custodian.

(4) Unless the court otherwise directs, if any such condition or direction requires someone to make a payment, or surrender a document or thing—

(a) that payment, document or thing must be made or surrendered to—

(i) the court officer,

(ii) the defendant's custodian, where the defendant is in custody, or

(iii) someone acting with the authority of either; and

(b) the court officer or the custodian, as appropriate, must serve immediately on the other a statement that the payment, document or thing has been made or surrendered.

(5) The custodian must release the defendant when each requirement ordered by the court has been met.

[Note. See also section 119 of the Magistrates' Courts Act 1980(**a**)*.]*

Forfeiture of a recognizance given by a surety

14.15.—(1) This rule applies where the court imposes as a condition of bail a requirement that a surety enter into a recognizance and, after the defendant is released on bail,—

(a) the defendant fails to surrender to custody as required, or

(b) it appears to the court that the surety has failed to comply with a condition or direction.

(2) The court officer must serve notice on—

(a) the surety; and

(b) each party to the decision to grant bail,

of the hearing at which the court will consider the forfeiture of the recognizance.

(3) The court must not forfeit the recognizance less than 5 business days after service of notice under paragraph (2).

(**a**) 1980 c. 43; section 119 was amended by section 77 of, and paragraph 55 of Schedule 14 to, the Criminal Justice Act 1982 (c. 48).

[Note. If the purpose for which a recognizance is entered is not fulfilled, that recognizance may be forfeited by the court. If the court forfeits a surety's recognizance, the sum promised by that person is then payable to the Crown. See also section 120 of the Magistrates' Courts Act 1980(**a**)*.]*

Notice of arrest for breach of bail

14.16.—(1) This rule and rule 14.17 (Arrangements for court to receive defendant arrested for breach of bail) apply where—

(a) a defendant arrested for breach of bail must be brought before a court under section 7 of the Bail Act 1976(**b**) (Liability to arrest for absconding or breaking conditions of bail); and

(b) a police custody officer so notifies the court officer.

(2) The police custody officer must provide the court officer with—

(a) the defendant's name and date of birth;

(b) details of—

(i) the warrant under which the defendant was arrested, or

(ii) the reasons for an arrest without a warrant;

(c) confirmation that the prosecutor has been notified;

(d) confirmation that the following have been notified and are available—

(i) any interpreter required,

(ii) the defendant's legal representative, if any, and

(iii) any local or other authority, including any youth offending team, responsible for the defendant's care or welfare;

(e) the police custody officer's proposal for the means by which the defendant will be brought before the court, either by live link or in person, and—

(i) if the proposal is for the defendant to attend court by live link, details of any material circumstance listed in rule 3.35 (Live link direction: exercise of court's powers), or

(ii) if the proposal is for the defendant to attend court in person, the identity of the authority responsible for transporting the defendant and the expected time of arrival; and

(f) details of any disability or other vulnerability of the defendant of which the police custody officer is aware and which is not apparent from other information supplied.

[Note. The court may issue a warrant for the defendant's arrest—

(a) under section 7(1) of the Bail Act 1976 where the defendant was released on bail under a duty to surrender into the custody of the court and fails to do so when required; or

(b) under section 7(2) of the Act where the defendant was released on bail, surrenders into the custody of the court, and then leaves without the court's permission before the hearing begins or resumes.

Under section 7(3) of the 1976 Act a defendant who has been released on bail and is under a duty to surrender into the custody of a court may be arrested and detained without a warrant by a constable—

(**a**) 1980 c. 43; section 120 was amended by section 55 of the Crime and Disorder Act 1998 (c. 37) and section 62 of, and paragraphs 45 and 56 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**b**) 1976 c. 63; section 7 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 109 of, and paragraph 185 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39), sections 198 and 220 of, and Schedule 4 to, the Extradition Act 2003 (c. 41), section 177 of, and paragraph 74 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25) and sections 90 and 105 of, and paragraphs 1 and 8 of Schedule 11 and paragraphs 14 and 16 of Schedule 12 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(a) who has reasonable grounds for believing that the defendant is not likely to surrender to custody,

(b) who has reasonable grounds for believing that the defendant is likely to break any of the conditions of bail,

(c) who has reasonable grounds for suspecting that the defendant has broken any of those conditions, or

(d) where a surety for that bail notifies the constable in writing that the defendant is unlikely to surrender to custody and for that reason the surety wishes to be relieved of the obligations of a surety.

Under section 7(4) of the 1976 Act, subject to the exceptions to which rule 14.17(2) refers a defendant arrested under section 7(3) must be brought before a magistrates' court as soon as practicable and in any event within 24 hours after the arrest, omitting any part of a day which is Christmas Day, Good Friday or a Sunday.

Under section 81(5) of the Senior Courts Act 1981(**a**) *a defendant arrested under a warrant issued by the Crown Court must be brought forthwith before—*

(a) the Crown Court if the defendant is charged with murder, or with murder and one or more other offences; or

(b) the Crown Court or a magistrates' court in any other case.]

Arrangements for court to receive defendant arrested for breach of bail

14.17.—(1) The court officer must arrange for a defendant of whose arrest the police custody officer gives notice under rule 14.16 (Notice of arrest for breach of bail)—

(a) if the arrest was under a Crown Court warrant, to be brought at once before—

(i) the Crown Court, if the defendant is charged with murder or with murder and one or more other offences, or

(ii) if the defendant is not so charged, the Crown Court as a general rule and otherwise a magistrates' court;

(b) if the arrest was under a magistrates' court warrant, to be brought as soon as practicable before a magistrates' court; and

(c) if the arrest was without a warrant, subject to paragraph (2) to be brought as soon as practicable before a magistrates' court—

(i) by 3.30pm that day if that day is a business day,

(ii) by 12.30pm that day if that day is a Saturday or a bank holiday,

(iii) in either case, later if, but only if, a disability or vulnerability of the defendant so requires, and in any event

(iv) within 24 hours after the arrest (but omitting from that period any part of a day which is Christmas Day, Good Friday or a Sunday).

(2) Where a defendant of whose arrest the police custody officer gives notice under rule 14.16 was arrested without a warrant—

(**a**) 1981 c. 54; section 81 was amended by sections 29 and 60 of the Criminal Justice Act 1982 (c. 48), section 7 of, and paragraph 6 of Schedule 3 to, the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), section 168 of, and paragraph 19 of Schedule 9 and paragraph 48 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 48 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 165 of, and paragraph 87 of Schedule 9 and Part I of Schedule 12 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), sections 41, 331 and 332 of, and paragraph 54 of Schedule 3, paragraph 4 of Schedule 36 and Parts 2 and 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), section 58 of, and paragraph 15 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28), articles 2, 3 and 6 of, and paragraphs 12 and 14 of the Schedule to, S.I. 2004/1033 and section 177 of, and paragraph 76 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25).

(a) if the arrest was within 24 hours of the time at which that defendant was due to surrender into the custody of a court then the court officer must arrange for the defendant to be brought before that court; and

(b) if the defendant is charged with murder or with murder and one or more other offences then—

(i) the court officer must arrange for the defendant to be brought before the Crown Court as soon as practicable and in any event within 24 hours after the arrest (but omitting from that period any part of a day which is not a business day), and

(ii) in paragraph (3) the reference to justices' legal advisers is omitted.

(3) In making the arrangements required by paragraph (1) the court officer must—

(a) consult with those affected including—

(i) the police custody officer,

(ii) court members,

(iii) justices' legal advisers and other court officers, and

(iv) the prosecutor; and

(b) as far as is practicable rearrange court business to ensure that the time available will allow all cases heard that day to conclude by 4.30pm (or later if, but only if, a disability or vulnerability of the defendant the subject of this rule so requires).

(4) When arrangements for the defendant to be brought before a court have been made the court officer promptly must so inform—

(a) the police custody officer; and

(b) as applicable, others consulted under paragraph (3)(a).

(5) The court before which the defendant is brought under this rule must—

(a) deal there and then with the alleged breach of bail; and

(b) as far as is practicable take the next steps required in the defendant's case in accordance with rule 3.8 (Case preparation and progression).

EXTENSION OF BAIL BEFORE CHARGE

Exercise of court's powers: extension of pre-charge bail

14.18.—(1) The court must determine an application to which rule 14.19 (Application to authorise extension of pre-charge bail) applies—

(a) without a hearing, subject to paragraph (2); and

(b) as soon as practicable, but as a general rule no sooner than the fifth business day after the application was served.

(2) The court must determine an application at a hearing where—

(a) if the application succeeds, its effect will be to extend the period for which the defendant is on bail to 24 months or less from the day after the defendant's arrest for the offence and the court considers that the interests of justice require a hearing;

(b) if the application succeeds, its effect will be to extend that period to more than 24 months from that day and the applicant or the defendant asks for a hearing; or

(c) it is an application to withhold information from the defendant and the court considers that the interests of justice require a hearing.

(3) Any hearing must be in private.

(4) Subject to rule 14.20 (Application to withhold information from the defendant), at a hearing the court may determine an application in the absence of—

(a) the applicant; and

(b) the defendant, if the defendant has had at least 5 business days in which to make representations.

(5) If the court so directs, a party to an application may attend a hearing by live link.

(6) The court must not authorise an extension of the period for which a defendant is on bail before being charged unless—

(a) the applicant states, in writing or orally, that to the best of the applicant's knowledge and belief—

(i) the application discloses all the information that is material to what the court must decide, and

(ii) the content of the application is true; or

(b) the application includes a statement by an investigator of the suspected offence that to the best of that investigator's knowledge and belief those requirements are met.

(7) Where the statement required by paragraph (6) is made orally—

(a) the statement must be on oath or affirmation, unless the court otherwise directs; and

(b) the court must arrange for a record of the making of the statement.

(8) The court may shorten or extend (even after it has expired) a time limit imposed by this rule or by rule 14.19 (Application to authorise extension of pre-charge bail).

[Note. For the definition of 'defendant' for the purposes of this rule and rules 14.19 and 14.20, see rule 14.1(3).

Sections 47ZA and 47ZB of the Police and Criminal Evidence Act 1984(**a**) *limit the period during which a defendant who has been arrested for an offence may be on bail after being released without being charged. That period ('the applicable bail period') is—*

(a) 6 months from the day after the day on which the defendant was arrested (the defendant's 'bail start date') in an 'FCA', 'HMRC', 'NCA' or 'SFO' case (that is, a case, as defined by section 47ZB, being investigated by the Financial Conduct Authority, an officer of Revenue and Customs, the National Crime Agency or the Serious Fraud Office, as applicable); and

(b) 3 months from the defendant's bail start date in any other case ('a standard case').

Under section 47ZDB of the 1984 Act(**b**)*, in an FCA, HMRC, NCA or SFO case the applicable bail period may be extended on the authority of the appropriate decision maker until the end of 12 months from the bail start date. 'Appropriate decision maker' is defined as, in summary, a senior officer of the relevant authority.*

Under sections 47ZC and 47ZD of the 1984 Act(**c**)*, in a standard case the applicable bail period may be extended on the authority of a police officer of the rank of inspector or above until the end of 6 months from the bail start date. Under section 47ZDA*(**d**) *the applicable bail period may be further extended on the authority of a police officer of the rank of superintendent or above until the end of 9 months from the bail start date.*

(**a**) 1984 c. 60; sections 47ZA and 47ZB were inserted by section 63 of the Policing and Crime Act 2017 (c. 3). Section 47ZB was amended by paragraphs 24 and 26 of Schedule 4 to the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

(**b**) 1984 c. 60; section 47ZDB was inserted by paragraphs 24 and 29 of Schedule 4 to the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

(**c**) 1984 c. 60; section 47ZC was inserted by section 63 of the Policing and Crime Act 2017 (c. 3) and amended by paragraphs 1, 12, 24 and 27 of Schedule 4 to the Police, Crime, Sentencing and Courts Act 2022 (c. 32). Section 47ZD was inserted by section 63 of the Policing and Crime Act 2017 (c. 3) and amended by paragraphs 24 and 28 of Schedule 4 to the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

(**d**) 1984 c. 60; section 47ZDA was inserted by paragraphs 24 and 29 of Schedule 4 to the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

Under sections 47ZC and 47ZE of the 1984 Act(**a**)*, if the case is designated by the Director of Public Prosecutions as exceptionally complex (a 'designated case') the applicable bail period may be further extended on the authority of one of the senior officers listed in section 47ZE until the end of 12 months from the bail start date.*

Under section 47ZF of the 1984 Act(**b**)*, on an application made before the date on which the applicable bail period ends by a constable, a member of staff of the Financial Conduct Authority of the description designated by its Chief Executive, an officer of Revenue and Customs, a National Crime Agency officer, a member of the Serious Fraud Office or a Crown Prosecutor, a magistrates' court may authorise an extension of that period—*

(a) from a previous total of 9 months to a new total of 12 months or, if the investigation is unlikely to be completed or a police charging decision made within a lesser period, a new total of 18 months (following extension under section 47ZDA of the Act);

(b) from a previous total of 12 months to a new total of 18 months or, if the investigation is unlikely to be completed or a police charging decision made within a lesser period, a new total of 24 months (following extension under section 47ZDB or 47ZE of the Act),

where the conditions listed in that section are met.

Under section 47ZG of the Act(**c**)*, on a further such application (of which there may be more than one) a magistrates' court may authorise a further extension of the applicable bail period, on each occasion by a further 3 months or, if the investigation is unlikely to be completed or a police charging decision made within a lesser period, a further 6 months, where the conditions listed in that section are met.*

Under section 47ZL of the Act(**d**)*, the running of the applicable bail period does not begin (in the case of a first release on bail) or is suspended (in any other case) where—*

(a) the defendant is released on bail to await a charging decision by the Director of Public Prosecutions under section 37B of the Act; or

(b) following arrest for breach of such bail the defendant is again released on bail.

The court's authority therefore is not required for an extension of an applicable bail period the running of which is postponed or suspended pending a Director's charging decision. However—

(a) time runs in any period during which information requested by the Director is being obtained; and

(b) if the Director requests information less than 7 days before the applicable bail period otherwise would end then the running of that period is further suspended until the end of 7 days beginning with the day on which the Director's request is made.

See also section 47ZI of the Police and Criminal Evidence Act 1984(**e**) *(Sections 47ZF to 47ZH: proceedings in magistrates' courts). The requirement for the court except in specified circumstances to determine an application without a hearing is prescribed by that section. Under that section the court must comprise a single justice of the peace unless a hearing is convened, when it must comprise two or more justices.]*

Application to authorise extension of pre-charge bail

14.19.—(1) This rule applies where an applicant wants the court to authorise an extension of the period for which a defendant is released on bail before being charged with an offence.

(**a**) 1984 c. 60; section 47ZE was inserted by section 63 of the Policing and Crime Act 2017 (c. 3) and amended by paragraphs 24 and 30 of Schedule 4 to the Police, Crime, Sentencing and Courts Act 2022 (c. 32).
(**b**) 1984 c. 60; section 47ZF was inserted by section 63 of the Policing and Crime Act 2017 (c. 3) and amended by paragraphs 24 and 31 of Schedule 4 to the Police, Crime, Sentencing and Courts Act 2022 (c. 32).
(**c**) 1984 c. 60; section 47ZG was inserted by section 63 of the Policing and Crime Act 2017 (c. 3).
(**d**) 1984 c. 60; section 47ZL was inserted by section 63 of the Policing and Crime Act 2017 (c. 3).
(**e**) 1984 c. 60; section 47ZI was inserted by section 63 of the Policing and Crime Act 2017 (c. 3).

(2) The applicant must—

(a) apply in writing before the date on which the defendant's pre-charge bail is due to end;

(b) demonstrate that the applicant is entitled to apply as a constable, an officer of Revenue and Customs, a National Crime Agency officer, a member of staff of the Financial Conduct Authority, a member of the Serious Fraud Office or a Crown Prosecutor;

(c) serve the application on—

(i) the court officer, and

(ii) the defendant; and

(d) serve on the defendant, with the application, a form of response notice for the defendant's use.

(3) The application must specify—

(a) the offence or offences for which the defendant was arrested;

(b) the date on which the defendant's pre-charge bail began;

(c) the date and period of any previous extension of that bail;

(d) the date on which that bail is due to end;

(e) the conditions of that bail; and

(f) if different, the bail conditions which are to be imposed if the court authorises an extension, or further extension, of the period for which the defendant is released on pre-charge bail.

(4) The application must explain—

(a) the grounds for believing that, as applicable—

(i) further investigation is needed of any matter in connection with the offence or offences for which the defendant was released on bail, or

(ii) further time is needed for making a decision as to whether to charge the defendant with that offence or those offences;

(b) the grounds for believing that, as applicable—

(i) the investigation into the offence or offences for which the defendant was released on bail is being conducted diligently and expeditiously, or

(ii) the decision as to whether to charge the defendant with that offence or those offences is being made diligently and expeditiously; and

(c) the grounds for believing that the defendant's further release on bail is necessary and proportionate in all the circumstances having regard, in particular, to any conditions of bail imposed.

(5) The application must—

(a) indicate whether the applicant wants the court to authorise an extension of the defendant's bail for 3 months or for 6 months; and

(b) if for 6 months, explain why the investigation is unlikely to be completed or the charging decision made, as the case may be, within 3 months.

(6) The application must explain why it was not made earlier where—

(a) the application is made before the date on which the defendant's bail is due to end; but

(b) it is not likely to be practicable for the court to determine the application before that date.

(7) A defendant who objects to the application must—

(a) serve notice on—

(i) the court officer, and

(ii) the applicant

not more than 5 business days after service of the application; and

(b) in the notice explain the grounds of the objection.

[Note. See sections 47ZF (Applicable bail period: first extension of limit by the court), 47ZG (Applicable bail period: subsequent extensions of limit by the court) and 47ZJ (Sections 47ZF and 47ZG: late applications to magistrates' court) of the Police and Criminal Evidence Act 1984(**a**).

The time limit for making an application is prescribed by section 47ZF(2) and by section 47ZG(2) of the 1984 Act. It may be neither extended nor shortened. Under section 47ZJ(2) of the Act, if it is not practicable for the court to determine the application before the applicable bail period ends then the court must determine the application as soon as practicable. Under section 47ZJ(3), the applicable bail period is treated as extended until the application is determined. Under section 47ZJ(4), if it appears to the court that it would have been reasonable for the application to have been made in time for it to be determined by the court before the end of the applicable bail period then the court may refuse the application.]

Application to withhold information from the defendant

14.20.—(1) This rule applies where an application to authorise an extension of pre-charge bail includes an application to withhold information from the defendant.

(2) The applicant must—

(a) omit that information from the part of the application that is served on the defendant;

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

(c) in that other part, explain the grounds for believing that the disclosure of that information would have one or more of the following results—

(i) evidence connected with an indictable offence would be interfered with or harmed,

(ii) a person would be interfered with or physically injured,

(iii) a person suspected of having committed an indictable offence but not yet arrested for the offence would be alerted, or

(iv) the recovery of property obtained as a result of an indictable offence would be hindered.

(3) At any hearing of an application to which this rule applies—

(a) the court must first determine the application to withhold information, in the defendant's absence and that of any legal representative of the defendant; and

(b) if the court allows the application to withhold information, then in the following sequence—

(i) the court must consider representations first by the applicant and then by the defendant, in the presence of both, and

(ii) the court may consider further representations by the applicant in the defendant's absence and that of any legal representative of the defendant, if satisfied that there are reasonable grounds for believing that information withheld from the defendant would be disclosed during those further representations.

(4) If the court refuses an application to withhold information from the defendant, the applicant may withdraw the application to authorise an extension of pre-charge bail.

[Note. See sections 47ZH and 47ZI(5), (6), (8) of the Police and Criminal Evidence Act 1984(**b**) *(withholding sensitive information; proceedings in magistrates' courts: determination of applications to withhold sensitive information).]*

(**a**) 1984 c. 60; section 47ZJ was inserted by section 63 of the Policing and Crime Act 2017 (c. 3).
(**b**) 1984 c. 60; sections 47ZH and 47ZI were inserted by section 63 of the Policing and Crime Act 2017 (c. 3).

Application to extend a custody time limit

14.21.—(1) This rule applies where the prosecutor gives notice of application to extend a custody time limit.

(2) The court officer must arrange for the court to hear that application as soon as practicable after the expiry of—

(a) 5 days from the giving of notice, in the Crown Court; or

(b) 2 days from the giving of notice, in a magistrates' court.

(3) The court may shorten a time limit under this rule.

[Note. See regulation 7 of the Prosecution of Offences (Custody Time Limits) Regulations 1987(**a**)*.*

Under regulations 4 and 5 of the 1987 Regulations(**b**)*, unless the court extends the time limit the maximum period during which the defendant may be in pre-trial custody is—*

(a) in a case which can be tried only in a magistrates' court, 56 days pending the beginning of the trial;

(b) in a magistrates' court, in a case which can be tried either in that court or in the Crown Court—

(i) 70 days, pending the beginning of a trial in the magistrates' court, or

(ii) 56 days, pending the beginning of a trial in the magistrates' court, if the court decides on such a trial during that period;

(c) in the Crown Court, pending the beginning of the trial, 182 days from the sending of the defendant for trial, less any period or periods during which the defendant was in custody in the magistrates' court.

Under section 22(3) of the Prosecution of Offences Act 1985(**c**)*, the court cannot extend a custody time limit which has expired, and must not extend such a time limit unless satisfied—*

(a) that the need for the extension is due to—

(i) the illness or absence of the accused, a necessary witness, a judge or a magistrate,

(ii) a postponement which is occasioned by the ordering by the court of separate trials in the case of two or more defendants or two or more offences, or

(iii) some other good and sufficient cause; and

(b) that the prosecution has acted with all due diligence and expedition.]

Appeal against custody time limit decision

14.22.—(1) This rule applies where—

(a) a defendant wants to appeal to the Crown Court against a decision by a magistrates' court to extend a custody time limit; or

(b) a prosecutor wants to appeal to the Crown Court against a decision by a magistrates' court to refuse to extend a custody time limit.

(**a**) S.I. 1987/299; regulation 7 was amended by S.I. 1989/767.

(**b**) S.I. 1987/299; regulation 4 was amended by section 71 of the Criminal Procedure and Investigations Act 1996 (c. 25) and S.I. 1989/767, 1991/1515, 1999/2744. Regulation 5 was amended by sections 71 and 80 of, and paragraph 8 of Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and S.I. 1989/767, 1991/1515, 2000/3284, 2012/1344.

(**c**) 1985 c. 23; section 22 was amended by paragraph 104 of Schedule 15 to the Criminal Justice Act 1988 (c. 33), section 43 of the Crime and Disorder Act 1998 (c. 37), paragraph 36 of Schedule 11 to the Criminal Justice Act 1991 (c. 53), paragraph 27 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33), section 71 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 67(3) of the Access to Justice Act 1999 (c. 22), section 70 of, and paragraph 57 of Schedule 3 and paragraphs 49 and 51 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and paragraph 22 of Schedule 12 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(2) The appellant must serve an appeal notice—

(a) on—

(i) the other party to the decision,

(ii) the Crown Court officer, and

(iii) the magistrates' court officer;

(b) in a defendant's appeal, as soon as practicable after the decision under appeal; and

(c) in a prosecutor's appeal—

(i) as soon as practicable after the decision under appeal, and

(ii) before the relevant custody time limit expires.

(3) The appeal notice must specify—

(a) each offence with which the defendant is charged;

(b) the decision under appeal;

(c) the date on which the relevant custody time limit will expire;

(d) on a defendant's appeal, the date on which the relevant custody time limit would have expired but for the decision under appeal; and

(e) the grounds of appeal.

(4) The Crown Court officer must arrange for the Crown Court to hear the appeal as soon as practicable and in any event no later than the second business day after the appeal notice was served.

(5) The appellant—

(a) may abandon an appeal without the Crown Court's permission, by serving a notice of abandonment, signed by or on behalf of the appellant, on—

(i) the other party,

(ii) the Crown Court officer, and

(iii) the magistrates' court officer

before the hearing of the appeal begins; but

(b) after the hearing of the appeal begins, may only abandon the appeal with the Crown Court's permission.

[Note. See section 22(7), (8), (9) of the Prosecution of Offences Act 1985(**a**)*.]*

Summary of the general entitlement to bail and of the exceptions

The court must consider bail whenever it can order the defendant's detention pending trial or sentencing, or in an extradition case, and whether an application is made or not. Under section 4 of the Bail Act 1976(**b**)*, the general rule, subject to exceptions, is that a defendant must be granted bail. Under Part IIA of Schedule 1 to the Act*(**c**)*, if the court decides not to grant the defendant bail then at each subsequent hearing the court must consider whether to grant bail.*

(**a**) 1985 c. 23; section 22(7) and (8) was amended by section 43 of the Crime and Disorder Act 1998 (c. 37).

(**b**) 1976 c. 63; section 4 was amended by section 154 of, and paragraph 145 of Schedule 7 to, the Magistrates' Courts Act 1980 (c. 43), section 168 of, and paragraphs 32 and 33 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 58 of the Criminal Justice and Court Services Act 2000 (c. 43), sections 198 and 220 of, and Schedule 4 to, the Extradition Act 2003 (c. 41), section 304 of, and paragraphs 20 and 22 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44), section 42 of, and paragraph 34 of Schedule 13 to, the Police and Justice Act 2006 (c. 48), sections 6 and 148 of, and paragraphs 23 and 102 of Schedule 4 and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraph 19 of Schedule 7, and Schedule 8, to the Policing and Crime Act 2009 (c. 26).

(**c**) 1976 c. 63; Schedule 1, Part IIA was added by section 154 of the Criminal Justice Act 1988 (c. 33).

Section 3 of the Bail Act 1976(**a**) *allows the court, before granting bail, to require a surety or security to secure the defendant's surrender to custody; and allows the court, on granting bail, to impose such requirements as appear to the court to be necessary—*

(a) to secure that the defendant surrenders to custody;

(b) to secure that the defendant does not commit an offence while on bail;

(c) to secure that the defendant does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to the defendant or any other person;

(d) for the defendant's own protection or, if a child or young person, for the defendant's welfare or in the defendant's own interests;

(e) to secure the defendant's availability for the purpose of enabling enquiries or a report to be made to assist the court in dealing with the defendant for the offence;

(f) to secure that before the time appointed for surrender to custody the defendant attends an interview with a legal representative.

Under section 3 of the Bail Act 1976, a person granted bail in criminal proceedings is under a duty to surrender to custody as required by that bail. Under section 6 of the Act, such a person who fails without reasonable cause so to surrender commits an offence and, under section 7, may be arrested.

Exceptions to the general right to bail are listed in Schedule 1 to the Bail Act 1976(**b**)*. They differ according to the category of offence concerned. Under section 4(2B) of the 1976 Act*(**c**)*, in an extradition case there is no general right to bail where the defendant is alleged to have been convicted in the territory requesting extradition.*

Under Part I of Schedule 1 to the 1976 Act, where the offence is punishable with imprisonment, and is not one that can be tried only in a magistrates' court, or in an extradition case—

(a) the defendant need not be granted bail if the court is satisfied that—

(i) there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would fail to surrender to custody, would commit an offence, or would interfere with witnesses or otherwise obstruct the course of justice,

(ii) there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would commit an offence by engaging in conduct that would, or would be likely to, cause physical or mental injury to an associated person

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(**a**) 1976 c. 63; section 3 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 34 of the Mental Health (Amendment) Act 1982 (c. 51), paragraph 46 of Schedule 4 to the Mental Health Act 1983 (c. 20), section 15 of, and paragraph 9 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 131 of the Criminal Justice Act 1988 (c. 33), sections 27 and 168 of, and paragraph 12 of Schedule 9 and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), sections 54 and 120 of, and paragraph 37 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), paragraph 51 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 131 of the Criminal Justice and Police Act 2001 (c. 16), sections 13 and 19 of, and paragraph 48 of Schedule 3 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44), paragraphs 33 and 34 of Schedule 21 to the Legal Services Act 2007 (c. 29) and paragraphs 1 and 2 of Schedule 11, paragraphs 1 and 2 of Schedule 12, to the Criminal Justice and Immigration Act 2008 (c. 4) and paragraphs 1 to 4 of Schedule 11, and paragraphs 14 and 15 of Schedule 12, to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**b**) 1976 c. 63; Schedule 1 was amended by section 34 of the Mental Health (Amendment) Act 1982 (c. 51), sections 153, 154 and 155 of the Criminal Justice Act 1988 (c. 33), paragraph 22 of Schedule 11 to the Criminal Justice Act 1991 (c. 53), section 26 of the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 38 of Schedule 8 to the Crime and Disorder Act 1998 (c. 37), paragraph 54 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), sections 129 and 137 of, and Schedule 7 to, the Criminal Justice and Police Act 2001 (c. 16), section 198 of the Extradition Act 2003 (c. 41), sections 13, 14, 15, 19 and 20 of, and paragraphs 20 and 23 of Schedule 32 and paragraphs 1 and 3 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), paragraph 40 of the Schedule to S.I. 2005/886, paragraph 78 of Schedule 16, and Schedule 17, to the Armed Forces Act 2006 (c. 52), paragraphs 1, 4, 5 and 6 of Schedule 12 to the Criminal Justice and Immigration Act 2008 (c. 4), section 114 of the Coroners and Justice Act 2009 (c. 25) and paragraphs 10 to 31 of Schedule 11, and paragraphs 14 and 17 of Schedule 12, to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**c**) 1976 c. 63; section 4(2B) was inserted by section 198 of the Extradition Act 2003 (c. 41) and amended by paragraph 34 of Schedule 13 to the Police and Justice Act 2006 (c. 48).

*(within the meaning of section 33 of the Family Law Act 1996(**a**)), or cause that person to fear injury,*

(iii) the defendant should be kept in custody for his or her own protection or welfare, or

(iv) it has not been practicable, for want of time since the institution of the proceedings, to obtain sufficient information for the court to take the decisions required;

(b) the defendant need not be granted bail if it appears to the court that the defendant was on bail at the time of the offence (this exception does not apply in an extradition case);

(c) the defendant need not be granted bail if, having been released on bail in the case on a previous occasion, the defendant since has been arrested for breach of bail;

(d) the defendant need not be granted bail if in custody pursuant to a sentence;

(e) the defendant need not be granted bail if it appears to the court that it would be impracticable to complete enquiries or a report for which the case is to be adjourned without keeping the defendant in custody;

(f) the defendant may not be granted bail if charged with murder, unless the court is of the opinion that there is no significant risk of the defendant committing an offence while on bail that would, or would be likely to, cause physical or mental injury to some other person;

(g) the defendant in an extradition case need not be granted bail if he or she was on bail on the date of the alleged offence and that offence is not one that could be tried only in a magistrates' court if it were committed in England or Wales.

Exceptions (a)(i), (b) and (c) do not apply where—

(a) the defendant is 18 or over;

(b) the defendant has not been convicted of an offence in those proceedings; and

(c) it appears to the court that there is no real prospect that the defendant will be sentenced to a custodial sentence in those proceedings.

In deciding whether an exception to the right to bail applies the court must have regard to any relevant consideration, including—

(a) the nature and seriousness of the offence, and the probable method of dealing with the defendant for it;

(b) the character, antecedents, associations and community ties of the defendant;

(c) the defendant's record of fulfilling obligations imposed under previous grants of bail; and

(d) except where the case is adjourned for enquires or a report, the strength of the evidence of the defendant having committed the offence.

Under Part IA of Schedule 1 to the 1976 Act, where the offence is punishable with imprisonment, and is one that can be tried only in a magistrates' court—

(a) the defendant need not be granted bail if it appears to the court that—

(i) having previously been granted bail in criminal proceedings, the defendant has failed to surrender as required and, in view of that failure, the court believes that, if released on bail (with or without conditions), the defendant would fail to surrender to custody, or

(ii) the defendant was on bail on the date of the offence and the court is satisfied that there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would commit an offence while on bail;

(b) the defendant need not be granted bail if the court is satisfied that—

(**a**) 1996 c. 27; section 33 was amended by section 82 of, and paragraph 4 of Schedule 9 to, the Civil Partnership Act 2004 (c. 33).

(i) there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause physical or mental injury to some other person, or cause some other person to fear such injury,

(ii) the defendant should be kept in custody for his or her own protection or welfare, or

(iii) it has not been practicable, for want of time since the institution of the proceedings, to obtain sufficient information for the court to take the decisions required;

(c) the defendant need not be granted bail if in custody pursuant to a sentence;

(d) the defendant need not be granted bail if, having been released on bail in the case on a previous occasion, the defendant since has been arrested for breach of bail, and the court is satisfied that there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would fail to surrender to custody, would commit an offence, or would interfere with witnesses or otherwise obstruct the course of justice.

Exceptions (a) and (d) do not apply where—

(a) the defendant is 18 or over;

(b) the defendant has not been convicted of an offence in those proceedings; and

(c) it appears to the court that there is no real prospect that the defendant will be sentenced to a custodial sentence in those proceedings.

Under Part II of Schedule 1 to the 1976 Act, where the offence is not punishable with imprisonment—

(a) the defendant need not be granted bail if it appears to the court that having previously been granted bail in criminal proceedings, the defendant has failed to surrender as required and, in view of that failure, the court believes that, if released on bail (with or without conditions), the defendant would fail to surrender to custody;

(b) the defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his or her own protection or welfare;

(c) the defendant need not be granted bail if in custody pursuant to a sentence;

(d) the defendant need not be granted bail if, having been released on bail in the case on a previous occasion, the defendant since has been arrested for breach of bail, and the court is satisfied that there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would fail to surrender to custody, would commit an offence, or would interfere with witnesses or otherwise obstruct the course of justice;

(e) the defendant need not be granted bail if, having been released on bail in the case on a previous occasion, the defendant since has been arrested for breach of bail, and the court is satisfied that there are substantial grounds for believing that, if released on bail (with or without conditions), the defendant would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause physical or mental injury to an associated person (within the meaning of section 33 of the Family Law Act 1996), or to cause that person to fear such injury.

Exceptions (a) and (d) apply only where—

(a) the defendant is under 18; and

(b) the defendant has been convicted in those proceedings.

Further exceptions to the general right to bail are set out in section 25 of the Criminal Justice and Public Order Act 1994(**a**)*, under which a defendant charged with murder, attempted murder,*

(**a**) 1994 c. 33; section 25 was amended by section 56 of the Crime and Disorder Act 1998 (c. 37), paragraph 160 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraph 32 of Schedule 6 to the Sexual Offences Act 2003 (c. 42), paragraph 67 of Schedule 32 and Schedule 37 to the Criminal Justice Act 2003 (c. 44), article 16 of S.I. 2008/1779, paragraph 3 of Schedule 17, and Schedule 23, to the Coroners and Justice Act 2009 (c. 25) and paragraph 33 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

manslaughter, rape or another sexual offence specified in that section, and who has been previously convicted of such an offence, may be granted bail only if there are exceptional circumstances which justify it.

PART 15

DISCLOSURE

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When this Part applies

15.1. This Part applies in a magistrates' court and in the Crown Court—

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

(b) where any comparable disclosure obligation applies otherwise than under the 1996 Act.

[Note. The Criminal Procedure and Investigations Act 1996 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 to investigations begun earlier. In some circumstances, the prosecutor may be required to disclose material to which the 1996 Act does not apply: see sections 1 and 21(**b**)*.*

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) Order 2015(**c**) *issued under sections 23 to 25 of the 1996 Act.]*

Prosecution disclosure and disclosure management

15.2.—(1) This rule applies where any of the following occurs—

(a) under section 3 of the Criminal Procedure and Investigations Act 1996(**d**) (Initial duty of prosecutor to disclose), or under any comparable obligation that applies where that section does not, the prosecutor—

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

(**b**) 1996 c. 25; section 1 was amended by section 119 of, and paragraph 125 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), paragraph 66 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and paragraph 37 of Schedule 17 to the Crime and Courts Act 2013 (c. 22). It was 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). It is further amended by section 9 of the Sexual Offences (Protected Material) Act 1997 (c. 39), with effect from a date to be appointed. Section 21 was amended by paragraph 66 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**c**) S.I. 2015/861.

(**d**) 1996 c. 25; section 3 was amended by section 82 of, and paragraph 7 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23), section 32 and section 331 of, and paragraphs 20 and 21 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and section 272 of, and paragraph 39 of Schedule 10 to, the Investigatory Powers Act 2016 (c. 25).

(i) discloses to the defendant any prosecution material that might reasonably be considered capable of undermining the case for the prosecution against the defendant or of assisting the case for the defendant (in this rule, "gives initial disclosure"), or

(ii) gives the defendant a statement that there is no such material;

(b) under section 7A of the 1996 Act(**a**) (Continuing duty of prosecutor to disclose), or under any comparable obligation that applies where that section does not, the prosecutor discloses any further such material; or

(c) the prosecutor serves a document (in this rule, a "disclosure management document") prepared by the prosecutor that—

(i) describes the prosecutor's approach to discharging the prosecution obligations to which this Part applies; and

(ii) gives the reasons for that approach.

(2) The prosecutor must discharge the prosecution obligations to which this Part applies as soon as is reasonably practicable.

(3) At the same time as the prosecutor discloses material to which this rule refers, or gives the defendant a statement that there is no, or no further, such material, the prosecutor must serve on the court officer notice to that effect.

(4) At the same time as the prosecutor serves on the defendant a disclosure management document, or revised such document, the prosecutor must serve that document on the court officer.

(5) As soon as is reasonably practicable after the prosecutor serves a disclosure management document, or revised such document, the defendant must—

(a) make such observations on the content of that document as the defendant wants the court to take into account when giving directions for the preparation of the case for trial; and

(b) serve any such observations on—

(i) the prosecutor, and

(ii) the court officer.

[Note. See—

(a) sections 2 and 3 of the Criminal Procedure and Investigations Act 1996, which define material and prescribe how and in what circumstances it must be disclosed; and

(b) sections 12 and 13 of the 1996 Act(**b**)*, and paragraph 10 of the Code of Practice accompanying the Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2015*(**c**), *which provide for the time limits for prosecution disclosure.*

See also—

(a) rule 3.19 (preparation for trial in the Crown Court, service of prosecution evidence). Under regulation 2 of the Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2005 the time for service of the prosecution evidence in the Crown Court is—

(i) not more than 50 days after sending for trial, where the defendant is in custody, and

(ii) not more than 70 days after sending for trial, where the defendant is on bail.

(b) rule 15.4 (Defence disclosure).

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

(**b**) 1996 c. 25; section 12 was amended by sections 331 and 336 of, and paragraph 28 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44). Section 13 was amended by section 119 of, and paragraph 127 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 67 of the Access to Justice Act 1999 (c. 22) and sections 331 and 336 of, and paragraph 66 of Schedule 3, paragraph 29 of Schedule 36 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

(**c**) S.I. 2015/861.

In some circumstances, disclosure is prohibited by section 56 of the Investigatory Powers Act 2016(**a**)*.]*

Prosecutor's application for public interest ruling

15.3.—(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.

(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; and

(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) must 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 must consider, 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

(**a**) 2016 c. 25; section 56 was amended by section 24 of, and paragraph 44 of Schedule 5 to, the Armed Forces Act 2021 (c. 35).

(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; and

(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 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 Criminal Procedure and Investigations Act 1996.

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

Defence disclosure

15.4.—(1) This rule applies where the defendant pleads not guilty and—

(a) may give a defence statement in a magistrates' court under section 6 of the Criminal Procedure and Investigations Act 1996(**b**); or

(b) must give—

(i) a defence statement in the Crown Court under section 5 of the 1996 Act(**c**); or

(ii) a defence witness notice in either court under section 6C of the 1996 Act(**d**).

(2) In a magistrates' court a defendant who wants to give a defence statement must do so not more than 14 days after the prosecutor gives initial disclosure under rule 15.2 (Prosecution disclosure and disclosure management) or gives the defendant a statement that there is no such material.

(3) In the Crown Court the defendant must give a defence statement—

(a) if the prosecutor has served on the defendant under rule 3.19 (Service of prosecution evidence) copies of the documents containing the evidence on which the prosecution case relies; and

(b) not more than 28 days after the prosecutor gives initial disclosure under rule 15.2 or gives the defendant a statement that there is no such material.

(4) In either court the defendant must give a defence witness notice—

(a) within the time for giving a defence statement in that court; and

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(**a**) 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). 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).

(**b**) 1996 c. 25; section 6 was amended by section 332 of, and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

(**c**) 1996 c. 25; section 5 was amended by section 119 of, and paragraph 126 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) and paragraph 66 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

(**d**) 1996 c. 25; section 6C was inserted by section 34 of the Criminal Justice Act 2003 (c. 44).

(b) whether the defendant gives a defence statement or not.

(5) If the time for giving a defence statement expires on a day that is not a business day then the time expires on the next business day.

(6) A defendant gives a defence statement or defence witness notice by serving it on—

(a) the court officer; and

(b) the prosecutor.

[Note. Under section 6A of the Criminal Procedure and Investigations Act 1996(**a**) *a 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—

(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 6C of the 1996 Act a defence witness notice that identifies any proposed defence witness (other than the defendant) must—

(a) give the name, address and date of birth of each such witness, or as many of those details as are known to the defendant when the notice is given;

(b) provide any information in the defendant's possession which might be of material assistance in identifying or finding any such witness in whose case any of the details mentioned in paragraph (a) are not known to the defendant when the notice is given; and

(c) amend any earlier such notice, if the defendant—

(i) decides to call a person not included in an earlier notice as a proposed witness,

(ii) decides not to call a person so included, or

(iii) discovers any information which the defendant would have had to include in an earlier notice, if then aware of it.

The time for giving a defence statement and a defence witness notice to which this rule refers is prescribed by section 12 of the 1996 Act(**b**) *and by the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 2011*(**c**)*.*

Under section 11 of the 1996 Act(**d**)*, 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;

(**a**) 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).

(**b**) 1996 c. 25; section 12 was amended by section 331 of, and paragraph 28 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(**c**) S.I. 2011/209.

(**d**) 1996 c. 25; section 11 was substituted by section 39 of the Criminal Justice Act 2003 (c. 44) and amended by section 60 of the Criminal Justice and Immigration Act 2008 (c. 4).

(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; or

(e) at trial, calls a witness not identified in a defence witness notice,

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(**a**)*, if before trial in the Crown Court it seems to the court that section 11 may apply then the court must warn the defendant.]*

Defendant's application for prosecution disclosure

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

(a) has given a defence statement under rule 15.4 (Defence disclosure); 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) 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 10 business days in which to make representations.

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

Review of public interest ruling

15.6.—(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

(**a**) 1996 c. 25; section 6E was inserted by section 33 of the Criminal Justice Act 2003 (c. 44).

(**b**) 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).

(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.

(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; and

(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) must 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 must consider, 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

15.7.—(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

(**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).

(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) 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 20 business 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

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

(2) A party who wants the court to exercise its power to punish that person for contempt of court must comply with the rules in Part 48 (Contempt of court).

(3) 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 10 business days in which to make representations.

[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.]

Court's power to vary requirements under this Part

15.9. The court may—

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

(b) extend (before it expires) a time limit to which rule 15.4 (Defence disclosure) refers, under regulation 3 of the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 2011(**b**);

(c) allow a defence statement, or a defence witness notice, to be in a different written form to one issued under the Practice Direction, as long as it contains what the Criminal Procedure and Investigations Act 1996 requires;

(**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**) S.I. 2011/209.

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

(e) 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 15.5 applies (Defendant's application for prosecution disclosure).

PART 16

WRITTEN WITNESS STATEMENTS

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Written witness statement in evidence	rule 16.4

When this Part applies

16.1. This Part applies where a party wants to introduce a written witness 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 witness statement

16.2. 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.

(**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), regulation 9 of, and paragraph 4 of Schedule 5 to, S.I. 2001/1090, paragraph 43 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), section 26 of, and paragraph 7 of Schedule 2 to, the Armed Forces Act 2011 (c. 18) and section 80 of the Deregulation Act 2015 (c. 20). It is further amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54) and section 65 of, and paragraph 1 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from dates to be appointed.

Reference to exhibit

16.3. Where the statement refers to a document or object as an exhibit, it must identify that document or object clearly.

[Note. See section 9(7) of the Criminal Justice Act 1967(**a**)*.]*

Written witness statement in evidence

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

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

(i) the court officer, and

(ii) each other party; and

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

(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 to object to the introduction of the statement in evidence instead of the witness giving evidence in person;

(b) of the time limit for objecting under this rule; and

(c) 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) A party served with a written witness statement who objects to its introduction in evidence must—

(a) serve notice of the objection on—

(i) the party who served it, and

(ii) the court officer; and

(b) serve the notice of objection not more than 5 business days after service of the statement unless—

(i) the court extends that time limit, before or after the statement was served,

(ii) rule 24.8 (Written guilty plea: special rules) applies, in which case the time limit is the later of 5 business days after service of the statement or 5 business days before the hearing date, or

(iii) rule 24.9 (Single justice procedure: special rules) applies, in which case the time limit is 15 business days after service of the statement.

(5) 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.

(6) 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.

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

[Note. Under section 9(2A) of the Criminal Justice Act 1967(**a**)*, Criminal Procedure Rules may prescribe the period within which a party served with a written witness statement must object to its introduction in evidence, subject to a minimum period of 7 days from its service.*

Under section 133 of the Criminal Justice Act 2003(**b**)*, where a statement in a document is admissible as evidence in criminal proceedings, the statement may be proved by producing either (a) the document, or (b) (whether or not the document exists) a copy of the document or of the material part of it, authenticated in whatever way the court may approve. By section 134 of the 2003 Act, 'document' means anything in which information of any description is recorded.]*

PART 17

WITNESS SUMMONSES, WARRANTS AND ORDERS

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When this Part applies

17.1. This Part applies in magistrates' courts and in the Crown Court where—

(a) a party wants the court to issue a witness summons, warrant or order under—

(i) section 97 of the Magistrates' Courts Act 1980(**c**),

(ii) paragraph 4 of Schedule 3 to the Crime and Disorder Act 1998(**d**),

(iii) section 2 or section 4 of the Criminal Procedure (Attendance of Witnesses) Act 1965(**e**), or

(iv) section 7 of the Bankers' Books Evidence Act 1879(**f**);

(**a**) 1967 c. 80; section 9(2A) was inserted by section 80 of the Deregulation Act 2015 (c. 20).

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

(**c**) 1980 c. 43; section 97 was amended by sections 13 and 14 of, and paragraph 7 of Schedule 2 to, the Contempt of Court Act 1981 (c. 47), section 31 of, and paragraph 2 of Schedule 4 to, the Criminal Justice (International Co-operation) Act 1990 (c. 5), sections 17 and 65 of, and paragraph 6 of Schedule 3 and Part I of Schedule 4 to, the Criminal Justice Act 1991 (c. 53), section 65 of, and paragraph 6 of Schedule 3 to, the Criminal Justice Act 1993 (c. 36), section 51 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 169 of the Serious Organised Crime and Police Act 2005 (c. 15) and section 17 of, and paragraph 99 of Schedule 10 to, the Crime and Courts Act 2013 (c. 22).

(**d**) 1998 c. 37; paragraph 4 of Schedule 3 was amended by paragraphs 15, 20, 68 and 72 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), section 169 of the Serious Organised Crime and Police Act 2005 (c. 15), article 3 of, and paragraphs 35 and 37 of the Schedule to, S.I. 2004/2035, article 2 of, and paragraph 61 of the Schedule to, S.I. 2005/886 and section 18 of, and paragraph 15 of Schedule 2 to, the Judicial Review and Courts Act 2022 (c. 35).

(**e**) 1965 c. 69; section 2 was substituted by section 66 of the Criminal Procedure and Investigations Act 1996 (c. 25) and amended by section 119 of, and paragraph 8 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 109 of, and paragraph 126 of Schedule 8 to, the Courts Act 2003 (c. 39), paragraph 42 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), section 169 of the Serious Organised Crime and Police Act 2005 (c. 15), paragraph 33 of Schedule 17 to the Crime and Courts Act 2013 (c. 22) and section 15 of the Judicial Review and Courts Act 2022 (c. 35). Section 4 was amended by section 56 of the Courts Act 1971 (c. 23) and sections 65, 66 and 67 of the Criminal Procedure and Investigations Act 1996 (c. 25).

(**f**) 1879 c. 11.

(b) the court considers the issue of such a summons, warrant or order on its own initiative as if a party had applied; or

(c) one of those listed in rule 17.7 wants the court to withdraw such a summons, warrant or order.

[Note. A magistrates' court may require the attendance of a witness to give evidence or to produce in evidence a document or thing by a summons, or in some circumstances a warrant for the witness' arrest, under section 97 of the Magistrates' Courts Act 1980 or under paragraph 4 of Schedule 3 to the Crime and Disorder Act 1998. The Crown Court may do so under section 2, 2D or 4 of the Criminal Procedure (Attendance of Witnesses) Act 1965(**a**)*.*

Under section 97(4) of the 1980 Act, if any person attending or brought before a magistrates' court refuses without just excuse to be sworn or give evidence, or to produce any document or thing required, the court may (i) commit that person to custody for a maximum of one month, or until that person gives evidence or produces the document or thing, if earlier, or (ii) impose a fine not exceeding £2,500, or (iii) both.

Under section 3 of the 1965 Act, any person who without just excuse disobeys a witness summons requiring that person to attend before any court, or disobeys a requirement made by any court under section 2A of that Act (power to require advance production of document or thing), shall be guilty of contempt of that court and may be punished summarily as if that contempt had been committed in the face of the court. No person shall be liable to committal to custody for a period exceeding three months for such disobedience.

Under paragraph 4(7) of Schedule 3 to the 1998 Act, if any person attending or brought before a magistrates' court refuses without just excuse to have evidence taken as a deposition, or to produce a document or other exhibit required, the potential penalties are the same as under section 97(4) of the 1980 Act.

Under section 227(2) of the Sentencing Act 2020(**b**)*, the committal to custody of a person aged under 21 is generally prohibited but section 108 of the Powers of Criminal Courts (Sentencing) Act 2000*(**c**) *allows the court to commit to detention a person aged at least 18 but under 21 if it is of the opinion that no other method of dealing with that person is appropriate.*

A magistrates' court or the Crown Court may order the production in evidence of a copy of an entry in a banker's book without the attendance of an officer of the bank, under sections 6 and 7 of the Bankers' Books Evidence Act 1879. Under section 9(2) of the 1879 Act(**d**)*, expressions in the Act relating to "bankers' books" include ledgers, day books, cash books, account books and other records used in the ordinary business of the bank, whether those records are in written form or are kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism.*

See Part 3 for the court's general powers to consider an application and to give directions.]

Issue etc. of summons, warrant or order

17.2.—(1) The court may issue or withdraw a witness summons, warrant or order—

(a) at a hearing, which must be in private unless the court otherwise directs; or

(b) without a hearing.

(**a**) 1965 c. 69; section 2D was inserted by section 66 of the Criminal Procedure and Investigations Act 1996 (c. 25).

(**b**) 2020 c. 17.

(**c**) 2000 c. 6; section 108 was amended by section 416 of, and paragraph 163 of Schedule 24 to, the Sentencing Act 2020 (c. 17).

(**d**) 1879 c. 11; section 9 was substituted by section 51 of, and paragraph 1 of Schedule 6 to, the Banking Act 1979 (c. 37) and amended by sections 4 and 7 of, and Schedule 4 to, the Trustee Savings Bank Act 1985 (c. 58), section 120 of, and paragraph 1 of Schedule 18 to, the Building Societies Act 1986 (c. 53), S.I. 2001/1149 and 3649 and section 114 of, and paragraph 27 of Schedule 18 to, the Financial Services Act 2012 (c. 21).

(2) A summons or warrant issued under section 97 of the Magistrates' Courts Act 1980 or under section 2 or 4 of the Criminal Procedure (Attendance of Witnesses) Act 1965 must specify—

(a) the time and place at which the witness must attend the court to give evidence; and

(b) any document or thing that the witness then must produce.

(3) A warrant issued under section 97 of the 1980 Act may specify a period, not exceeding one month, for which the witness may be committed to custody for refusal without just excuse—

(a) to give evidence; or

(b) to produce any document or thing required.

(4) A summons or warrant issued under paragraph 4 of Schedule 3 to the Crime and Disorder Act 1998—

(a) must specify—

(i) the time and place at which the witness must attend the court to have evidence taken as a deposition, and

(ii) any document or other exhibit that the witness then must produce; and

(b) may specify a period, not exceeding one month, for which the witness may be committed to custody for refusal without just excuse—

(i) to have evidence taken as a deposition, or

(ii) to produce any such document or other exhibit.

[Note. If rule 17.5 applies, a person served with an application for a witness summons will have an opportunity to make representations about whether there should be a hearing of that application before the witness summons is issued.

Under section 97(4) of the Magistrates' Courts Act 1980, a warrant issued under section 97(2) or (3) may specify a maximum period of potential committal to custody, up to one month, for refusal without just excuse to be sworn or give evidence, or to produce any document or thing required.

Under paragraph 4(6) of Schedule 3 to the Crime and Disorder Act 1998, the time specified for attendance in a summons or warrant issued under that paragraph must be such as to allow a deposition to be taken before time expires for the service of prosecution evidence in the Crown Court. Under paragraph 4(7), the summons or warrant may specify a maximum period of potential committal to custody, up to one month, for refusal without just excuse to have evidence taken as a deposition, or to produce a document or other exhibit required.]

Application for summons, warrant or order: general rules

17.3.—(1) A party who wants the court to issue a witness summons, warrant or order must apply as soon as practicable after becoming aware of the grounds for doing so.

(2) A party applying for a witness summons or warrant must—

(a) identify the proposed witness;

(b) explain—

(i) what evidence the proposed witness can give or produce,

(ii) why it is likely to be material evidence, and

(iii) why it would be in the interests of justice to issue a summons or warrant, as appropriate; and

(c) in an application by the prosecutor for a summons or warrant to be issued under paragraph 4 of Schedule 3 to the Crime and Disorder Act 1998—

(i) specify the date by which the prosecutor must serve the prosecution evidence in the Crown Court, and

(ii) if applicable, describe such steps as have been taken to apply for an extension or further extension of that period.

(3) A party applying for an order to be allowed to inspect and copy an entry in bank records must—

(a) identify the entry;

(b) explain the purpose for which the entry is required; and

(c) propose—

(i) the terms of the order, and

(ii) the period within which the order should take effect, if 3 days from the date of service of the order would not be appropriate.

(4) The application may be made orally unless—

(a) paragraph (3) of this rule applies (bank records);

(b) rule 17.5 applies (Application for summons to produce a document, etc.: special rules); or

(c) the court otherwise directs.

(5) The applicant must—

(a) serve any order made on the witness to whom, or the bank to which, it is directed; and

(b) notify the witness of the right to take legal advice.

[Note. The court may issue a warrant for a witness' arrest if that witness fails to obey a witness summons: see section 97(3) of the Magistrates' Courts Act 1980, paragraph 4(5) of Schedule 3 to the Crime and Disorder Act 1998 and section 4 of the Criminal Procedure (Attendance of Witnesses) Act 1965. Before a magistrates' court may issue a warrant under section 97(3) of the 1980 Act, the witness must first be paid or offered a reasonable amount for costs and expenses.]

Written application: form and service

17.4.—(1) An application in writing under rule 17.3 must be in the form issued under the Practice Direction, containing the same declaration of truth as a witness statement.

(2) The party applying must serve the application—

(a) in every case, on the court officer and as directed by the court; and

(b) as required by rule 17.5, if that rule applies.

[Note. Declarations of truth in witness statements are required by section 9 of the Criminal Justice Act 1967(**a**)*. Section 89 of the 1967 Act*(**b**) *makes it an offence to make a written statement under section 9 of that Act which the person making it knows to be false or does not believe to be true.]*

Application for summons to produce a document, etc.: special rules

17.5.—(1) This rule applies to an application under rule 17.3 for a witness summons requiring the proposed witness—

(a) to produce in evidence a document or thing; or

(b) to give evidence about information apparently held in confidence,

that relates to another person.

(2) The application must be in writing in the form required by rule 17.4.

(**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), regulation 9 of, and paragraph 4 of Schedule 5 to, S.I. 2001/1090, paragraph 43 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), section 26 of, and paragraph 7 of Schedule 2 to, the Armed Forces Act 2011 (c. 18) and section 80 of the Deregulation Act 2015 (c. 20). It is further amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54) and section 65 of, and paragraph 1 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from dates to be appointed.

(**b**) 1967 c. 80; section 89 was amended by section 154 of, and Schedule 9 to, the Magistrates' Courts Act 1980 (c. 43).

(3) The party applying must serve the application—

(a) on the proposed witness, unless the court otherwise directs; and

(b) on one or more of the following, if the court so directs—

(i) a person to whom the proposed evidence relates, and

(ii) another party.

(4) The court must not issue a witness summons where this rule applies unless—

(a) everyone served with the application has had at least 10 business days in which to make representations, including representations about whether there should be a hearing of the application before the summons is issued; and

(b) the court is satisfied that it has been able to take adequate account of the duties and rights, including rights of confidentiality, of the proposed witness and of any person to whom the proposed evidence relates.

[Note. Under section 2A of the Criminal Procedure (Attendance of Witnesses) Act 1965(**a**)*, a witness summons to produce a document or thing issued by the Crown Court may require the witness to produce it for inspection by the applicant before producing it in evidence.]*

Application for summons to produce a document, etc.: court's assessment of relevance and confidentiality

17.6.—(1) This rule applies where a person served with an application for a witness summons requiring the proposed witness to produce in evidence a document or thing objects to its production on the ground that—

(a) it is not likely to be material evidence; or

(b) even if it is likely to be material evidence, the duties or rights, including rights of confidentiality, of the proposed witness or of any person to whom the document or thing relates, outweigh the reasons for issuing a summons.

(2) The court may require the proposed witness to make the document or thing available for the objection to be assessed.

(3) The court may invite—

(a) the proposed witness or any representative of the proposed witness; or

(b) a person to whom the document or thing relates or any representative of such a person,

to help the court assess the objection.

Application to withdraw a summons, warrant or order

17.7.—(1) The court may withdraw a witness summons, warrant or order if one of the following applies for it to be withdrawn—

(a) the party who applied for it, on the ground that it no longer is needed;

(b) the witness, on the grounds that the court received no representations by the witness before the summons, warrant or order was issued and, in the Crown Court, the witness had had no notice of any application for a summons, and—

(i) the witness cannot give or produce evidence likely to be material evidence, or

(ii) even if the witness could do so, the witness' duties or rights, including rights of confidentiality, or those of any person to whom the evidence relates, outweigh the reasons for the issue of the summons, warrant or order;

(c) any person to whom the proposed evidence relates, on the grounds that the court received no representations by that person before the summons, warrant or order was issued and—

(**a**) 1965 c. 69; section 2A was inserted by section 66 of the Criminal Procedure and Investigations Act 1996 (c. 25).

(i) that evidence is not likely to be material evidence, or

(ii) even if it is, that person's duties or rights, including rights of confidentiality, or those of the witness, outweigh the reasons for the issue of the summons, warrant or order; or

(d) the bank to which the order is directed, on the ground that a requirement of the Bankers' Books Evidence Act 1879 is not met.

(2) A person applying under this rule must—

(a) apply in writing as soon as practicable after becoming aware of the grounds for doing so, explaining why the court should withdraw the summons, warrant or order; and

(b) serve the application on the court officer and as appropriate on—

(i) the witness or bank,

(ii) the party (if any) who applied for the summons, warrant or order, and

(iii) any other person who was served with the application (if any) for the summons, warrant or order.

(3) Rule 17.6 applies to an application under this rule that concerns a document or thing to be produced by a witness in evidence.

[Note. See sections 2B, 2C and 2E of the Criminal Procedure (Attendance of Witnesses) Act 1965(**a**) *for the Crown Court's powers to withdraw a witness summons, including the power to order costs.]*

Taking a deposition in a magistrates' court

17.8.—(1) This rule applies where a witness attends or is brought before a magistrates' court on a summons or warrant issued under paragraph 4 of Schedule 3 to the Crime and Disorder Act 1998(**b**)—

(a) to have evidence taken as a deposition; or

(b) to produce a document or other exhibit.

(2) The general rule is that the hearing must be in public but the court may exercise any power it has to—

(a) impose a restriction on reporting what takes place, or public access;

(b) withhold information from the public during the hearing; or

(c) order a hearing in private.

(3) The court must, in this sequence—

(a) explain, in terms the witness can understand (with help, if necessary), that—

(i) the court is required by law to take evidence for use by the prosecutor in the Crown Court,

(ii) any document or other exhibit that the witness was required to produce by the summons or warrant to attend must be produced to the court unless there is a just excuse for not doing so,

(iii) the prosecutor will ask questions that the witness must answer unless there is a just excuse for not doing so,

(iv) the witness' evidence will be recorded in writing in a document called a 'deposition' which will be read to the witness and which the witness will be asked to sign, and

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(**a**) 1965 c. 69; sections 2B, 2C and 2E were inserted by section 66 of the Criminal Procedure and Investigations Act 1996 (c. 25) and amended by section 109 of, and paragraph 126 of Schedule 8 to, the Courts Act 2003 (c. 39).

(**b**) 1998 c. 37; paragraph 4 of Schedule 3 was amended by paragraphs 15, 20, 68 and 72 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), section 169 of the Serious Organised Crime and Police Act 2005 (c. 15), article 3 of, and paragraphs 35 and 37 of the Schedule to, S.I. 2004/2035 and article 2 of, and paragraph 61 of the Schedule to, S.I. 2005/886.

(v) if the witness refuses to produce a required document or other exhibit, or refuses to answer a question, without just excuse, then the court may commit the witness to custody and may impose a fine;

(b) take possession of any document or other exhibit that the witness was required to produce by the summons or warrant to attend;

(c) require the prosecutor to question the witness;

(d) allow any legal representative of the witness who is present to question the witness;

(e) as a general rule, allow a legal representative of the defendant, if present, to question the witness but only to the extent reasonably required to clarify the witness' answer to a question asked by the prosecutor;

(f) cause the witness' evidence to be recorded in writing in a deposition;

(g) in the event of refusal by the witness to produce a required document or other exhibit, or to answer a question—

(i) ask the witness to explain why,

(ii) consider the explanation,

(iii) if satisfied that there is a just excuse for refusal, cause a record of that conclusion to be included in the deposition,

(iv) if not so satisfied and the refusal is maintained, deal with the refusal at the end of the hearing; and

(h) certify the accuracy of the deposition by—

(i) inviting the witness to authenticate it, by any written or electronic means, and

(ii) whether the witness agrees to do so or not, authenticating the deposition by any such means itself.

(4) A justices' legal adviser must assist the court by preparing the deposition, unless the court—

(a) includes a District Judge (Magistrates' Courts); and

(b) otherwise directs.

(5) The magistrates' court officer must, as soon as practicable, make available to the Crown Court and serve on the prosecutor—

(a) a copy of the deposition;

(b) a copy of any document produced by the witness; and

(c) a description of any object produced by the witness.

[Note. For the functions of a justices' legal adviser, see sections 28 and 29 of the Courts Act 2003(**a**)*. See also rule 2.12 (Duties of justices' legal adviser).]*

Court's power to vary requirements under this Part

17.9.—(1) The court may—

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

(b) where a rule or direction requires an application under this Part to be in writing, allow that application to be made orally instead.

(2) Someone who wants the court to allow an application to be made orally under paragraph (1)(b) of this rule must—

(a) give as much notice as the urgency of the application permits to those on whom the application otherwise should be served; and

(**a**) 2003 c. 39; sections 28 and 29 were substituted by section 3 of, and paragraphs 25 and 26 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).

(b) in doing so explain the reasons for the application and for wanting the court to consider it orally.

PART 18

MEASURES TO HELP A WITNESS OR DEFENDANT TO GIVE EVIDENCE OR OTHERWISE PARTICIPATE

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GENERAL RULES

When this Part applies

18.1. This Part applies—

(a) where the court can give a direction (a 'special measures direction'), under section 19 of the Youth Justice and Criminal Evidence Act 1999(**a**), on an application or on its own initiative, for any of the following measures—

(i) preventing a witness from seeing the defendant (section 23 of the 1999 Act),

(ii) allowing a witness to give evidence by live link (section 24 of the 1999 Act(**b**)),

(iii) hearing a witness' evidence in private (section 25 of the 1999 Act(**c**)),

(iv) dispensing with the wearing of wigs and gowns (section 26 of the 1999 Act),

(v) admitting video recorded evidence (sections 27 and 28 of the 1999 Act(**d**)),

(vi) questioning a witness through an intermediary (section 29 of the 1999 Act(**e**)),

(vii) using a device to help a witness communicate (section 30 of the 1999 Act);

(b) where the court can vary or discharge such a direction, under section 20 of the 1999 Act(**f**);

(c) where the court can—

(i) make a witness anonymity order, under section 86 of the Coroners and Justice Act 2009(**g**), or

(ii) vary or discharge such an order, under section 91, 92 or 93 of the 2009 Act;

(d) where the court can—

(i) appoint an intermediary to facilitate a defendant's effective participation in that defendant's trial, when the defendant gives evidence or at any other time, or

(ii) vary or discharge such an appointment; and

(e) where the court can exercise any other power it has to give, make, vary, rescind, discharge or revoke a direction for a measure to help a witness to give evidence or to help a defendant to participate in that defendant's trial.

[Note. At the end of this Part is a summary of the circumstances in which a witness or defendant may be eligible for the assistance of one of the measures to which this Part applies.]

Meaning of 'witness' and 'live link'

18.2. In this Part—

(a) 'witness' means anyone (other than a defendant) for whose benefit an application, direction or order is made; and

(b) 'live link', in relation to a witness, means a live television link or other arrangement by which a witness who is absent from the courtroom or other place where the proceedings are being held is able to see and hear a person there and to be seen and heard by—

(i) the judge or justices (or both) and the jury (if there is one),

(ii) legal representatives acting in the proceedings, and

(iii) any interpreter or other person appointed (in pursuance of the direction or otherwise) to assist the witness.

(**a**) 1999 c. 23.

(**b**) 1999 c. 23; section 24 was amended by paragraph 385 of Schedule 8 to, and Schedule 10 to, the Courts Act 2003 (c. 39) and section 102(1) of the Coroners and Justice Act 2009 (c. 25).

(**c**) 1999 c. 23; section 25 was amended by paragraphs 1 and 3 of the Schedule to S.I. 2013/554 and section 46 of the Modern Slavery Act 2015 (c. 30).

(**d**) 1999 c. 23; section 27 was amended by paragraph 384 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 73 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and sections 102(2), 103(1), (3), (4) and (5), 177(1) and (2) and 178 of, and paragraph 73 of Schedule 21, paragraph 23 of Schedule 22 and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).

(**e**) 1999 c. 23; section 29 was amended by paragraph 384(d) of Schedule 8 to the Courts Act 2003 (c. 39).

(**f**) 1999 c. 23; section 20(6) was amended by paragraph 384(a) of Schedule 8 to the Courts Act 2003 (c. 39).

(**g**) 2009 c. 25.

*[Note. See section 24(8) of the Youth Justice and Criminal Evidence Act 1999(**a**).]*

Meaning of 'intermediary' and 'intermediary's report'

18.3. In this Part—

(a) 'intermediary' means a person who is—

(i) approved by the court for the purposes of section 29 of the Youth Justice and Criminal Evidence Act 1999(**b**) (Examination of witness through intermediary),

(ii) asked to assess a defendant's communication needs, or

(iii) appointed by the court to facilitate a defendant's effective participation in the trial, when the defendant gives evidence or at any other time, where otherwise that defendant's communication needs would impede such participation; and

(b) a reference to 'an intermediary's report' means a report by such a person which complies with rule 18.24.

Making an application for a direction or order

18.4. A party who wants the court to exercise its power to give or make a direction or order must—

(a) apply in writing as soon as reasonably practicable, and in any event not more than—

(i) 20 business days after the defendant pleads not guilty, in a magistrates' court, or

(ii) 10 business days after the defendant pleads not guilty, in the Crown Court; and

(b) serve the application on—

(i) the court officer, and

(ii) each other party.

[Note. See also rule 18.10 (Content of application for a special measures direction), rule 18.15 (Content and conduct of application for a witness anonymity order) and rule 18.19 (Appointment of intermediary to facilitate a defendant's participation).]

Decisions and reasons

18.5.—(1) A party who wants to introduce the evidence of a witness who is the subject of an application, direction or order must—

(a) inform the witness of the court's decision as soon as reasonably practicable; and

(b) explain to the witness the arrangements that as a result will be made for him or her to give evidence.

(2) The court must—

(a) promptly determine an application; and

(b) allow a party sufficient time to comply with the requirements of—

(i) paragraph (1), and

(ii) the code of practice issued under section 32 of the Domestic Violence, Crime and Victims Act 2004(**c**) or under section 2 of the Victims and Prisoners Act 2024(**d**).

(3) The court must announce, at a hearing in public before the witness gives evidence or the defendant's trial begins (as the case may be), the reasons for a decision—

(a) to give, make, vary or discharge a direction or order; or

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(**a**) 1999 c. 23.
(**b**) 1999 c. 23; section 29 was amended by paragraph 384 of Schedule 8 to the Courts Act 2003 (c. 39).
(**c**) 2004 c. 28; section 32 was amended by article 8 of, and paragraph 10 of the Schedule to, S.I. 2007/2128.
(**d**) 2024 c. 21.

(b) to refuse to do so.

[Note. See sections 20(5) and 33BB(4) of the Youth Justice and Criminal Evidence Act 1999 and sections 51(8) and 52(7) of the Criminal Justice Act 2003(**a**)*.*

Under section 32 of the Domestic Violence, Crime and Victims Act 2004, the Secretary of State for Justice must issue a code of practice as to the services to be provided by specified persons to a victim of criminal conduct. Section 2 of the Victims and Prisoners Act 2024 imposes a corresponding obligation. Under section 2(13) of the 2024 Act, until the first code of practice issued under section 2 is in operation, references in sections 5 to 12 and 32 of that Act to the "victims' code" are references to the code of practice issued under section 32 of the 2004 Act for the time being in operation.]

Court's power to vary requirements under this Part

18.6.—(1) The court may—

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

(b) allow an application or representations to be made in a different form to one issued under the Practice Direction, or to be made orally.

(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.

Custody of documents

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

(a) keep a written application or representations; 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.

SPECIAL MEASURES DIRECTIONS

Exercise of court's powers

18.8.—(1) The court may decide whether to give, vary or discharge a special measures direction—

(a) at a hearing, in public or in private, or without a hearing; and

(b) in a party's absence, if that party—

(i) applied for the direction, variation or discharge, or

(ii) has had at least 10 business days in which to make representations.

(2) Where a direction provides for evidence to be admitted under section 28 of the Youth Justice and Criminal Evidence Act 1999(**b**) (Video recorded cross-examination or re-examination) the court must set a timetable that provides for—

(a) the date of any ground rules hearing under rule 3.9;

(b) the date on which the cross-examination and any re-examination will be recorded;

(c) the date by which any application under section 28(5) of the 1999 Act must be made for a direction for further cross-examination or re-examination;

(d) the date by which any application must be made to exclude as evidence any part of the recording; and

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(**a**) 2003 c. 44.
(**b**) 1999 c. 23; section 28 was amended by section 109 of, and paragraph 384 of Schedule 8 to, the Courts Act 2003 (c. 39).

(e) the date by which any editing of the recording must be completed.

Special measures direction without application

18.9.—(1) This rule applies where—

(a) a party notifies the court that a witness is eligible for assistance under section 16 or section 17 of the Youth Justice and Criminal Evidence Act 1999;

(b) the notice is given at—

(i) a preparation for trial hearing in a magistrates' court, or

(ii) a plea and trial preparation hearing in the Crown Court; and

(c) no other party opposes the giving of a special measures direction for the benefit of that witness.

(2) The court may exercise its power to give a special measures direction without requiring an application under rule 18.10.

(3) The party who gives the notice must—

(a) provide any information that the court may need to assess—

(i) the measure or measures likely to maximise so far as practicable the quality of the witness' evidence, and

(ii) the witness' own views; and

(b) where a direction provides for video recorded evidence to be admitted under section 27 of the Youth Justice and Criminal Evidence Act 1999, as soon as reasonably practicable serve such evidence on—

(i) the court officer, and

(ii) each other party.

[Note. Under sections 21 and 22 of the Youth Justice and Criminal Evidence Act 1999, a 'child witness' is one who is under 18, and a 'qualifying witness' is one who was a child witness when interviewed.

Under those sections, the 'primary rule' requires the court to give a direction—

(a) for the evidence of a child witness or of a qualifying witness to be admitted—

(i) by means of a video recording of an interview with the witness, in the place of examination-in-chief, and

(ii) after that, by live link; or

(b) if one or both of those measures is not taken, for the witness while giving evidence to be screened from seeing the defendant.

The primary rule always applies unless—

(a) the witness does not want it to apply, and the court is satisfied that to omit a measure usually required by that rule would not diminish the quality of the witness' evidence; or

(b) the court is satisfied that to direct one of the measures usually required by that rule would not be likely to maximise, so far as practicable, the quality of the witness' evidence.]

Content of application for a special measures direction

18.10. An applicant for a special measures direction must—

(a) explain how the witness is eligible for assistance;

(b) explain why special measures would be likely to improve the quality of the witness' evidence;

(c) propose the measure or measures that in the applicant's opinion would be likely to maximise, so far as practicable, the quality of that evidence;

(d) report any views that the witness has expressed about—

(i) his or her eligibility for assistance,

(ii) the likelihood that special measures would improve the quality of his or her evidence, and

(iii) the measure or measures proposed by the applicant;

(e) in a case in which a child witness or a qualifying witness does not want the primary rule to apply, provide any information that the court may need to assess the witness' views;

(f) in a case in which the applicant proposes that the witness should give evidence by live link—

(i) identify someone to accompany the witness while the witness gives evidence,

(ii) name that person, if possible, and

(iii) explain why that person would be an appropriate companion for the witness, including the witness' own views;

(g) in a case in which the applicant proposes the admission of video recorded evidence, identify—

(i) the date and duration of the recording, and

(ii) which part the applicant wants the court to admit as evidence, if the applicant does not want the court to admit all of it;

(h) attach any other material on which the applicant relies; and

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

Application to vary or discharge a special measures direction

18.11.—(1) A party who wants the court to vary or discharge a special measures direction must—

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

(b) serve the application on—

(i) the court officer, and

(ii) each other party.

(2) The applicant must—

(a) explain what material circumstances have changed since the direction was given (or last varied, if applicable);

(b) explain why the direction should be varied or discharged; and

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

[Note. Under section 20 of the Youth Justice and Criminal Evidence Act 1999, the court can vary or discharge a special measures direction—

(a) on application, if there has been a material change of circumstances; or

(b) on the court's own initiative.]

Application containing information withheld from another party

18.12.—(1) This rule applies where—

(a) an applicant serves an application for a special measures direction, or for its variation or discharge; and

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

(2) The applicant must—

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

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

(c) in that other part, explain why the applicant has withheld that information from that other party.

(3) Any hearing of an application to which this rule applies—

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

(b) if the court so directs, may be, wholly or in part, in the absence of a party from whom information has been withheld.

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

(a) the general rule is that the court must consider, in the following sequence—

(i) representations first by the applicant and then by each other party, in all the parties' presence, and then

(ii) further representations by the applicant, in the absence of a party from whom information has been withheld; but

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

[Note. See section 20 of the Youth Justice and Criminal Evidence Act 1999.]

Representations in response

18.13.—(1) This rule applies where a party wants to make representations about—

(a) an application for a special measures direction;

(b) an application for the variation or discharge of such a direction; or

(c) a direction, variation or discharge that the court proposes on its own initiative.

(2) Such a party must—

(a) serve the representations on—

(i) the court officer, and

(ii) each other party;

(b) do so not more than 10 business days after, as applicable—

(i) service of the application, or

(ii) notice of the direction, variation or discharge that the court proposes; and

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

(3) Where representations include information that the person making them thinks ought not be revealed to another party, that person must—

(a) omit that information from the representations served on that other party;

(b) mark the information to show that, unless the court otherwise directs, it is only for the court; and

(c) with that information include an explanation of why it has been withheld from that other party.

(4) Representations against a special measures direction must explain, as appropriate—

(a) why the witness is not eligible for assistance;

(b) if the witness is eligible for assistance, why—

(i) no special measure would be likely to improve the quality of the witness' evidence,

(ii) the proposed measure or measures would not be likely to maximise, so far as practicable, the quality of the witness' evidence, or

(iii) the proposed measure or measures might tend to inhibit the effective testing of that evidence; and

(c) in a case in which the admission of video recorded evidence is proposed, why it would not be in the interests of justice for the recording, or part of it, to be admitted as evidence.

(5) Representations against the variation or discharge of a special measures direction must explain why it should not be varied or discharged.

[Note. Under sections 21 and 22 of the Youth Justice and Criminal Evidence Act 1999, where the witness is a child witness or a qualifying witness the special measures that the court usually must direct must be treated as likely to maximise, so far as practicable, the quality of the witness' evidence, irrespective of representations to the contrary.]

WITNESS ANONYMITY ORDERS

Exercise of court's powers

18.14.—(1) The court may decide whether to make, vary or discharge a witness anonymity order—

(a) at a hearing (which must be in private, unless the court otherwise directs), or without a hearing (unless any party asks for one); and

(b) in the absence of a defendant.

(2) The court must not exercise its power to make, vary or discharge a witness anonymity order, or to refuse to do so—

(a) before or during the trial, unless each party has had an opportunity to make representations;

(b) on an appeal by the defendant to which applies Part 34 (Appeal to the Crown Court) or Part 39 (Appeal to the Court of Appeal about conviction or sentence), unless in each party's case—

(i) that party has had an opportunity to make representations, or

(ii) the appeal court is satisfied that it is not reasonably practicable to communicate with that party; or

(c) after the trial and any such appeal are over, unless in the case of each party and the witness—

(i) each has had an opportunity to make representations, or

(ii) the court is satisfied that it is not reasonably practicable to communicate with that party or witness.

Content and conduct of application for a witness anonymity order

18.15.—(1) An applicant for a witness anonymity order must—

(a) include in the application nothing that might reveal the witness' identity;

(b) describe the measures proposed by the applicant;

(c) explain how the proposed order meets the conditions prescribed by section 88 of the Coroners and Justice Act 2009(**a**);

(d) explain why no measures other than those proposed will suffice, such as—

(i) an admission of the facts that would be proved by the witness,

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(**a**) 2009 c. 25.

(ii) an order restricting public access to the trial,

(iii) reporting restrictions, in particular under sections 45, 45A or 46 of the Youth Justice and Criminal Evidence Act 1999(**a**),

(iv) a direction for a special measure under section 19 of the Youth Justice and Criminal Evidence Act 1999,

(v) introduction of the witness' written statement as hearsay evidence, under section 116 of the Criminal Justice Act 2003(**b**), or

(vi) arrangements for the protection of the witness;

(e) attach to the application—

(i) a witness statement setting out the proposed evidence, edited in such a way as not to reveal the witness' identity,

(ii) where the prosecutor is the applicant, any further prosecution evidence to be served, and any further prosecution material to be disclosed under the Criminal Procedure and Investigations Act 1996, similarly edited, and

(iii) any defence statement that has been served, or as much information as may be available to the applicant that gives particulars of the defence; and

(f) ask for a hearing, if the applicant wants one.

(2) At any hearing of the application, the applicant must—

(a) identify the witness to the court, unless at the prosecutor's request the court otherwise directs; and

(b) present to the court, unless it otherwise directs—

(i) the unedited witness statement from which the edited version has been prepared,

(ii) where the prosecutor is the applicant, the unedited version of any further prosecution evidence or material from which an edited version has been prepared, and

(iii) such further material as the applicant relies on to establish that the proposed order meets the conditions prescribed by section 88 of the 2009 Act.

(3) At any such hearing—

(a) the general rule is that the court must consider, in the following sequence—

(i) representations first by the applicant and then by each other party, in all the parties' presence, and then

(ii) information withheld from a defendant, and further representations by the applicant, in the absence of any (or any other) defendant; but

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

(4) Before the witness gives evidence, the applicant must identify the witness to the court—

(a) if not already done;

(b) without revealing the witness' identity to any other party or person; and

(c) unless at the prosecutor's request the court otherwise directs.

Duty of court officer to notify the Director of Public Prosecutions

18.16. The court officer must notify the Director of Public Prosecutions of an application, unless the prosecutor is, or acts on behalf of, a public authority.

(**a**) 1999 c. 23; section 45A was inserted by section 78 of the Criminal Justice and Courts Act 2015 (c. 2).
(**b**) 2003 c. 44.

Application to vary or discharge a witness anonymity order

18.17.—(1) A party who wants the court to vary or discharge a witness anonymity order, or a witness who wants the court to do so when the case is over, must—

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

(b) serve the application on—

(i) the court officer, and

(ii) each other party.

(2) The applicant must—

(a) explain what material circumstances have changed since the order was made (or last varied, if applicable);

(b) explain why the order should be varied or discharged, taking account of the conditions for making an order; and

(c) ask for a hearing, if the applicant wants one.

(3) Where an application includes information that the applicant thinks might reveal the witness' identity, the applicant must—

(a) omit that information from the application that is served on a defendant;

(b) mark the information to show that it is only for the court and the prosecutor (if the prosecutor is not the applicant); and

(c) with that information include an explanation of why it has been withheld.

(4) Where a party applies to vary or discharge a witness anonymity order after the trial and any appeal are over, the party who introduced the witness' evidence must serve the application on the witness.

[Note. Under sections 91, 92 and 93 of the Coroners and Justice Act 2009, the court can vary or discharge a witness anonymity order—

(a) on an application, if there has been a material change of circumstances since it was made or previously varied; or

(b) on the court's own initiative, unless the trial and any appeal are over.]

Representations in response

18.18.—(1) This rule applies where a party or, where the case is over, a witness, wants to make representations about—

(a) an application for a witness anonymity order;

(b) an application for the variation or discharge of such an order; or

(c) a variation or discharge that the court proposes on its own initiative.

(2) Such a party or witness must—

(a) serve the representations on—

(i) the court officer, and

(ii) each other party;

(b) do so not more than 10 business days after, as applicable—

(i) service of the application, or

(ii) notice of the variation or discharge that the court proposes; and

(c) ask for a hearing, if that party or witness wants one.

(3) Where representations include information that the person making them thinks might reveal the witness' identity, that person must—

(a) omit that information from the representations served on a defendant;

(b) mark the information to show that it is only for the court (and for the prosecutor, if relevant); and

(c) with that information include an explanation of why it has been withheld.

(4) Representations against a witness anonymity order must explain why the conditions for making the order are not met.

(5) Representations against the variation or discharge of such an order must explain why it would not be appropriate to vary or discharge it, taking account of the conditions for making an order.

(6) A prosecutor's representations in response to an application by a defendant must include all information available to the prosecutor that is relevant to the conditions and considerations specified by sections 88 and 89 of the Coroners and Justice Act 2009.

INTERMEDIARY FOR A DEFENDANT

Appointment of intermediary to facilitate a defendant's participation

18.19.—(1) The court must exercise its power to appoint an intermediary to facilitate a defendant's effective participation in the trial where—

(a) the defendant's ability to participate is likely to be diminished by reason of—

(i) age, if the defendant is under 18, or

(ii) mental disorder (as defined in section 1(2) of the Mental Health Act 1983(**a**)), a significant impairment of intelligence and social functioning, or a physical disability or disorder; and

(b) the appointment is necessary for that purpose.

(2) In determining whether such an appointment is necessary, who to appoint and the duration or purpose of the appointment, the court must have regard to—

(a) the defendant's communication needs as reported to the court;

(b) the recommendations in any intermediary's report received by the court;

(c) any views that the defendant has expressed about—

(i) receiving the assistance of an intermediary, or

(ii) other measures or arrangements to facilitate the defendant's effective participation in the trial;

(d) the likely impact of the defendant's age, if under 18, level of intellectual ability or social functioning on the ability to—

(i) give evidence, and

(ii) understand what is said and done by the court and other participants;

(e) the likely impact on such participation and on such understanding of any mental disorder or other significant impairment of intelligence or social functioning;

(f) the adequacy of arrangements for questioning the defendant in the absence of an intermediary;

(g) any assistance that the defendant has received in the past—

(i) while giving evidence in legal proceedings,

(ii) while being questioned during the investigation of an alleged offence, or

(iii) as a defendant in a criminal case;

(h) any assessment of the defendant's health by a mental health practitioner acting independently of the parties to assist the court;

(**a**) 1983 c. 20; section 1(2) was amended by sections 1, 55 and 56 of, and Schedule 11 to, the Mental Health Act 2007 (c. 12).

(i) any expert medical opinion that the court may have received; and

(j) any other matter that the court thinks relevant.

(3) The court may exercise its power to appoint an intermediary—

(a) for the duration of every hearing that the defendant is due to attend;

(b) for the duration of any specified such hearing or hearings, or for the duration of a specified part of such a hearing; or

(c) for a specified purpose during a hearing.

(4) Unless the court otherwise directs, the appointment of an intermediary extends to facilitating the defendant's communication with that defendant's legal representatives for the duration and for the purpose of the appointment.

(5) The court may decide whether to appoint an intermediary to facilitate a defendant's effective participation in the trial and whether to vary or discharge any such appointment—

(a) on application or on the court's own initiative;

(b) at a hearing, in public or in private, or without a hearing; and

(c) in a party's absence, if that party—

(i) applied for the appointment, variation or discharge, or

(ii) has had at least 10 business days in which to make representations.

(6) The court must not exercise its power to vary or discharge a direction for the appointment of an intermediary unless satisfied that—

(a) since the direction was made—

(i) the defendant's communication needs have changed materially, or

(ii) any other material circumstance has changed materially; and

(b) the defendant will be able to participate effectively in the trial despite the variation or discharge of the direction.

Application to vary or discharge the appointment of an intermediary for a defendant

18.20.—(1) A party who wants the court to vary or discharge the appointment of an intermediary to facilitate a defendant's effective participation in the trial must—

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

(b) serve the application on—

(i) the court officer, and

(ii) each other party.

(2) The applicant must—

(a) explain how the criteria listed in rule 18.19(6) are met (variation or discharge of appointment); and

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

Representations in response to application or proposal

18.21.—(1) This rule applies where a party wants to make representations about—

(a) an application or proposal for the appointment of an intermediary to facilitate a defendant's effective participation in the trial; or

(b) an application or proposal for the variation or discharge of such an appointment.

(2) Such a party must—

(a) serve the representations on—

(i) the court officer, and

(ii) each other party;

(b) do so not more than 10 business days after, as applicable—

(i) service of the application, or

(ii) notice of the appointment, variation or discharge that the court proposes; and

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

(3) Representations against such an appointment, variation or discharge must explain why the criteria that apply are not met.

DUTIES OF INTERMEDIARIES

Intermediary's duty to the court

18.22.—(1) This rule applies to an intermediary who accepts—

(a) approval by the court for the purposes of section 29 of the Youth Justice and Criminal Evidence Act 1999(**a**) (Examination of witness through intermediary);

(b) approval by the court for the purposes of section 33BA of the 1999 Act(**b**) (Examination of accused through intermediary); or

(c) appointment by the court to facilitate a defendant's effective participation in the trial, when the defendant gives evidence or at any other time.

(2) The intermediary must help the court to achieve the overriding objective—

(a) to the best of the intermediary's skill and understanding by—

(i) communicating to the witness or defendant (as the case may be) questions put to them,

(ii) communicating to the questioner and the court the replies, and

(iii) explaining such questions and answers so that they can be understood;

(b) by assessing continually the witness' or the defendant's (as the case may be) ability to participate effectively and intervening if necessary;

(c) where the intermediary is appointed to facilitate a defendant's effective participation, by explaining to the defendant, in terms the defendant can understand, what is said and done by the court and other participants; and

(d) by actively assisting the court in fulfilling its duties under rule 3.2 (Case management; The duty of the court) and rule 3.9 (Case management; Ground rules hearing), in particular by—

(i) complying with directions made by the court, and

(ii) at once informing the court of any significant failure (by the intermediary or another) to take any step required by such a direction.

(3) This duty overrides any obligation to the witness or to the defendant (as the case may be), or to the person by whom the intermediary is paid.

Declaration by intermediary

18.23.—(1) This rule applies where—

(a) a video recorded interview with a witness is conducted through an intermediary; or

(b) the court directs the examination of a witness or defendant through an intermediary.

(2) The intermediary must make a declaration—

(**a**) 1999 c. 23; section 29 was amended by paragraph 384 of Schedule 8 to the Courts Act 2003 (c. 39).

(**b**) 1999 c. 23; section 33BA is inserted by section 104(1) of the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed.

(a) before such an interview begins; and

(b) before the examination begins (even if such an interview with the witness was conducted through the same intermediary).

(3) The declaration must be in these terms, or in any corresponding terms that the intermediary declares to be binding—

> "I swear by Almighty God [*or* I solemnly, sincerely and truly declare and affirm] that I shall faithfully communicate questions and answers and make true explanation of all matters and things required of me according to the best of my skill and understanding."

Content of intermediary's report

18.24.—(1) An intermediary's report must, in every case—

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

(b) identify the commissioner of the report;

(c) identify those from whom the intermediary has obtained information material to the report;

(d) list the documents received or inspected by the intermediary which contained such information and give an indication of their content;

(e) give the date or dates on which the intermediary met the witness or defendant, as the case may be, for the purpose of preparing the report;

(f) describe the nature and duration of the intermediary's assessment, or assessments, of the witness or defendant;

(g) by reference to examples drawn from the intermediary's assessment of the witness or defendant explain why in this particular case intermediary assistance is necessary;

(h) include an evaluation of—

(i) the impact of any condition or conditions which, whether in isolation or together, may adversely affect the witness' or the defendant's ability to communicate, and

(ii) the extent, if any, to which that impact may be exacerbated by the trial;

(i) if the intermediary is not able to reach an evaluation without qualifying it, state the qualification;

(j) report the views of the witness or defendant, as the case may be, on receiving the assistance of an intermediary;

(k) include in a summary of the intermediary's conclusions any recommendation, with reasons, for—

(i) the approval or appointment of an intermediary,

(ii) the manner and duration of any questioning of the witness or defendant, as the case may be, and

(iii) arrangements for the way in which the intermediary, if approved or appointed, should participate; and

(l) contain a statement that the intermediary—

(i) understands an intermediary's duty to the court, and

(ii) will comply with that duty if approved or appointed.

(2) Where the intermediary is asked to evaluate a defendant's communication needs the report must also—

(a) include an evaluation of the extent to which any measures or arrangements beside the appointment of an intermediary will facilitate the defendant's effective participation in the trial; and

(b) in the summary of the intermediary's conclusions include any recommendation, with reasons, for—

(i) the duration and purpose of any appointment of an intermediary, and

(ii) other measures or arrangements to help the defendant to participate effectively in the trial.

Summary of eligibility for measures to which this Part applies

Special measures direction

Under section 16 of the Youth Justice and Criminal Evidence Act 1999(**a**)*, a witness is eligible for the assistance of a special measures direction given under section 19 of that Act if—*

(a) the witness is under 18; or

(b) the witness has—

(i) a mental disorder, or a significant impairment of intelligence and social functioning, or

(ii) a physical disability or disorder

and the court considers that the completeness, coherence and accuracy (the 'quality') of evidence given by the witness is likely to be diminished by reason of those circumstances.

Under section 17 of the 1999(**b**) *Act, a witness is eligible for such assistance if—*

(a) the court is satisfied that the quality of evidence given by the witness is likely to be diminished because of his or her fear or distress in connection with giving evidence, taking account particularly of—

(i) the circumstances of the offence,

(ii) the witness' age, social and cultural background, ethnic origins, domestic and employment circumstances, religious beliefs or political opinions,

(iii) any behaviour towards the witness on the part of the defendant, the defendant's family or associates, or any other potential defendant or witness, and

(iv) the witness' own views;

(b) the witness is the complainant in respect of a sexual offence or other offence specified by the Act, and has not declined such assistance; or

(c) the offence is one of a list of offences involving weapons, and the witness has not declined such assistance.

Section 28 of the 1999 Act (video recorded cross-examination or re-examination) is not yet fully in force. With that exception, all the special measures listed in rule 18.1 potentially are available where the witness is eligible for assistance under section 16 of the Act. Those numbered (i) to (v) are available where the witness is eligible for assistance under section 17.

As a general rule, but with exceptions, the court must give a special measures direction—

(a) under section 21 or 22 of the 1999 Act(**c**)*, where the witness—*

(i) is under 18, or

(ii) was under that age when interviewed

whether or not an application for a direction is made;

(**a**) 1999 c. 23.

(**b**) 1999 c. 23; section 17 was amended by section 99 of the Coroners and Justice Act 2009 (c. 25), paragraphs 1 and 2 of the Schedule to S.I. 2013/554 and section 46 of the Modern Slavery Act 2015 (c. 30).

(**c**) 1999 c. 23; sections 21 and 22 were amended by sections 98, 100 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).

(b) under section 22A of the 1999 Act(**a**)*, where an application is made in the Crown Court for the evidence of a witness who is the complainant of a sexual offence to be admitted by means of a video recording of an interview with the witness in the place of examination-in-chief.*

Witness anonymity order

Under section 86 of the Coroners and Justice Act 2009(**b**)*, a witness anonymity order is an order that specifies measures to be taken to ensure that the identity of a witness is not disclosed, such as withholding the witness' name from materials disclosed to a party to the proceedings, the use of a pseudonym, the screening of the witness from view, the modulation of the witness' voice, and the prohibition of questions that might reveal his or her identity. Before making such an order, the court must—*

(a) be satisfied that three conditions prescribed by the Act are met (section 88 of the 2009 Act); and

(b) have regard to considerations specified by the Act (section 89 of the 2009 Act).

Intermediary for a defendant

In order to ensure the defendant's effective participation in his or her trial the court has an inherent power to appoint an intermediary to facilitate that participation, including during the giving of evidence by the defendant.

PART 19

EXPERT EVIDENCE

Contents of this Part

When this Part applies	rule 19.1
Expert's duty to the court	rule 19.2
Introduction of expert evidence	rule 19.3
Content of expert's report	rule 19.4
Expert to be informed of service of report	rule 19.5
Pre-hearing discussion of expert evidence	rule 19.6
Court's power to direct that evidence is to be given by a single joint expert	rule 19.7
Instructions to a single joint expert	rule 19.8
Application to withhold information from another party	rule 19.9
Court's power to vary requirements under this Part	rule 19.10

When this Part applies

19.1.—(1) This Part applies where a party wants to introduce expert opinion evidence.

(2) 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.

(3) Where evidence that is introduced as evidence of fact within a witness' direct knowledge includes expert opinion the court may direct that the requirements of rules 19.2 (Expert's duty to

(**a**) 1999 c. 23; section 22A was inserted by section 101 of the Coroners and Justice Act 2009 (c. 25).
(**b**) 2009 c. 25.

the court) and 19.3 (Introduction of expert evidence) apply, to the extent and with such adaptations as the court directs.

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

Expert's duty to the court

19.2.—(1) An expert must help the court to achieve the overriding objective—

(a) by giving opinion which is—

(i) objective and unbiased, and

(ii) within the expert's area or areas of expertise; and

(b) by actively assisting the court in fulfilling its duty of case management under rule 3.2, in particular by—

(i) complying with directions made by the court, and

(ii) at once informing the court of any significant failure (by the expert or another) to take any step required by such a direction.

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

(3) This duty includes obligations—

(a) to define the expert's area or areas of expertise—

(i) in the expert's report, and

(ii) when giving evidence in person;

(b) when giving evidence in person, to draw the court's attention to any question to which the answer would be outside the expert's area or areas of expertise;

(c) 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; and

(d) to disclose to the party for whom the expert's evidence is commissioned anything—

(i) of which the expert is aware, and

(ii) of which that party, if aware of it, would be required to give notice under rule 19.3(3)(c).

[Note. The Practice Direction lists examples of matters that should be disclosed under this rule and rule 19.3(3)(c).]

Introduction of expert evidence

19.3.—(1) A party who wants another party to admit as fact a summary of an expert's conclusions must serve that summary—

(a) on the court officer and on each party from whom that admission is sought; and

(b) as soon as practicable after the defendant whom it affects pleads not guilty.

(2) A party on whom such a summary is served must—

(**a**) 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).
(**b**) 2000 c. 6.
(**c**) 1983 c. 20.
(**d**) 2003 c. 44.

(a) serve a response stating—

(i) which, if any, of the expert's conclusions are admitted as fact, and

(ii) where a conclusion is not admitted, what are the disputed issues concerning that conclusion; and

(b) serve the response—

(i) on the court officer and on the party who served the summary, and

(ii) as soon as practicable, and in any event not more than 10 business days after service of the summary.

(3) A party who wants to introduce expert evidence otherwise than as admitted fact must—

(a) serve a report by the expert which complies with rule 19.4 (Content of expert's report) on—

(i) the court officer, and

(ii) each other party;

(b) serve the report as soon as practicable, and in any event with any application in support of which that party relies on that evidence;

(c) serve with the report—

(i) notice of anything of which the party serving it is aware which might reasonably be thought capable of undermining the reliability of the expert's opinion, or detracting from the credibility or impartiality of the expert, and

(ii) an explanation of how facts stated in the report are admissible as evidence if that is not explained by the report; and

(d) 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.

(4) Unless the parties otherwise agree or the court directs, a party may not—

(a) introduce expert evidence if that party has not complied with paragraph (3); or

(b) introduce in evidence an expert report if the expert does not give evidence in person.

[Note. A party who accepts another party's expert's conclusions may admit them as fact under section 10 of the Criminal Justice Act 1967(**a**)*.*

Under section 81 of the Police and Criminal Evidence Act 1984(**b**)*, and under section 20(3) of the Criminal Procedure and Investigations Act 1996*(**c**)*, Criminal Procedure Rules may require the disclosure of expert evidence before it is introduced as part of a party's case and prohibit its introduction without the court's permission, if it was not disclosed as required.*

Under section 30 of the Criminal Justice Act 1988(**d**)*, an expert report is admissible in evidence whether or not the person who made it gives oral evidence, but if that person does not give oral evidence then the report is admissible only with the court's permission.*

Evidence of facts which are material to the opinions expressed in an expert report, or upon which those opinions are based, may be admissible if (i) they are within the expert witness' own direct

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

(**b**) 1984 c. 60; section 81 was amended by section 109(1) of, and paragraph 286 of Schedule 8 to, the Courts Act 2003 (c. 39).

(**c**) 1996 c. 25; section 20(3) was amended by section 109(1) of, and paragraph 378 of Schedule 8 to, the Courts Act 2003 (c. 39).

(**d**) 1988 c. 33; section 30 was amended by section 47 of, and paragraph 32 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and paragraph 60 of Schedule 3 and Schedule 37 to the Criminal Justice Act 2003 (c. 44).

knowledge, or (ii) as hearsay evidence within the meaning of section 114 of the Criminal Justice Act 2003(**a**)*: see also rule 19.4(b), (c), (d) and (e). Evidence of examinations etc. on which an expert relies may be admissible under section 127 of the 2003 Act*(**b**)*. Part 20 contains rules about the introduction of hearsay evidence under other provisions of that Act.]*

Content of expert's report

19.4. Where rule 19.3(3) applies, 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) where the expert has based an opinion or inference on a representation of fact or opinion made by another person for the purposes of criminal proceedings (for example, as to the outcome of an examination, measurement, test or experiment)—

(i) identify the person who made that representation to the expert,

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

(iii) certify that that person had personal knowledge of the matters stated in that representation;

(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 the expert's own opinion;

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

(h) include such information as the court may need to decide whether the expert's opinion is sufficiently reliable to be admissible as evidence;

(i) contain a summary of the conclusions reached;

(j) contain a statement that the expert understands an expert's duty to the court, and has complied and will continue to comply with that duty; and

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

[Note. Part 16 contains rules about written witness statements. Declarations of truth in witness statements are required by section 9 of the Criminal Justice Act 1967(**c**)*.]*

Expert to be informed of service of report

19.5. 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

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

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

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

(**c**) 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), regulation 9 of, and paragraph 4 of Schedule 5 to, S.I. 2001/1090, paragraph 43 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), section 26 of, and paragraph 7 of Schedule 2 to, the Armed Forces Act 2011 (c. 18) and section 80 of the Deregulation Act 2015 (c. 20). It is further amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54) and section 65 of, and paragraph 1 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from dates to be appointed.

(2) The court may direct the experts to—

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

(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 9 of the Criminal Justice Act 1987(**a**)*; sections 31 and 40 of the Criminal Procedure and Investigations Act 1996*(**b**)*; and section 8A of the Magistrates' Courts Act 1980*(**c**)*.]*

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

19.7.—(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

19.8.—(1) Where the court gives a direction under rule 19.7 for a single joint expert to be used, each of the co-defendants may give instructions to the expert.

(2) A co-defendant who gives instructions to the expert must, at the same time, send a copy of the instructions to each other co-defendant.

(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.

Application to withhold information from another party

19.9.—(1) This rule applies where—

(a) a party introduces expert evidence under rule 19.3(3);

(b) the evidence omits information which it otherwise might include because the party introducing it thinks that that information ought not be revealed to another party; and

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(**a**) 1987 c. 38; section 9 was amended by section 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 6 of the Criminal Justice Act 1993 (c. 36), sections 72, 74 and 80 of, and paragraph 3 of Schedule 3 and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25), sections 45 and 310 of, and paragraphs 18, 52 and 54 of Schedule 36 and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), article 3 of, and paragraphs 21 and 23 of S.I. 2004/2035, section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9).

(**b**) 1996 c. 25; section 31 was amended by sections 310, 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).

(**c**) 1980 c. 43; section 8A was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by S.I. 2006/2493 and paragraphs 12 and 14 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(c) the party introducing the evidence wants the court to decide whether it would be in the public interest to withhold that information.

(2) The party who wants to introduce the evidence must—

(a) apply for such a decision; and

(b) serve the application on—

(i) the court officer, and

(ii) the other party, but only to the extent that serving it would not reveal what the applicant thinks ought to be withheld.

(3) The application must—

(a) identify the information;

(b) explain why the applicant thinks that it would be in the public interest to withhold it; and

(c) omit from the part of the application that is served on the other party anything that would reveal what the applicant thinks ought to be withheld.

(4) Where the applicant serves only part of the application on the other party, the applicant must—

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

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

(5) The court may—

(a) direct the applicant to serve on the other party any part of the application which has been withheld; and

(b) determine the application at a hearing or without a hearing.

(6) Any hearing of an application to which this rule applies—

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

(b) if the court so directs, may be, wholly or in part, in the absence of the party from whom information has been withheld.

(7) At any hearing of an application to which this rule applies—

(a) the general rule is that the court must consider, in the following sequence—

(i) representations first by the applicant and then by the other party, in both parties' presence, and then

(ii) further representations by the applicant, in the absence of the party from whom information has been withheld; but

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

Court's power to vary requirements under this Part

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

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

(a) apply when serving the report, summary or notice for which it is required; and

(b) explain the delay.

PART 20

HEARSAY EVIDENCE

Contents of this Part

When this Part applies rule 20.1

Notice to introduce hearsay evidence rule 20.2
Opposing the introduction of hearsay evidence rule 20.3
Unopposed hearsay evidence rule 20.4
Court's power to vary requirements under this Part rule 20.5

When this Part applies

20.1. This Part applies in a magistrates' court and in the Crown Court where a party wants to introduce hearsay evidence within the meaning of section 114 of the Criminal Justice Act 2003(**a**).

[Note. Under section 114 of the Criminal Justice Act 2003, a statement not made in oral evidence is admissible as evidence of any matter stated if—

(a) a statutory provision makes it admissible;

(b) a rule of law preserved by section 118 makes it admissible;

(c) the parties agree to it being admissible; or

(d) it is in the interests of justice for it to be admissible.

Under section 115 of the Act—

(a) a "statement" means any representation of fact or opinion, by any means, and includes a representation in pictorial form; and

(b) a "matter stated" is something stated by someone with the apparent purpose of—

(i) causing another person to believe it, or

(ii) causing another person, or a machine, to act or operate on the basis that the matter is as stated.]

Notice to introduce hearsay evidence

20.2.—(1) This rule applies where a party wants to introduce hearsay evidence for admission under any of the following sections of the Criminal Justice Act 2003—

(a) section 114(1)(d) (evidence admissible in the interests of justice);

(b) section 116 (evidence where a witness is unavailable);

(c) section 117(1)(c)(**b**) (a statement prepared for the purposes of criminal proceedings); or

(d) section 121 (multiple hearsay).

(2) That party must—

(a) serve notice on—

(i) the court officer, and

(ii) each other party;

(b) in the notice—

(i) identify the evidence that is hearsay,

(ii) set out any facts on which that party relies to make the evidence admissible,

(iii) explain how that party will prove those facts if another party disputes them, and

(iv) explain why the evidence is admissible; and

(c) attach to the notice any statement or other document containing the evidence that has not already been served.

(3) A prosecutor who wants to introduce such evidence must serve the notice not more than—

(**a**) 2003 c. 44.
(**b**) 2003 c. 44; section 117 was amended by regulation 4 of, and paragraph 8 of Schedule 3 to, S.I. 2017/730 and section 10 of the Crime (Overseas Production Orders) Act 2019 (c. 5).

(a) 20 business days after the defendant pleads not guilty, in a magistrates' court; or

(b) 10 business days after the defendant pleads not guilty, in the Crown Court.

(4) A defendant who wants to introduce such evidence must serve the notice as soon as reasonably practicable.

(5) A party entitled to receive a notice under this rule may waive that entitlement by so informing—

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

(b) the court.

[Note. The sections of the Criminal Justice Act 2003 listed in this rule set out the conditions on which hearsay evidence may be admitted under them.

If notice is not given as this rule requires, then under section 132(5) of the 2003 Act—

(a) the evidence is not admissible without the court's permission;

(b) if the court gives permission, it may draw such inferences as appear proper from the failure to give notice; and

(c) the court may take the failure into account in exercising its powers to order costs.

This rule does not require notice of hearsay evidence that is admissible under any of the following sections of the 2003 Act—

(a) section 117 (business and other documents), otherwise than as required by rule 20.2(1)(c);

(b) section 118 (preservation of certain common law categories of admissibility);

(c) section 119 (inconsistent statements);

(d) section 120(**a**) *(other previous statements of witness); or*

(e) section 127(**b**) *(expert evidence: preparatory work): but see Part 19 for the procedure where a party wants to introduce such evidence.]*

Opposing the introduction of hearsay evidence

20.3.—(1) This rule applies where a party objects to the introduction of hearsay evidence.

(2) That party must—

(a) apply to the court to determine the objection;

(b) serve the application on—

(i) the court officer, and

(ii) each other party;

(c) serve the application as soon as reasonably practicable, and in any event not more than 10 business days after—

(i) service of notice to introduce the evidence under rule 20.2,

(ii) service of the evidence to which that party objects, if no notice is required by that rule, or

(iii) the defendant pleads not guilty

whichever of those events happens last; and

(d) in the application, explain—

(i) which, if any, facts set out in a notice under rule 20.2 that party disputes,

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(**a**) 2003 c. 44; section 120 was amended by sections 112 and 178 of, and Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).

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

(ii) why the evidence is not admissible, and

(iii) any other objection to the evidence.

(3) The court—

(a) may determine an application—

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

(ii) without a hearing;

(b) must not determine the application unless the party who served the notice—

(i) is present, or

(ii) has had a reasonable opportunity to respond;

(c) may adjourn the application; and

(d) may discharge or vary a determination where it can do so under—

(i) section 8B of the Magistrates' Courts Act 1980(**a**) (ruling at pre-trial hearing in a magistrates' court), or

(ii) section 9 of the Criminal Justice Act 1987(**b**), or section 31 or 40 of the Criminal Procedure and Investigations Act 1996(**c**) (ruling at preparatory or other pre-trial hearing in the Crown Court).

Unopposed hearsay evidence

20.4.—(1) This rule applies where—

(a) a party has served notice to introduce hearsay evidence under rule 20.2; and

(b) no other party has applied to the court to determine an objection to the introduction of the evidence.

(2) The court must treat the evidence as if it were admissible by agreement.

[Note. Under section 132(4) of the Criminal Justice Act 2003, rules may provide that evidence is to be treated as admissible by agreement of the parties if notice to introduce that evidence has not been opposed.]

Court's power to vary requirements under this Part

20.5.—(1) The court may—

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

(b) allow an application or notice to be in a different form to one issued under the Practice Direction, or to be made or given orally; and

(c) dispense with the requirement for notice to introduce hearsay evidence.

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

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

(b) explain the delay.

(**a**) 1980 c. 43; section 8B was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by paragraph 51 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

(**b**) 1987 c. 38; section 9 was amended by section 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 6 of the Criminal Justice Act 1993 (c. 36), sections 72, 74 and 80 of, and paragraph 3 of Schedule 3 and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25), sections 45 and 310 of, and paragraphs 18, 52 and 54 of Schedule 36 and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), article 3 of, and paragraphs 21 and 23 of S.I. 2004/2035, section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9).

(**c**) 1996 c. 25; section 31 was amended by sections 310, 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).

PART 21

EVIDENCE OF BAD CHARACTER

Contents of this Part

When this Part applies	rule 21.1
Content of application or notice	rule 21.2
Application to introduce evidence of a non-defendant's bad character	rule 21.3
Notice to introduce evidence of a defendant's bad character	rule 21.4
Reasons for decisions	rule 21.5
Court's power to vary requirements under this Part	rule 21.6

When this Part applies

21.1. This Part applies in a magistrates' court and in the Crown Court where a party wants to introduce evidence of bad character within the meaning of section 98 of the Criminal Justice Act 2003(**a**).

[Note. Under section 98 of the Criminal Justice Act 2003, evidence of a person's bad character means evidence of, or of a disposition towards, misconduct on that person's part, other than evidence that—

(a) has to do with the alleged facts of the offence; or

(b) is evidence of misconduct in connection with the investigation or prosecution.

Under section 100(1) of the Criminal Justice Act 2003, evidence of a non-defendant's bad character is admissible if—

(a) it is important explanatory evidence;

(b) it has substantial probative value in relation to a matter which—

(i) is a matter in issue in the proceedings, and

(ii) is of substantial importance in the context of the case as a whole; or

(c) all parties to the proceedings agree to the evidence being admissible.

The section explains requirements (a) and (b). Unless the parties agree to the evidence being admissible, it may not be introduced without the court's permission.

Under section 101(1) of the Criminal Justice Act 2003, evidence of a defendant's bad character is admissible if—

(a) all parties to the proceedings agree to the evidence being admissible;

(b) the evidence is introduced by the defendant, or is given in answer to a question asked by the defendant in cross-examination which was intended to elicit that evidence;

(c) it is important explanatory evidence;

(d) it is relevant to an important matter in issue between the defendant and the prosecution;

(e) it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant;

(f) it is evidence to correct a false impression given by the defendant; or

(g) the defendant has made an attack on another person's character.

Sections 102 to 106 of the Act supplement those requirements. The court must not admit evidence under (d) or (g) if, on an application by the defendant, the court concludes that to do so would be unfair.]

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

Content of application or notice

21.2.—(1) A party who wants to introduce evidence of bad character must—

(a) make an application under rule 21.3, where it is evidence of a non-defendant's bad character; or

(b) give notice under rule 21.4, where it is evidence of a defendant's bad character.

(2) An application or notice must—

(a) set out the facts of the misconduct on which that party relies,

(b) explain how that party will prove those facts (whether by certificate of conviction, other official record, or other evidence), if another party disputes them, and

(c) explain why the evidence is admissible.

[Note. The fact that a person was convicted of an offence may be proved under—

(a) section 73 of the Police and Criminal Evidence Act 1984(**a**) *(conviction in the United Kingdom); or*

(b) section 7 of the Evidence Act 1851(**b**) *(conviction outside the United Kingdom).*

See also sections 117 and 118 of the Criminal Justice Act 2003 (admissibility of evidence contained in business and other documents).

Under section 10 of the Criminal Justice Act 1967(**c**)*, a party may admit a matter of fact.]*

Application to introduce evidence of a non-defendant's bad character

21.3.—(1) This rule applies where a party wants to introduce evidence of the bad character of a person other than the defendant.

(2) That party must serve an application to do so on—

(a) the court officer; and

(b) each other party.

(3) The applicant must serve the application—

(a) as soon as reasonably practicable; and in any event

(b) not more than 10 business days after the prosecutor discloses material on which the application is based (if the prosecutor is not the applicant).

(4) A party who objects to the introduction of the evidence must—

(a) serve notice on—

(i) the court officer, and

(ii) each other party

not more than 10 business days after service of the application; and

(b) in the notice explain, as applicable—

(i) which, if any, facts of the misconduct set out in the application that party disputes,

(ii) what, if any, facts of the misconduct that party admits instead,

(iii) why the evidence is not admissible, and

(iv) any other objection to the application.

(5) The court—

(a) may determine an application—

(**a**) 1984 c. 60; section 73 was amended by section 90(1) of, and paragraphs 125 and 128 of Schedule 13 to, the Access to Justice Act 1999 (c. 22) and paragraph 285 of Schedule 8 to, the Courts Act 2003 (c. 39).
(**b**) 1851 c. 99.
(**c**) 1967 c. 80.

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

(ii) without a hearing;

(b) must not determine the application unless each party other than the applicant—

(i) is present, or

(ii) has had at least 10 business days in which to serve a notice of objection;

(c) may adjourn the application; and

(d) may discharge or vary a determination where it can do so under—

(i) section 8B of the Magistrates' Courts Act 1980(**a**) (ruling at pre-trial hearing in a magistrates' court), or

(ii) section 9 of the Criminal Justice Act 1987(**b**), or section 31 or 40 of the Criminal Procedure and Investigations Act 1996(**c**) (ruling at preparatory or other pre-trial hearing in the Crown Court).

[Note. See also rule 21.5 (reasons for decisions must be given in public).]

Notice to introduce evidence of a defendant's bad character

21.4.—(1) This rule applies where a party wants to introduce evidence of a defendant's bad character.

(2) A prosecutor or co-defendant who wants to introduce such evidence must serve notice on—

(a) the court officer; and

(b) each other party.

(3) A prosecutor must serve any such notice not more than—

(a) 20 business days after the defendant pleads not guilty, in a magistrates' court; or

(b) 10 business days after the defendant pleads not guilty, in the Crown Court.

(4) A co-defendant who wants to introduce such evidence must serve the notice—

(a) as soon as reasonably practicable; and in any event

(b) not more than 10 business days after the prosecutor discloses material on which the notice is based.

(5) A party who objects to the introduction of the evidence identified by such a notice must—

(a) apply to the court to determine the objection;

(b) serve the application on—

(i) the court officer, and

(ii) each other party

not more than 10 business days after service of the notice; and

(c) in the application explain, as applicable—

(i) which, if any, facts of the misconduct set out in the notice that party disputes,

(ii) what, if any, facts of the misconduct that party admits instead,

(iii) why the evidence is not admissible,

(**a**) 1980 c. 43; section 8B was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by paragraph 51 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

(**b**) 1987 c. 38; section 9 was amended by section 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 6 of the Criminal Justice Act 1993 (c. 36), sections 72, 74 and 80 of, and paragraph 3 of Schedule 3 and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25), sections 45 and 310 of, and paragraphs 18, 52 and 54 of Schedule 36 and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), article 3 of, and paragraphs 21 and 23 of the Schedule to, S.I. 2004/2035, section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9).

(**c**) 1996 c. 25; section 31 was amended by sections 310, 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).

(iv) why it would be unfair to admit the evidence, and

(v) any other objection to the notice.

(6) The court—

(a) may determine such an application—

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

(ii) without a hearing;

(b) must not determine the application unless the party who served the notice—

(i) is present, or

(ii) has had a reasonable opportunity to respond;

(c) may adjourn the application; and

(d) may discharge or vary a determination where it can do so under—

(i) section 8B of the Magistrates' Courts Act 1980 (ruling at pre-trial hearing in a magistrates' court), or

(ii) section 9 of the Criminal Justice Act 1987, or section 31 or 40 of the Criminal Procedure and Investigations Act 1996 (ruling at preparatory or other pre-trial hearing in the Crown Court).

(7) A party entitled to receive such a notice may waive that entitlement by so informing—

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

(b) the court.

(8) A defendant who wants to introduce evidence of his or her own bad character must—

(a) give notice, in writing or orally—

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

(ii) before the evidence is introduced, either by the defendant or in reply to a question asked by the defendant of another party's witness in order to obtain that evidence; and

(b) in the Crown Court, at the same time give notice (in writing, or orally) of any direction about the defendant's character that the defendant wants the court to give the jury under rule 25.14 (Directions to the jury and taking the verdict).

[Note. See also rule 21.5 (reasons for decisions must be given in public).

If notice is not given as this rule requires, then under section 111(4) of the Criminal Justice Act 2003 the court may take the failure into account in exercising its powers to order costs.]

Reasons for decisions

21.5. The court must announce at a hearing in public (but in the absence of the jury, if there is one) the reasons for a decision—

(a) to admit evidence as evidence of bad character, or to refuse to do so; or

(b) to direct an acquittal or a retrial under section 107 of the Criminal Justice Act 2003.

[Note. See section 110 of the Criminal Justice Act 2003.]

Court's power to vary requirements under this Part

21.6.—(1) The court may—

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

(b) allow an application or notice to be in a different form to one issued under the Practice Direction, or to be made or given orally; and

(c) dispense with a requirement for notice to introduce evidence of a defendant's bad character.

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

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

(b) explain the delay.

PART 22

EVIDENCE OF A COMPLAINANT'S PREVIOUS SEXUAL BEHAVIOUR

Contents of this Part

When this Part applies	rule 22.1
Exercise of court's powers	rule 22.2
Decisions and reasons	rule 22.3
Application for permission to introduce evidence or cross-examine	rule 22.4
Application containing information withheld from another party	rule 22.5
Representations in response	rule 22.6
Special measures, etc. for a witness	rule 22.7
Court's power to vary requirements under this Part	rule 22.8

When this Part applies

22.1. This Part applies in a magistrates' court and in the Crown Court where—

(a) section 41 of the Youth Justice and Criminal Evidence Act 1999(**a**) prohibits the introduction of evidence or cross-examination about any sexual behaviour of the complainant of a sexual offence; and

(b) despite that prohibition, a defendant wants to introduce such evidence or to cross-examine a witness about such behaviour.

[Note. Section 41 of the Youth Justice and Criminal Evidence Act 1999 prohibits evidence or cross-examination about the sexual behaviour of a complainant of a sexual offence, subject to exceptions.

See also—

(a) section 42 of the 1999 Act(**b**)*, which among other things defines 'sexual behaviour' and 'sexual offence';*

(b) section 34, which prohibits cross-examination by a defendant in person of the complainant of a sexual offence (Part 23 contains relevant rules).]

Exercise of court's powers

22.2. The court—

(a) must determine an application under rule 22.4 (Application for permission to introduce evidence or cross-examine)—

(i) at a hearing in private, and

(ii) in the absence of the complainant;

(b) must not determine the application unless—

(**a**) 1999 c. 23.

(**b**) 1999 c. 23; section 42 was amended by paragraph 73 of Schedule 3 and Schedule 37 to the Criminal Justice Act 2003 (c. 44).

(i) each party other than the applicant is present, or has had at least 10 business days in which to make representations, and

(ii) the court is satisfied that it has been able to take adequate account of the complainant's rights;

(c) may adjourn the application; and

(d) may discharge or vary a determination where it can do so under—

(i) section 8B of the Magistrates' Courts Act 1980(**a**) (ruling at pre-trial hearing in a magistrates' court), or

(ii) section 9 of the Criminal Justice Act 1987(**b**), or section 31 or 40 of the Criminal Procedure and Investigations Act 1996(**c**) (ruling at preparatory or other pre-trial hearing in the Crown Court).

[Note. See also section 43 of the Youth Justice and Criminal Evidence Act 1999(**d**)*, which among other things requires an application under section 41 of the Act to be heard in private and in the absence of the complainant.*

At a pre-trial hearing a court may make binding rulings about the admissibility of evidence and about questions of law under sections 31 and 40 of the Criminal Procedure and Investigations Act 1996(**e**) *and section 8A of the Magistrates' Courts Act 1980*(**f**)*.]*

Decisions and reasons

22.3.—(1) A prosecutor who wants to introduce the evidence of a complainant in respect of whom the court allows the introduction of evidence or cross-examination about any sexual behaviour must—

(a) inform the complainant of the court's decision as soon as reasonably practicable; and

(b) explain to the complainant any arrangements that as a result will be made for him or her to give evidence.

(2) The court must—

(a) promptly determine an application; and

(b) allow the prosecutor sufficient time to comply with the requirements of—

(i) paragraph (1), and

(ii) the code of practice issued under section 32 of the Domestic Violence, Crime and Victims Act 2004(**g**) or under section 2 of the Victims and Prisoners Act 2024(**h**).

(3) The court must announce at a hearing in public—

(a) the reasons for a decision to allow or refuse an application under rule 22.4; and

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(**a**) 1980 c. 43; section 8B was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by paragraph 51 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

(**b**) 1987 c. 38; section 9 was amended by section 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 6 of the Criminal Justice Act 1993 (c. 36), sections 72, 74 and 80 of, and paragraph 3 of Schedule 3 and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25), sections 45 and 310 of, and paragraphs 18, 52 and 54 of Schedule 36 and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), article 3 of, and paragraphs 21 and 23 of the Schedule to, S.I. 2004/2035, section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9).

(**c**) 1996 c. 25; section 31 was amended by sections 310, 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).

(**d**) 1999 c. 23; section 43(3) was amended by section 109(1) of, and paragraph 384(g) of Schedule 8 to, the Courts Act 2003 (c. 39).

(**e**) 1996 c. 25; section 31 was amended by sections 310, 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).

(**f**) 1980 c. 43; section 8A was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by S.I. 2006/2493 and paragraphs 12 and 14 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**g**) 2004 c. 28; section 32 was amended by article 8 of, and paragraph 10 of the Schedule to, S.I. 2007/2128.

(**h**) 2024 c. 21.

(b) if it allows such an application, the extent to which evidence may be introduced or questions asked.

[Note. Under section 43 of the Youth Justice and Criminal Evidence Act 1999—

(a) the reasons for the court's decision on an application must be given in open court; and

(b) the court must state in open court the extent to which evidence may be introduced or questions asked.

Under section 32 of the Domestic Violence, Crime and Victims Act 2004, the Secretary of State for Justice must issue a code of practice as to the services to be provided by specified persons to a victim of criminal conduct. Section 2 of the Victims and Prisoners Act 2024 imposes a corresponding obligation. Under section 2(13) of the 2024 Act, until the first code of practice issued under section 2 is in operation, references in sections 5 to 12 and 32 of that Act to the "victims' code" are references to the code of practice issued under section 32 of the 2004 Act for the time being in operation.]

Application for permission to introduce evidence or cross-examine

22.4.—(1) A defendant who wants to introduce evidence or cross-examine a witness about any sexual behaviour of the complainant must—

(a) serve an application for permission to do so on—

(i) the court officer, and

(ii) each other party; and

(b) serve the application—

(i) as soon as reasonably practicable after becoming aware of the grounds for doing so, and in any event

(ii) not more than 10 business days after the prosecutor discloses material on which the application is based.

(2) The application must—

(a) identify the issue to which the defendant says the complainant's sexual behaviour is relevant;

(b) give particulars of—

(i) any evidence that the defendant wants to introduce, and

(ii) any questions that the defendant wants to ask;

(c) identify the exception to the prohibition in section 41 of the Youth Justice and Criminal Evidence Act 1999 on which the defendant relies; and

(d) give the name and date of birth of any witness whose evidence about the complainant's sexual behaviour the defendant wants to introduce.

Application containing information withheld from another party

22.5.—(1) This rule applies where—

(a) an applicant serves an application under rule 22.4 (Application for permission to introduce evidence or cross-examine); and

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

(2) The applicant must—

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

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

(c) in that other part, explain why the applicant has withheld that information from that other party.

(3) If the court so directs, the hearing of an application to which this rule applies may be, wholly or in part, in the absence of a party from whom information has been withheld.

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

(a) the general rule is that the court must consider, in the following sequence—

(i) representations first by the applicant and then by each other party, in all the parties' presence, and then

(ii) further representations by the applicant, in the absence of a party from whom information has been withheld; but

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

[Note. See section 43(3)(c) of the Youth Justice and Criminal Evidence Act 1999.]

Representations in response

22.6.—(1) This rule applies where a party wants to make representations about—

(a) an application under rule 22.4 (Application for permission to introduce evidence or cross-examine); or

(b) a proposed variation or discharge of a decision allowing such an application.

(2) Such a party must—

(a) serve the representations on—

(i) the court officer, and

(ii) each other party; and

(b) do so not more than 10 business days after, as applicable—

(i) service of the application, or

(ii) notice of the proposal to vary or discharge.

(3) Where representations include information that the person making them thinks ought not be revealed to another party, that person must—

(a) omit that information from the representations served on that other party;

(b) mark the information to show that, unless the court otherwise directs, it is only for the court; and

(c) with that information include an explanation of why it has been withheld from that other party.

(4) Representations against an application under rule 22.4 must explain the grounds of objection.

(5) Representations against the variation or discharge of a decision must explain why it should not be varied or discharged.

Special measures, etc. for a witness

22.7.—(1) This rule applies where the court allows an application under rule 22.4 (Application for permission to introduce evidence or cross-examine).

(2) Despite the time limits in rule 18.4 (Making an application for a direction or order)—

(a) a party may apply for a special measures direction or for the variation of an existing special measures direction not more than 10 business days after the court's decision; and

(b) the court may shorten the time for opposing that application.

(3) Where the court allows the cross-examination of a witness, the court must give directions for the appropriate treatment and questioning of that witness in accordance with rule 3.8(6) and (7) (setting ground rules for the conduct of questioning).

[Note. Special measures to improve the quality of evidence given by certain witnesses may be directed by the court under section 19 of the Youth Justice and Criminal Evidence Act 1999 and varied under section 20(**a**)*. An application for a special measures direction may be made by a party under Part 18 or the court may make a direction on its own initiative. Rule 18.13(2) sets the usual time limit (10 business days) for opposing a special measures application.]*

Court's power to vary requirements under this Part

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

PART 23

RESTRICTION ON CROSS-EXAMINATION BY A DEFENDANT

Contents of this Part

General rules

When this Part applies — rule 23.1
Appointment of advocate to cross-examine witness — rule 23.2

Application to prohibit cross-examination

Exercise of court's powers — rule 23.3
Application to prohibit cross-examination — rule 23.4
Application to discharge prohibition imposed by the court — rule 23.5
Application containing information withheld from another party — rule 23.6
Representations in response — rule 23.7
Court's power to vary requirements — rule 23.8

GENERAL RULES

When this Part applies

23.1. This Part applies where—

(a) a defendant may not cross-examine in person a witness because of section 34 or section 35 of the Youth Justice and Criminal Evidence Act 1999(**b**) (Complainants in proceedings for sexual offences; Child complainants and other child witnesses); or

(b) the court can prohibit a defendant from cross-examining in person a witness under section 36 of that Act(**c**) (Direction prohibiting accused from cross-examining particular witness).

[Note. Under section 34 of the Youth Justice and Criminal Evidence Act 1999, no defendant charged with a sexual offence may cross-examine in person a witness who is the complainant, either—

(a) in connection with that offence; or

(b) in connection with any other offence (of whatever nature) with which that defendant is charged in the proceedings.

Under section 35 of the 1999 Act, no defendant charged with an offence listed in that section may cross-examine in person a protected witness, either—

(**a**) 1999 c. 23; section 20(6) was amended by paragraph 384(a) of Schedule 8 to the Courts Act 2003 (c. 39).
(**b**) 1999 c. 23; section 35 was amended by sections 139 and 140 of, and paragraph 41 of Schedule 6 and Schedule 7 to, the Sexual Offences Act 2003 (c. 42), section 148 of, and paragraphs 35 and 36 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4) and section 105 of the Coroners and Justice Act 2009 (c. 25).
(**c**) 1999 c. 23.

(a) in connection with that offence; or

(b) in connection with any other offence (of whatever nature) with which that defendant is charged in the proceedings.

A 'protected witness' is one who—

(a) either is the complainant or is alleged to have been a witness to the commission of the offence; and

(b) either is a child, within the meaning of section 35, or is due to be cross-examined after giving evidence in chief—

(i) by means of a video recording made when the witness was a child, or

(ii) in any other way when the witness was a child.

Under section 36 of the 1999 Act, where neither section 34 nor section 35 applies the court may give a direction prohibiting the defendant from cross-examining, or further cross-examining, in person a witness, on application by the prosecutor or on the court's own initiative. See also rules 23.3 to 23.7.]

Appointment of advocate to cross-examine witness

23.2.—(1) This rule applies where a defendant may not cross-examine in person a witness in consequence of—

(a) the prohibition imposed by section 34 or section 35 of the Youth Justice and Criminal Evidence Act 1999; or

(b) a prohibition imposed by the court under section 36 of the 1999 Act.

(2) The court must, as soon as practicable, explain in terms the defendant can understand (with help, if necessary)—

(a) the prohibition and its effect;

(b) that if the defendant will not be represented by a lawyer with a right of audience in the court for the purposes of the case then the defendant is entitled to arrange for such a lawyer to cross-examine the witness on his or her behalf;

(c) that the defendant must notify the court officer of the identity of any such lawyer, with details of how to contact that person, by no later than a date set by the court; and

(d) that if the defendant does not want to make such arrangements, or if the defendant gives no such notice by that date, then—

(i) the court must decide whether it is necessary in the interests of justice to appoint such a lawyer to cross-examine the witness in the defendant's interests, and

(ii) if the court decides that that is necessary, the court will appoint a lawyer chosen by the court who will not be responsible to the defendant.

(3) Having given those explanations, the court must—

(a) ask whether the defendant wants to arrange for a lawyer to cross-examine the witness, and set a date by when the defendant must notify the court officer of the identity of that lawyer if the answer to that question is 'yes'; and

(b) if the answer to that question is 'no', or if by the date set the defendant has given no such notice—

(i) decide whether it is necessary in the interests of justice for the witness to be cross-examined by an advocate appointed to represent the defendant's interests, and

(ii) if the court decides that that is necessary, give directions for the appointment of such an advocate.

(4) The court may give the explanations and ask the questions required by this rule—

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

(b) without a hearing, by written notice to the defendant.

(5) The court may extend (even after it has expired) the time limit that it sets under paragraph (3)(a)—

(a) on application by the defendant; or

(b) on its own initiative.

(6) Paragraphs (7), (8), (9) and (10) apply where the court appoints an advocate.

(7) The directions that the court gives under paragraph (3)(b)(ii) must provide for the supply to the advocate of a copy of—

(a) all material served by one party on the other, whether before or after the advocate's appointment, to which applies—

(i) Part 8 (Initial details of the prosecution case),

(ii) in the Crown Court, rule 3.19 (service of prosecution evidence in a case sent for trial),

(iii) Part 16 (Written witness statements),

(iv) Part 19 (Expert evidence),

(v) Part 20 (Hearsay evidence),

(vi) Part 21 (Evidence of bad character), or

(vii) Part 22 (Evidence of a complainant's previous sexual behaviour);

(b) any material disclosed, given or served, whether before or after the advocate's appointment, which is—

(i) prosecution material disclosed to the defendant under section 3 (Initial duty of prosecutor to disclose) or section 7A (Continuing duty of prosecutor to disclose) of the Criminal Procedure and Investigations Act 1996(**a**),

(ii) a defence statement given by the defendant under section 5 (Compulsory disclosure by accused) or section 6 (Voluntary disclosure by accused) of the 1996 Act(**b**),

(iii) a defence witness notice given by the defendant under section 6C of that Act(**c**) (Notification of intention to call defence witnesses), or

(iv) an application by the defendant under section 8 of that Act(**d**) (Application by accused for disclosure);

(c) any case management questionnaire prepared for the purposes of the trial or, as the case may be, the appeal; and

(d) all case management directions given by the court for the purposes of the trial or the appeal.

(8) Where the defendant has given a defence statement—

(a) section 8(2) of the Criminal Procedure and Investigations Act 1996 is modified to allow the advocate, as well as the defendant, to apply for an order for prosecution disclosure under that subsection if the advocate has reasonable cause to believe that there is prosecution material concerning the witness which is required by section 7A of the Act to be disclosed to the defendant and has not been; and

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(**a**) 1996 c. 25; section 3 was amended by section 82 of, and paragraph 7 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23), section 32 of, and paragraphs 20 and 21 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and section 271 of, and paragraph 39 of Schedule 10 to, the Investigatory Powers Act 2016 (c. 25). Section 7A was inserted by section 37 of the Criminal Justice Act 2003 (c. 44) and was amended by section 271 of, and paragraph 39 of Schedule 10 to, the Investigatory Powers Act 2016 (c. 25).

(**b**) 1996 c. 25; section 5 was amended by section 119 of, and paragraph 126 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), in respect of certain proceedings only, and by section 33 of, and paragraph 66 of Schedule 3, paragraphs 20 and 23 of Schedule 36 and Parts 3 and 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44). Section 6 was amended by paragraphs 20 and 24 of Schedule 36 and Part 3 of Schedule 37 to the Criminal Justice Act 2003 (c. 44). For transitional provisions and savings see paragraph (2) of Schedule 2 to S.I. 2005/950.

(**c**) 1996 c. 25; section 6C was inserted by section 34 of the Criminal Justice Act 2003 (c. 44).

(**d**) 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), section 38 of the Criminal Justice Act 2003 (c. 44) and section 271 of, and paragraph 39 of Schedule 10 to, the Investigatory Powers Act 2016 (c. 25).

(b) rule 15.5 (Defendant's application for prosecution disclosure) applies to an application by the advocate as it does to an application by the defendant.

(9) Before receiving evidence the court must establish, with the active assistance of the parties and of the advocate, and in the absence of any jury in the Crown Court—

(a) what issues will be the subject of the advocate's cross-examination; and

(b) whether the court's permission is required for any proposed question, for example where Part 21 or Part 22 applies.

(10) The appointment terminates at the conclusion of the cross-examination of the witness.

[Note. See section 38 of the Youth Justice and Criminal Evidence Act 1999(**a**)*. Under section 38(8) the references in that section to a 'legal representative' are to a representative who is an advocate within the meaning of rule 2.2.*

Under section 38(7) of the 1999 Act, where the court appoints an advocate Criminal Procedure Rules may apply with modifications any of the provisions of Part I of the Criminal Procedure and Investigations Act 1996. A summary of the disclosure requirements of the 1996 Act is at the end of Part 15 (Disclosure). Under section 5 of that Act, in the Crown Court the defendant must give a defence statement. Under section 6, in a magistrates' court the defendant may give such a statement but need not do so. Under section 6C, in the Crown Court and in magistrates' courts the defendant must give a defence witness notice indicating whether he or she intends to call any witnesses (other than him or herself) and, if so, identifying them. Under section 8 a defendant may apply for prosecution disclosure only if the defendant has given a defence statement.]

APPLICATION TO PROHIBIT CROSS-EXAMINATION

Exercise of court's powers

23.3.—(1) The court may decide whether to impose or discharge a prohibition against cross-examination under section 36 of the Youth Justice and Criminal Evidence Act 1999—

(a) at a hearing, in public or in private, or without a hearing; and

(b) in a party's absence, if that party—

(i) applied for the prohibition or discharge, or

(ii) has had at least 10 business days in which to make representations.

(2) The court must announce, at a hearing in public before the witness gives evidence, the reasons for a decision—

(a) to impose or discharge such a prohibition; or

(b) to refuse to do so.

[Note. See section 37 of the Youth Justice and Criminal Evidence Act 1999(**b**)*.]*

Application to prohibit cross-examination

23.4.—(1) This rule applies where under section 36 of the Youth Justice and Criminal Evidence Act 1999 the prosecutor wants the court to prohibit the cross-examination of a witness by a defendant in person.

(2) The prosecutor must—

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

(b) serve the application on—

(**a**) 1999 c. 23; section 38 was amended by section 109 of, and paragraph 384(f) of Schedule 8 to, the Courts Act 2003 (c. 39).
(**b**) 1999 c. 23; section 37 was amended by section 109 of, and paragraph 384(e) of Schedule 8 to, the Courts Act 2003 (c. 39).

(i) the court officer,

(ii) the defendant who is the subject of the application, and

(iii) any other defendant, unless the court otherwise directs.

(3) The application must—

(a) report any views that the witness has expressed about whether he or she is content to be cross-examined by the defendant in person;

(b) identify—

(i) the nature of the questions likely to be asked, having regard to the issues in the case,

(ii) any relevant behaviour of the defendant at any stage of the case, generally and in relation to the witness,

(iii) any relationship, of any nature, between the witness and the defendant,

(iv) any other defendant in the case who is subject to such a prohibition in respect of the witness, and

(v) any special measures direction made in respect of the witness, or for which an application has been made;

(c) explain why the quality of evidence given by the witness on cross-examination—

(i) is likely to be diminished if no such prohibition is imposed, and

(ii) would be likely to be improved if it were imposed; and

(d) explain why it would not be contrary to the interests of justice to impose the prohibition.

Application to discharge prohibition imposed by the court

23.5.—(1) A party who wants the court to discharge a prohibition against cross-examination which the court imposed under section 36 of the Youth Justice and Criminal Evidence Act 1999 must—

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

(b) serve the application on—

(i) the court officer, and

(ii) each other party.

(2) The applicant must—

(a) explain what material circumstances have changed since the prohibition was imposed; and

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

[Note. Under section 37 of the Youth Justice and Criminal Evidence Act 1999, the court can discharge a prohibition against cross-examination which it has imposed—

(a) on application, if there has been a material change of circumstances; or

(b) on its own initiative.]

Application containing information withheld from another party

23.6.—(1) This rule applies where—

(a) an applicant serves an application for the court to impose a prohibition against cross-examination, or for the discharge of such a prohibition; and

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

(2) The applicant must—

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

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

(c) in that other part, explain why the applicant has withheld that information from that other party.

(3) Any hearing of an application to which this rule applies—

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

(b) if the court so directs, may be, wholly or in part, in the absence of a party from whom information has been withheld.

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

(a) the general rule is that the court must consider, in the following sequence—

(i) representations first by the applicant and then by each other party, in all the parties' presence, and then

(ii) further representations by the applicant, in the absence of a party from whom information has been withheld; but

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

[Note. See section 37 of the Youth Justice and Criminal Evidence Act 1999.]

Representations in response

23.7.—(1) This rule applies where a party wants to make representations about—

(a) an application under rule 23.4 for a prohibition against cross-examination;

(b) an application under rule 23.5 for the discharge of such a prohibition; or

(c) a prohibition or discharge that the court proposes on its own initiative.

(2) Such a party must—

(a) serve the representations on—

(i) the court officer, and

(ii) each other party;

(b) do so not more than 10 business days after, as applicable—

(i) service of the application, or

(ii) notice of the prohibition or discharge that the court proposes; and

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

(3) Representations against a prohibition must explain in what respect the conditions for imposing it are not met.

(4) Representations against the discharge of a prohibition must explain why it should not be discharged.

(5) Where representations include information that the person making them thinks ought not be revealed to another party, that person must—

(a) omit that information from the representations served on that other party;

(b) mark the information to show that, unless the court otherwise directs, it is only for the court; and

(c) with that information include an explanation of why it has been withheld from that other party.

Court's power to vary requirements

23.8.—(1) The court may—

(a) shorten or extend (even after it has expired) a time limit under rule 23.4 (Application to prohibit cross-examination), rule 23.5 (Application to discharge prohibition imposed by the court) or rule 23.7 (Representations in response); and

(b) allow an application or representations required by any of those rules to be made in a different form to one issued under the Practice Direction, or to be made orally.

(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.

PART 24

TRIAL AND SENTENCE IN A MAGISTRATES' COURT

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[Note. Part 3 contains rules about case management that apply at trial as well as during preparation for trial. The rules in this Part must be read in conjunction with those rules.]

When this Part applies

24.1.—(1) This Part applies in a magistrates' court where the court tries a case or the defendant pleads guilty.

(2) Where the defendant is under 18, in this Part—

(a) a reference to convicting the defendant includes a reference to finding the defendant guilty of an offence; and

(b) a reference to sentence includes a reference to an order made on a finding of guilt.

[Note. A magistrates' court's powers to try an allegation of an offence are contained in section 2 of the Magistrates' Courts Act 1980(**a**)*. In relation to a defendant under 18, they are contained in sections 45, 46 and 48 of the Children and Young Persons Act 1933*(**b**)*.*

(**a**) 1980 c. 43; section 2 was substituted by section 44 of the Courts Act 2003 (c. 39) and amended by section 41 of, and paragraph 51 of Schedule 3 to, the Criminal Justice 2003 (c. 44).

(**b**) 1933 c. 12; section 45 was substituted by section 50 of the Courts Act 2003 (c. 39) and amended by section 15 of, and paragraph 20 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4); section 46 was amended by section 46 of, and Schedule 7 to, the Justices of the Peace Act 1949 (c. 101), section 72 of, and paragraph 4 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54), section 154 of, and paragraph 6 of Schedule 7 to, the Magistrates' Courts Act 1980 (c. 43), sections 68 and 100 of, and paragraph 1 of Schedule 8 and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991

See also section 18 of the Children and Young Persons Act 1963(**a**)*, section 47 of the Crime and Disorder Act 1998*(**b**) *and section 27 of the Sentencing Act 2020*(**c**)*.*

The exercise of the court's powers is affected by—

(a) the classification of the offence (and the general rule, subject to exceptions, is that a magistrates' court must try—

(i) an offence classified as one that can be tried only in a magistrates' court (in other legislation, described as triable only summarily), and

(ii) an offence classified as one that can be tried either in a magistrates' court or in the Crown Court (in other legislation, described as triable either way) that has been allocated for trial in a magistrates' court); and

(b) the defendant's age (and the general rule, subject to exceptions, is that an allegation of an offence against a defendant under 18 must be tried in a magistrates' court sitting as a youth court, irrespective of the classification of the offence and without allocation for trial there).

Under sections 10, 14, 27A, 121 and 148 of the Magistrates' Courts Act 1980(**d**) *and the Justices of the Peace Rules 2016*(**e**)*, the court—*

(a) must comprise at least two but not more than three justices, or a District Judge (Magistrates' Courts) (but a single member can adjourn the hearing);

(b) must not include any member who adjudicated at a hearing to which rule 44.2 applies (defendant's declaration of no knowledge of hearing);

(c) when reaching a verdict, must not include any member who was absent from any part of the hearing;

(d) when passing sentence, need not include any of the members who reached the verdict (but may do so).

Under section 16A of the Magistrates' Courts Act 1980(**f**)*, the court may comprise a single justice where—*

(a) the offence charged is a summary offence not punishable with imprisonment;

(b) the defendant was at least 18 years old when charged or is a corporation;

(c) the court is satisfied that specified documents giving notice of the procedure under that section and containing other specified information have been served on the defendant; and

(d) the defendant has not served notice of an intention to plead not guilty, or of a desire not to be tried in accordance with that section.

(c. 53) and section 109 of, and paragraph 74 of Schedule 8 to, the Courts Act 2003 (c. 39); and section 48 was amended by section 79 of, and Schedule 9 to, the Criminal Justice Act 1948 (c. 58), section 132 of, and Schedule 6 to, the Magistrates' Courts Act 1952 (c. 55), section 64 of, and paragraph 12 of Schedule 3 and Schedule 5 to, the Children and Young Persons Act 1963 (c. 37), sections 72, 79 and 83 of, and Schedules 6, 9 and 10 to, the Children and Young Persons Act 1969 (c. 54), sections 68 and 100 of, and paragraph 1 of Schedule 8 and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53), section 106 of, and Schedule 15 to, the Access to Justice Act 1999 (c. 22) and section 109 of, and paragraph 75 of Schedule 8 to, the Courts Act 2003 (c. 39).

(**a**) 1963 c. 37; section 18 was amended by section 100 of, and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53) and section 168 of, and paragraph 5 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33).

(**b**) 1998 c. 37; section 47 was amended by section 165 of, and Schedule 12 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 332 of, and Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and article 2 of, and paragraph 59 of the Schedule to S.I. 2005/886.

(**c**) 2020 c. 17.

(**d**) 1980 c. 43; section 10 was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53) and section 47 of the Crime and Disorder Act 1998 (c. 37). Section 14 was amended by section 109 of, and paragraph 205 of Schedule 8 to, the Courts Act 2003 (c. 39). Section 27A was inserted by section 46 of the Courts Act 2003 (c. 39). Section 121 was amended by section 61 of the Criminal Justice Act 1988 (c. 33), section 92 of, and paragraph 8 of Schedule 11 to, the Children Act 1989 (c. 41), section 109 of, and paragraph 237 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39). Section 148 was amended by section 109 of, and paragraph 248 of Schedule 8 to, the Courts Act 2003 (c. 39).

(**e**) S.I. 2016/709.

(**f**) 1980 c. 43; section 16A was inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2).

Under section 45 of the Children and Young Persons Act 1933(**a**) *and under the Justices of the Peace Rules 2016, where the court is a youth court comprising justices each member must be authorised to sit as a member of that youth court.*

Under section 150 of the Magistrates' Courts Act 1980(**b**)*, where two or more justices are present one may act on behalf of all.*

Section 59 of the Children and Young Persons Act 1933(**c**) *requires that—*

(a) the expressions 'conviction' and 'sentence' must not be used by a magistrates' court dealing with a defendant under 18; and

(b) a reference in legislation to a defendant who is convicted, to a conviction, or to a sentence, must be read as including a reference to a defendant who is found guilty of an offence, a finding of guilt, or an order made on a finding of guilt, respectively.

Under section 14 of the Magistrates' Courts Act 1980, proceedings which begin with a summons or requisition will become void if the defendant, at any time during or after the trial, makes a statutory declaration that he or she did not know of them until a date after the trial began. See rule 44.2.

Under section 142 of the Magistrates' Courts Act 1980—

(a) where a defendant is convicted by a magistrates' court, the court may order that the case should be heard again by different justices; and

(b) the court may vary or rescind an order which it has made when dealing with a convicted defendant,

if in either case it appears to the court to be in the interests of justice to do so. See rule 44.3.

See also Part 32 (Breach, revocation and amendment of community and other orders). Rule 32.4 (Procedure on application by responsible officer) applies rules in this Part to the procedure with which that rule deals.]

General rules

24.2.—(1) Where this Part applies—

(a) the general rule is that the hearing must be in public; but

(b) the court may exercise any power it has to—

(i) impose reporting restrictions,

(ii) withhold information from the public, or

(iii) order a hearing in private; and

(c) unless the court otherwise directs, only the following may attend a hearing in a youth court—

(i) the parties and their legal representatives,

(ii) a defendant's parents, guardian or other supporting adult,

(iii) a witness,

(iv) anyone else directly concerned in the case, and

(v) a representative of a news-gathering or reporting organisation.

(2) Before proceeding to trial the court must ensure that it has given—

(**a**) 1933 c. 12; section 45 was substituted by section 50 of the Courts Act 2003 (c. 39) and amended by section 15 of, and paragraph 20 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).

(**b**) 1980 c. 43; section 150 has been amended but none is relevant to the note to this rule.

(**c**) 1933 c. 12; section 59 was amended by sections 79 and 83 of, and Schedules 9 and 10 to, the Criminal Justice Act 1948 (c. 58) and section 18 of the Costs in Criminal Cases Act 1952 (c. 48).

(a) any direction needed to impose a reporting restriction or to withhold information from the public; and

(b) subject to that, any direction needed to facilitate public observation and reporting.

(3) Unless already done, the justices' legal adviser or the court must—

(a) read the allegation of the offence to the defendant;

(b) explain, in terms the defendant can understand (with help, if necessary)—

(i) the allegation, and

(ii) what the procedure at the hearing will be;

(c) ask whether the defendant has been advised about the potential effect on sentence of a guilty plea;

(d) ask whether the defendant pleads guilty or not guilty; and

(e) take the defendant's plea.

(4) The court may adjourn the hearing—

(a) at any stage, to the same or to another magistrates' court; or

(b) to a youth court, where the court is not itself a youth court and the defendant is under 18.

(5) Paragraphs (1), (2) and (3) of this rule do not apply where the court tries a case under rule 24.9 (Single justice procedure: special rules).

[Note. See sections 10, 16A, 27A, 29 and 121 of the Magistrates' Courts Act 1980(**a**) *and sections 46 and 47 of the Children and Young Persons Act 1933.*

Where the case has been allocated for trial in a magistrates' court, part of the procedure under rule 24.2(2) will have taken place.

Part 6 contains rules about reporting, etc. restrictions. For a list of the court's powers to impose reporting and access restrictions, see the note to rule 6.1.

Under section 34A of the Children and Young Persons Act 1933(**b**)*, the court—*

(a) may require the defendant's parents or guardian to attend court with the defendant, where the defendant is under 18; and

(b) must do so, where the defendant is under 16,

unless satisfied that that would be unreasonable.

Part 7 contains rules about (among other things) the issue of a summons to a parent or guardian.

Part 46 (Representatives) contains rules allowing a parent, guardian or other supporting adult to help a defendant under 18.]

Procedure on plea of not guilty

24.3.—(1) This rule applies—

(a) if the defendant has—

(i) entered a plea of not guilty, or

(ii) not entered a plea; or

(b) if, in either case, it appears to the court that there may be grounds for making a hospital order without convicting the defendant.

(**a**) 1980 c. 43; section 29 was amended by paragraph 40 of Schedule 11 and paragraph 22 of Schedule 12 to the Criminal Justice Act 1991 (c. 53), paragraph 41 of Schedule 10 to the Criminal Justice and Public Order Act 1994 (c. 33) and paragraph 51 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**b**) 1933 c. 12; section 34A was inserted by section 56 of the Criminal Justice Act 1991 (c. 53) and amended by section 107 of, and paragraph 1 of Schedule 5 to, the Local Government Act 2000 (c. 22) and S.I. 2016/413.

(2) If a not guilty plea was taken on a previous occasion, the justices' legal adviser or the court must ask the defendant to confirm that plea.

(3) In the following sequence—

(a) the prosecutor may summarise the prosecution case, concisely identifying the relevant law, outlining the facts and indicating the matters likely to be in dispute;

(b) to help the members of the court to understand the case and resolve any issue in it, the court may invite the defendant concisely to identify what is in issue;

(c) the prosecutor must introduce the evidence on which the prosecution case relies;

(d) at the conclusion of the prosecution case, on the defendant's application or on its own initiative, the court—

(i) may acquit on the ground that the prosecution evidence is insufficient for any reasonable court properly to convict, but

(ii) must not do so unless the prosecutor has had an opportunity to make representations;

(e) the justices' legal adviser or the court must explain, in terms the defendant can understand (with help, if necessary)—

(i) the right to give evidence, and

(ii) the potential effect of not doing so at all, or of refusing to answer a question while doing so;

(f) the defendant may introduce evidence;

(g) a party may introduce further evidence if it is then admissible (for example, because it is in rebuttal of evidence already introduced);

(h) the prosecutor may make final representations in support of the prosecution case, where—

(i) the defendant is represented by a legal representative, or

(ii) whether represented or not, the defendant has introduced evidence other than his or her own; and

(i) the defendant may make final representations in support of the defence case.

(4) Where a party wants to introduce evidence or make representations after that party's opportunity to do so under paragraph (3), the court—

(a) may refuse to receive any such evidence or representations; and

(b) must not receive any such evidence or representations after it has announced its verdict.

(5) If the court—

(a) convicts the defendant; or

(b) makes a hospital order instead of doing so,

it must give sufficient reasons to explain its decision.

(6) If the court acquits the defendant, it may—

(a) give an explanation of its decision; and

(b) exercise any power it has to make—

(i) a behaviour order, or

(ii) a costs order.

[Note. See section 9 of the Magistrates' Courts Act 1980(**a**)*.*

(**a**) 1980 c. 43.

Under section 37(3) of the Mental Health Act 1983(**a**)*, if the court is satisfied that the defendant did the act or made the omission alleged, then it may make a hospital order without convicting the defendant.*

Under section 35 of the Criminal Justice and Public Order Act 1994(**b**)*, the court may draw such inferences as appear proper from a defendant's failure to give evidence, or refusal without good cause to answer a question while doing so. The procedure set out in rule 24.3(3)(e) is prescribed by that section.*

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

Section 2 of the Criminal Procedure Act 1865(**c**) *and section 3 of the Criminal Evidence Act 1898*(**d**) *restrict the circumstances in which the prosecutor may make final representations without the court's permission.*

See rule 24.11 for the procedure if the court convicts the defendant.

Part 31 contains rules about behaviour orders.]

Evidence of a witness in person

24.4.—(1) This rule applies where a party wants to introduce evidence by calling a witness to give that evidence in person.

(2) Unless the court otherwise directs—

(a) a witness waiting to give evidence must not wait inside the courtroom, unless that witness is—

(i) a party, or

(ii) an expert witness;

(b) a witness who gives evidence in the courtroom must do so from the place provided for that purpose; and

(c) a witness' address must not be announced unless it is relevant to an issue in the case.

(3) Before the witness gives evidence—

(a) the party who introduces the witness' evidence must explain how that evidence is admissible, unless it is only evidence of fact within the witness' direct knowledge; and

(b) the witness must take an oath or affirm, unless other legislation otherwise provides.

(4) In the following sequence—

(a) the party who calls a witness must ask questions in examination-in-chief;

(b) every other party may ask questions in cross-examination; and

(c) the party who called the witness may ask questions in re-examination.

(5) If other legislation so permits, at any time while giving evidence a witness may refer to a record of that witness' recollection of events.

(6) The justices' legal adviser or the court may—

(a) ask a witness questions; and in particular

(b) where the defendant is not represented, ask any question necessary in the defendant's interests.

(**a**) 1983 c. 20; section 37(3) was amended by sections 1 and 55 of, and paragraphs 1 and 7 of Schedule 1 and Schedule 11 to, the Mental Health Act 2007 (c. 12).

(**b**) 1994 c. 33; section 35 was amended by sections 35 and 120 of, and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37). The Criminal Justice Act 2003 (c. 44) amendment to section 35 is not relevant to procedure in magistrates' courts.

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

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

[Note. Section 53 of the Youth Justice and Criminal Evidence Act 1999(**a**) *provides that everyone is competent to give evidence in criminal proceedings unless unable to understand questions put or give intelligible answers. See also section 1 of the Criminal Evidence Act 1898*(**b**)*.*

Part 19 contains rules about the introduction of evidence of expert opinion. Part 20 contains rules about the introduction of hearsay evidence.

Sections 1, 3, 5 and 6 of the Oaths Act 1978(**c**) *provide for the taking of oaths and the making of affirmations, and for the words that must be used. Section 28 of the Children and Young Persons Act 1963*(**d**) *provides that in a youth court, and where a witness in any court is under 18, an oath must include the words 'I promise' in place of the words 'I swear'. Under sections 55 and 56 of the Youth Justice and Criminal Evidence Act 1999, a person may give evidence without taking an oath, or making an affirmation, where that person (i) is under 14 or (ii) has an insufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth which is involved in taking an oath.*

The questions that may be put to a witness—

(a) by a party are governed by rules of evidence, for example—

(i) the rule that a question must be relevant to what is in issue,

(ii) the rule that the party who calls a witness must not ask that witness a leading question about what is in dispute, and

(iii) the rule that a party who calls a witness may contradict that witness only in limited circumstances (see section 3 of the Criminal Procedure Act 1865)(**e**)*;*

(b) by the justices' legal adviser or the court are in their discretion, but that is subject to—

(i) rules of evidence, and

(ii) rule 1.3 (the application by the court of the overriding objective).

Under sections 34, 35 and 36 of the Youth Justice and Criminal Evidence Act 1999(**f**)*, a defendant who is not represented may not cross-examine a witness where—*

(a) the defendant is charged with a sexual offence against the witness;

(b) the defendant is charged with a sexual offence, or one of certain other offences, and the witness is a child; or

(c) the court prohibits the defendant from cross-examining the witness.

Part 23 contains rules relevant to restrictions on cross-examination.

Under section 139 of the Criminal Justice Act 2003(**g**)*, a witness may refresh his or her memory by referring to a record made before the hearing, either contained in a document made or verified by the witness, or in the transcript of a sound recording, if—*

(a) the witness states that it records his or her recollection of events at that earlier time; and

(b) that recollection is likely to have been significantly better when the record was made than at the time of the hearing.

(**a**) 1999 c. 23.

(**b**) 1898 c. 36; section 1 was amended by section 1 of the Criminal Evidence Act 1979 (c. 16), section 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), sections 80(9) and 119(2) of, and Schedule 7 to, the Police and Criminal Evidence Act 1984 (c. 60), sections 31 and 168 of, and paragraph 2 of Schedule 10, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 67 of, and paragraph 1 of Schedule 4, and Schedule 6 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23) and sections 331 and 332 of, and paragraph 80 of Schedule 36, and Part 5 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

(**c**) 1978 c. 19.

(**d**) 1963 c. 37; section 28 was amended by section 2 of the Oaths Act 1978 (c. 19) and section 100 of, and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53).

(**e**) 1865 c. 18.

(**f**) 1999 c. 23; section 35 was amended by sections 139 and 140 of, and paragraph 41 of Schedule 6 and Schedule 7 to, the Sexual Offences Act 2003 (c. 42) and section 148 of, and paragraphs 35 and 36 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4).

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

In some circumstances, a witness may give evidence in accordance with special measures directed by the court under section 19 of the Youth Justice and Criminal Evidence Act 1999(**a**)*, or by live link under section 32 of the Criminal Justice Act 1988*(**b**) *or section 51 of the Criminal Justice Act 2003. Part 18 contains relevant rules.]*

Evidence of a witness in writing

24.5.—(1) This rule applies where a party wants to introduce in evidence the written statement of a witness to which applies—

(a) Part 16 (Written witness statements);

(b) Part 19 (Expert evidence); or

(c) Part 20 (Hearsay evidence).

(2) That party must explain how the evidence is admissible unless it is—

(a) evidence of fact within the direct knowledge of the person who made the written statement served under rule 16.4 (Written witness statement in evidence);

(b) contained in an expert's report served under rule 19.3 (Introduction of expert evidence); or

(c) identified as hearsay in a notice served under rule 20.2 (Notice to introduce hearsay evidence).

(3) If the court admits such evidence—

(a) the court must read the statement; and

(b) unless the court otherwise directs, if any member of the public, including any reporter, is present, each relevant part of the statement must be read or summarised aloud.

[Note. See Parts 16, 19 and 20, and the other legislation to which those Parts apply. The admissibility of evidence that a party introduces is governed by rules of evidence.

A written witness statement to which Part 16 applies may only be introduced in evidence if there has been no objection within the time limit to which rule 16.4 refers.

An expert report to which Part 19 applies may only be introduced in evidence if it has been served in accordance with rule 19.3.

Rule 20.3 provides for opposing the introduction of hearsay evidence, including such evidence in a document.

Where a witness gives evidence in person, a previous written statement by that witness may be admissible as evidence under section 119 (Inconsistent statements) or under section 120 (Other previous statements of witnesses) of the Criminal Justice Act 2003(**c**)*.]*

Evidence by admission

24.6.—(1) This rule applies where—

(a) a party introduces in evidence a fact admitted by another party; or

(b) parties jointly admit a fact.

(2) Unless the court otherwise directs, a written record must be made of the admission.

(**a**) 1999 c. 23.

(**b**) 1988 c. 33; section 32 was amended by section 55 of the Criminal Justice Act 1991 (c. 53), section 29 of, and paragraph 16 of Schedule 2 to, the Criminal Appeal Act 1995 (c. 35), section 62 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 67 of, and Schedule 6 and paragraph 3 of Schedule 7 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23) and paragraphs 24 and 26 of the Schedule to S.I. 2004/2035.

(**c**) 2003 c. 44; section 120 was amended by sections 112 and 178 of, and Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).

[Note. See section 10 of the Criminal Justice Act 1967(**a**)*. The admissibility of evidence that a party introduces is governed by rules of evidence.]*

Procedure on plea of guilty

24.7.—(1) This rule applies if—

(a) the defendant pleads guilty; and

(b) the court is satisfied that the plea represents a clear acknowledgement of guilt.

(2) The court may convict the defendant without receiving evidence.

[Note. See section 9 of the Magistrates' Courts Act 1980(**b**)*.]*

Written guilty plea: special rules

24.8.—(1) This rule applies where—

(a) the offence alleged—

(i) can be tried only in a magistrates' court, and

(ii) is not one specified under section 12(1)(a) of the Magistrates' Courts Act 1980(**c**);

(b) the defendant is at least 16 years old;

(c) the prosecutor has served on the defendant—

(i) the summons or requisition,

(ii) the material listed in paragraph (2) on which the prosecutor relies to set out the facts of the offence,

(iii) the material listed in paragraph (3) on which the prosecutor relies to provide the court with information relevant to sentence,

(iv) a notice that the procedure set out in this rule applies, and

(v) a notice for the defendant's use if the defendant wants to plead guilty without attending court; and

(d) the prosecutor has served on the court officer—

(i) copies of those documents, and

(ii) a certificate of service of those documents on the defendant.

(2) The material that the prosecutor must serve to set out the facts of the offence is—

(a) a summary of the evidence on which the prosecution case is based;

(b) any—

(i) written witness statement to which Part 16 (Written witness statements) applies, or

(ii) document or extract setting out facts; or

(c) any combination of such a summary, statement, document or extract.

(3) The material that the prosecutor must serve to provide information relevant to sentence is—

(a) details of any previous conviction of the defendant which the prosecutor considers relevant, other than any conviction listed in the defendant's driving record;

(b) if applicable, a notice that the defendant's driving record will be made available to the court; and

(c) a notice containing or describing any other information about the defendant, relevant to sentence, which will be made available to the court.

(**a**) 1967 c. 80.
(**b**) 1980 c. 43.
(**c**) 1980 c. 43; section 12(1)(a) was amended by sections 308 and 332 of, and Part 12 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

(4) A defendant who wants to plead guilty without attending court must, as soon as practicable and in any event no later than the business day before the hearing date—

(a) serve a notice of guilty plea on the court officer; and

(b) include with that notice—

(i) any representations that the defendant wants the court to consider, and

(ii) a statement of the defendant's assets and other financial circumstances.

(5) A defendant who wants to withdraw such a notice must notify the court officer in writing before the hearing date.

(6) If the defendant does not withdraw the notice before the hearing date, then on or after that date—

(a) to establish the facts of the offence and other information about the defendant relevant to sentence, the court may take account only of—

(i) information contained in a document served by the prosecutor under paragraph (1),

(ii) any previous conviction listed in the defendant's driving record, where the offence is under the Road Traffic Regulation Act 1984(**a**), the Road Traffic Act 1988(**b**), the Road Traffic (Consequential Provisions) Act 1988(**c**) or the Road Traffic (Driver Licensing and Information Systems) Act 1989(**d**),

(iii) any other information about the defendant, relevant to sentence, of which the prosecutor served notice under paragraph (1), and

(iv) any representations and any other information served by the defendant under paragraph (4),

and rule 24.11(3) to (9) inclusive must be read accordingly;

(b) unless the court otherwise directs, the prosecutor need not attend; and

(c) the court may accept such a guilty plea and pass sentence in the defendant's absence.

(7) With the defendant's agreement, the court may deal with the case in the same way as under paragraph (6) where the defendant is present and—

(a) has served a notice of guilty plea under paragraph (4); or

(b) pleads guilty there and then.

[Note. The procedure set out in this rule is prescribed by sections 12 and 12A of the Magistrates' Courts Act 1980(**e**)*. Under section 12(1)(a), the Secretary of State can specify offences to which the procedure will not apply. None has been specified.*

Under section 1 of the Magistrates' Courts Act 1980(**f**) *a justice of the peace may issue a summons requiring a defendant to attend court to answer an allegation of an offence. Under section 29 of the Criminal Justice Act 2003*(**g**) *a prosecutor authorised under that section may*

(**a**) 1984 c. 27.
(**b**) 1988 c. 52.
(**c**) 1988 c. 54.
(**d**) 1989 c. 22.
(**e**) 1980 c. 43; section 12 was amended by section 45 of, and paragraph 1 of Schedule 5 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 1 of the Magistrates' Courts (Procedure) Act 1998 (c. 15), section 109 of, and paragraph 203 of Schedule 8 to, the Courts Act 2003 (c. 39), section 308 of, and Part 12 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and section 81 of the Deregulation Act 2015 (c. 20). Section 12A was inserted by section 45 of, and paragraph 2 of Schedule 5 to, the Criminal Justice and Public Order Act 1994 (c. 33) and amended by section 109 of, and paragraph 204 of Schedule 8 to, the Courts Act 2003 (c. 39).
(**f**) 1980 c. 43; section 1 was amended by section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), sections 43 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39), section 31 of, and paragraph 12 of Schedule 7 to, the Criminal Justice Act 2003 (c. 44), section 153 of the Police Reform and Social Responsibility Act 2011 (c. 13), section 50 of, and paragraphs 2 and 3 of Schedule 11 to, the Criminal Justice and Courts Act 2015 (c. 2) and section 67 of, and paragraph 2 of Schedule 12 to, the Space Industry Act 2018 (c. 5). It is further amended by paragraphs 7 and 8 of Schedule 36 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.
(**g**) 2003 c. 44; section 29 has been brought into force for certain purposes only (see S.I. 2007/1999, 2008/1424, 2009/2879, 2010/3005, 2011/2188, 2012/825 and 2014/633). It was amended by section 50 of, and paragraph 130 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11), section 59 of, and paragraph 196 of Schedule 4 to, the Serious

issue a written charge alleging an offence and a requisition requiring a defendant to attend court. Part 7 contains relevant rules.

For the court's power, where this rule applies, to take account of a previous conviction listed in a defendant's driving record, see section 13(3A) of the Road Traffic Offenders Act 1988(**a**)*.*

See also rule 24.11(10)(a) under which the court must adjourn where the defendant is absent before passing a custodial sentence or imposing a disqualification.]

Single justice procedure: special rules

24.9.—(1) This rule applies where—

(a) the offence alleged—

(i) can be tried only in a magistrates' court, and

(ii) is not one punishable with imprisonment;

(b) the defendant is at least 18 years old or is a corporation;

(c) the prosecutor has served on the defendant—

(i) a written charge,

(ii) the material listed in paragraph (2) on which the prosecutor relies to set out the facts of the offence,

(iii) the material listed in paragraph (3) on which the prosecutor relies to provide the court with information relevant to sentence,

(iv) a notice that the procedure set out in this rule applies,

(v) a notice explaining the automatic online conviction option, if that will be available to the defendant, including explanations of penalties and liabilities, of where to obtain more details and of how to accept that option,

(vi) a notice for the defendant's use if the defendant wants to plead guilty and wants to be sentenced by a single justice,

(vii) a notice for the defendant's use if the defendant wants to plead guilty but wants the case dealt with at a hearing by a court comprising more than one justice, and

(viii) a notice for the defendant's use if the defendant wants to plead not guilty; and

(d) the prosecutor has served on the court officer—

(i) copies of those documents, and

(ii) a certificate of service of those documents on the defendant.

(2) The material that the prosecutor must serve to set out the facts of the offence is—

(a) a summary of the evidence on which the prosecution case is based;

(b) any—

(i) written witness statement to which Part 16 (Written witness statements) applies, or

(ii) document or extract setting out facts; or

(c) any combination of such a summary, statement, document or extract.

(3) The material that the prosecutor must serve to provide information relevant to sentence is—

(a) details of any previous conviction of the defendant which the prosecutor considers relevant, other than any conviction listed in the defendant's driving record;

(b) if applicable, a notice that the defendant's driving record will be made available to the court; and

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Organised Crime and Police Act 2005 (c. 15), section 15 of, and paragraph 187 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22), S.I. 2014/834 and section 46 of the Criminal Justice and Courts Act 2015 (c. 2).

(**a**) 1988 c. 53; section 13(3A) was inserted by section 2 of the Magistrates' Courts (Procedure) Act 1998 (c. 15).

(c) a notice containing or describing any other information about the defendant, relevant to sentence, which will be made available to the court.

(4) Not more than 15 business days after service on the defendant of the documents listed in paragraph (1)(c)—

(a) a defendant who wants to plead guilty and wants to accept the automatic online conviction option, if that is offered, may do so;

(b) a defendant who wants to plead guilty and wants to be sentenced by a single justice must serve a notice to that effect on the court officer and include with that notice—

(i) any representations that the defendant wants the court to consider, and

(ii) a statement of the defendant's assets and other financial circumstances;

(c) a defendant who wants to plead guilty but wants the case dealt with at a hearing by a court comprising more than one justice must serve a notice to that effect on the court officer; and

(d) a defendant who wants to plead not guilty must serve a notice to that effect on the court officer.

(5) If within 15 business days of service on the defendant of the documents listed in paragraph (1)(c) the defendant accepts the automatic online conviction option (if that is offered) and does not then withdraw that acceptance within the next 5 business days—

(a) at the end of the fifth business day after acceptance the defendant is convicted of the offence and liable to each penalty and other payment specified for it; and

(b) paragraphs (6) to (11) do not apply.

(6) If within 15 business days of service on the defendant of the documents listed in paragraph (1)(c) the defendant serves a notice to plead guilty and to be sentenced by a single justice under paragraph (4)(b)—

(a) the court officer must arrange for the court to deal with the case in accordance with that notice; and

(b) the time for service of any other notice under paragraph (4) expires at once.

(7) If within 15 business days of service on the defendant of the documents listed in paragraph (1)(c) the defendant wants to withdraw a notice served under paragraph (4)(b) (notice to plead guilty and to be sentenced by a single justice), paragraph (4)(c) (notice to plead guilty at a hearing) or paragraph (4)(d) (notice to plead not guilty), the defendant must either—

(a) accept the automatic online conviction option, if that was offered; or

(b) serve—

(i) notice of that withdrawal on the court officer, and

(ii) any substitute notice under paragraph (4).

(8) Paragraph (9) applies where by the date of trial the defendant has not—

(a) served notice under paragraph (4)(c) or (d) of wanting to plead guilty at a hearing, or wanting to plead not guilty; or

(b) given notice to that effect under section 16B(2) of the Magistrates' Courts Act 1980(**a**) (notice objecting to single justice procedure trial).

(9) Where this paragraph applies—

(a) the court may try the case in the parties' absence and without a hearing;

(b) the court may accept any guilty plea of which the defendant has given notice under paragraph (4)(b); and

(c) to establish the facts of the offence and other information about the defendant relevant to sentence, the court may take account only of—

(**a**) 1980 c. 43; section 16B was inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2).

(i) information contained in a document served by the prosecutor under paragraph (1),

(ii) any previous conviction listed in the defendant's driving record, where the offence is under the Road Traffic Regulation Act 1984, the Road Traffic Act 1988, the Road Traffic (Consequential Provisions) Act 1988 or the Road Traffic (Driver Licensing and Information Systems) Act 1989,

(iii) any other information about the defendant, relevant to sentence, of which the prosecutor served notice under paragraph (1), and

(iv) any representations and any other information served by the defendant under paragraph (4)(b)

and rule 24.11(3) to (9) inclusive must be read accordingly.

(10) Paragraph (11) applies where—

(a) the defendant serves on the court officer a notice under paragraph (4)(c) or (d); or

(b) the court which tries the defendant under paragraph (9) adjourns the trial for the defendant to attend a hearing by a court comprising more than one justice.

(11) Where this paragraph applies, the court must exercise its power to issue a summons and—

(a) the rules in Part 7 apply (Starting a prosecution in a magistrates' court) as if the prosecutor had just served an application for a summons to be issued in the same terms as the written charge;

(b) the rules in Part 8 (Initial details of the prosecution case) apply as if the documents served by the prosecutor under paragraph (1) had been served under that Part; and

(c) except for rule 24.8 (Written guilty plea: special rules) and this rule, the rules in this Part apply.

[Note. The procedure set out in this rule is prescribed by sections 16A to 16L of the Magistrates' Courts Act 1980(**a**) *and section 29 of the Criminal Justice Act 2003*(**b**)*. Under section 16A of the 1980 Act, the court may comprise a single justice. Under section 29 of the 2003 Act, a prosecutor authorised under that section may issue a written charge alleging an offence and a single justice procedure notice. Part 7 contains relevant rules.*

Under section 1 of the Magistrates' Courts Act 1980(**c**) *a justice of the peace may issue a summons requiring a defendant to attend court to answer an allegation of an offence. Under sections 16C and 16D of the 1980 Act, a justice may issue a summons requiring a defendant to attend court in the circumstances listed in rule 24.9(10).*

Under section 16K(1) of the Magistrates' Courts Act 1980(**d**) *the time when a conviction takes effect after the defendant accepts the automatic online conviction option, if that is offered, is to be determined in accordance with Criminal Procedure Rules.*

For the court's power, where this rule applies, to take account of—

(a) information contained or described in a document served by the prosecutor under rule 24.9(1), see section 16F of the Magistrates' Courts Act 1980;

(**a**) 1980 c. 43; sections 16A to 16F were inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2). Sections 16G to 16L were inserted by section 3 of the Judicial Review and Courts Act 2022 (c. 35).

(**b**) 2003 c. 44; section 29 has been brought into force for certain purposes only (see S.I. 2007/1999, 2008/1424, 2009/2879, 2010/3005, 2011/2188, 2012/825 and 2014/633). It was amended by section 50 of, and paragraph 130 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11), section 59 of, and paragraph 196 of Schedule 4 to, the Serious Organised Crime and Police Act 2005 (c. 15), section 15 of, and paragraph 187 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22), S.I. 2014/834 and section 46 of the Criminal Justice and Courts Act 2015 (c. 2).

(**c**) 1980 c. 43; section 1 was amended by section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), sections 43 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39), section 31 of, and paragraph 12 of Schedule 7 to, the Criminal Justice Act 2003 (c. 44), section 153 of the Police Reform and Social Responsibility Act 2011 (c. 13), section 50 of, and paragraphs 2 and 3 of Schedule 11 to, the Criminal Justice and Courts Act 2015 (c. 2) and section 67 of, and paragraph 2 of Schedule 12 to, the Space Industry Act 2018 (c. 5). It is further amended by paragraphs 7 and 8 of Schedule 36 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(**d**) 1980 c. 43; section 16K was inserted by section 3 of the Judicial Review and Courts Act 2022 (c. 35).

(b) a previous conviction listed in a defendant's driving record, see section 13(3A) of the Road Traffic Offenders Act 1988(**a**)*.]*

Application to withdraw a guilty plea

24.10.—(1) This rule applies where the defendant wants to withdraw a guilty plea.

(2) The defendant must apply to do so—

(a) as soon as practicable after becoming aware of the reasons for doing so; and

(b) before sentence.

(3) Unless the court otherwise directs, the application must be in writing and the defendant must serve it on—

(a) the court officer; and

(b) the prosecutor.

(4) The application must—

(a) explain why it would be unjust not to allow the defendant to withdraw the guilty plea;

(b) identify—

(i) any witness that the defendant wants to call, and

(ii) any other proposed evidence; and

(c) say whether the defendant waives legal professional privilege, giving any relevant name and date.

Procedure if the court convicts

24.11.—(1) This rule applies if the court convicts the defendant.

(2) The court—

(a) may exercise its power to require—

(i) a statement of the defendant's assets and other financial circumstances,

(ii) a pre-sentence report; and

(b) may (and in some circumstances must) remit the defendant to a youth court for sentence where—

(i) the defendant is under 18, and

(ii) the convicting court is not itself a youth court.

(3) The prosecutor must—

(a) summarise the prosecution case, if the sentencing court has not heard evidence;

(b) identify any offence to be taken into consideration in sentencing;

(c) provide information relevant to sentence, including any statement of the effect of the offence on the victim, the victim's family or others;

(d) where it is likely to assist the court, identify any other matter relevant to sentence, including—

(i) the legislation applicable,

(ii) any sentencing guidelines, or guideline cases,

(iii) aggravating and mitigating features affecting the defendant's culpability and the harm which the offence caused, was intended to cause or might foreseeably have caused, and

(**a**) 1988 c. 53; section 13(3A) was inserted by section 2 of the Magistrates' Courts (Procedure) Act 1998 (c. 15).

(iv) the effect of such of the information listed in paragraph (2)(a) as the court may need to take into account; and

(e) in a youth court, if the maker of a statement to which paragraph (3)(c) refers wishes to read that statement to the court, apply for a direction to which rule 24.2(1)(c) refers (attendance) and for any other direction that the prosecutor wants—

(i) when, or as soon as practicable after, the court convicts the defendant, and

(ii) as a general rule, no later than 5 business days before the hearing at which sentence is due to be passed.

(4) The defendant must provide details of financial circumstances—

(a) in any form required by the court officer; and

(b) by any date directed by the court or by the court officer.

(5) Where the defendant pleads guilty but wants to be sentenced on a different basis to that disclosed by the prosecution case—

(a) the defendant must set out that basis in writing, identifying what is in dispute;

(b) the court may invite the parties to make representations about whether the dispute is material to sentence; and

(c) if the court decides that it is a material dispute, the court must—

(i) invite such further representations or evidence as it may require, and

(ii) decide the dispute.

(6) Where the court has power to order the endorsement of the defendant's driving record, or power to order the defendant to be disqualified from driving—

(a) if other legislation so permits, a defendant who wants the court not to exercise that power must introduce the evidence or information on which the defendant relies;

(b) the prosecutor may introduce evidence; and

(c) the parties may make representations about that evidence or information.

(7) Before the court passes sentence—

(a) the court must—

(i) give the defendant an opportunity to make representations and introduce evidence relevant to sentence, and

(ii) where the defendant is under 18, give the defendant's parents, guardian or other supporting adult, if present, such an opportunity as well; and

(b) the justices' legal adviser or the court must elicit any further information relevant to sentence that the court may require.

(8) If the court requires more information, it may exercise its power to adjourn the hearing for not more than—

(a) 3 weeks at a time, if the defendant will be in custody; or

(b) 4 weeks at a time.

(9) When the court has taken into account all the evidence, information and any report available, the court must—

(a) subject to paragraph (10), as a general rule, pass sentence there and then;

(b) when passing sentence, explain the reasons for deciding on that sentence, unless neither the defendant nor any member of the public, including any reporter, is present;

(c) when passing sentence, explain to the defendant its effect, the consequences of failing to comply with any order or pay any fine, and any power that the court has to vary or review the sentence, unless—

(i) the defendant is absent, or

(ii) the defendant's ill-health or disorderly conduct makes such an explanation impracticable;

(d) give any such explanation in terms the defendant, if present, can understand (with help, if necessary); and

(e) consider exercising any power it has to make a costs or other order.

(10) Despite the general rule—

(a) the court must adjourn the hearing if—

(i) the case started with a summons, requisition or single justice procedure notice,

(ii) the defendant is absent, and

(iii) the court considers passing a custodial sentence (where it can do so), or imposing a disqualification (unless it has already adjourned the hearing to give the defendant an opportunity to attend);

(b) the court may defer sentence for up to 6 months;

(c) the court may, and in some cases must, commit the defendant to the Crown Court for sentence;

(d) if the prosecutor asks the court to commit the defendant to the Crown Court in respect of an offence so that a confiscation order can be considered—

(i) the court must commit the defendant for that purpose, and

(ii) sub-paragraph (e) applies; and

(e) where this sub-paragraph applies—

(i) the court may commit the defendant to the Crown Court to be dealt with there for any other offence of which the defendant has been convicted and with which the magistrates' court otherwise could deal, and

(ii) if it does so, the court must state whether it would have committed the defendant to the Crown Court for sentence anyway under section 14, 16 or 16A of the Sentencing Act 2020(**a**).

[Note. See sections 9, 10 and 11 of the Magistrates' Courts Act 1980(**b**)*, and sections 31, 52, 59, 63, 124, 125 and 126 of the Sentencing Act 2020*(**c**)*.*

Under section 11(3A) of the 1980 Act, a custodial sentence passed in the defendant's absence does not take effect until the defendant is brought before the court.

Under sections 57D and 57E of the Crime and Disorder Act 1998(**d**)*, the court may require a defendant to attend a sentencing hearing by live link.*

Under section 35 of the Sentencing Act 2020, the court may require a defendant who is an individual to provide a statement of assets and other financial circumstances if the defendant—

(a) serves notice of guilty plea, where rule 24.8 (Written guilty plea: special rules) applies; or

(b) is convicted.

(**a**) 2020 c. 17; section 16A was inserted by section 46 of, and paragraph 26 of Schedule 13 to, the Counter-Terrorism and Sentencing Act 2021 (c. 11).

(**b**) 1980 c. 43; section 10 was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53) and section 47 of the Crime and Disorder Act 1998 (c. 37). Section 11 was amended by section 123 of, and paragraph 1 of Schedule 8 to, the Criminal Justice Act 1988 (c. 33), section 168 of, and paragraph 39 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 39 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 304 of, and paragraphs 25 and 26 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44) and section 54 of the Criminal Justice and Immigration Act 2008 (c. 4).

(**c**) 2020 c. 17.

(**d**) 1998 c. 37; sections 57A to 57E were substituted for section 57 as originally enacted by section 45 of the Police and Justice Act 2006 (c. 48), and amended by sections 106, 109 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).

Under section 20A of the Criminal Justice Act 1991(**a**)*, it is an offence for a defendant knowingly or recklessly to make a false or incomplete statement of assets or other financial circumstances, or to fail to provide such a statement, in response to a request by a court officer on behalf of the court.*

Under section 30 of the Sentencing Act 2020, the general rule (subject to exceptions) is that the court must obtain and consider a pre-sentence report—

(a) where it is considering a custodial sentence or a community sentence;

(b) where it thinks the defendant may pose a significant risk of causing serious harm to the public by further offending.

Under section 32(3) of the Sentencing Act 2020, where the court obtains a written pre-sentence report about a defendant who is under 18, it may direct that information in it must be withheld, if it would be likely to create a risk of significant harm to the defendant.

For the circumstances in which a magistrates' court may (and, in some cases, must) remit the defendant to a youth court for sentence, see section 25 of the Sentencing Act 2020.

The Sentencing Council may issue sentencing guidelines under section 120 of the Coroners and Justice Act 2009(**b**)*.*

For the circumstances in which a court may (and, in some cases, must) order the endorsement of a defendant's driving record, or the disqualification of a defendant from driving, see sections 34, 35 and 44 of the Road Traffic Offenders Act 1988(**c**)*. Under that legislation, in some circumstances the court has discretion not to make such an order. See also rule 29.1.*

The evidence that may be introduced is subject to rules of evidence.

In addition to the specific powers to which this rule applies, the court has a general power to adjourn a trial: see rule 24.2.

Under section 52(4) of the Sentencing Act 2020, Criminal Procedure Rules may prescribe cases in which there do not apply the court's usual duties to give reasons and explanations. Written notice of the effect of some sentences is required by rule 28.2 (Notice of requirements of suspended sentence or community, etc. order), rule 28.3 (Notification requirements) and rule 30.2 (notice of fine or other financial order).

Under section 3 of the Sentencing Act 2020, if (among other things) the defendant consents, the court may defer sentence for up to 6 months, for the purpose of allowing it to take account of the defendant's conduct after conviction, or any change in the defendant's circumstances.

For the circumstances in which a magistrates' court may (and, in some cases, must) commit a defendant to the Crown Court for sentence or for the making of other orders beyond a magistrates' court's powers, see—

(a) sections 14, 15, 16, 16A, 17, 18, 19 and 20 of the Sentencing Act 2020(**d**)*;*

(**a**) 1991 c. 53; section 20A was inserted by section 168 of, and paragraph 43 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33) and amended by sections 95 and 109 of, and paragraph 350 of Schedule 8 to, the Courts Act 2003 (c. 39) and section 44 of, and paragraph 26 of Schedule 16 to, the Crime and Courts Act 2013 (c. 22).

(**b**) 2009 c. 25.

(**c**) 1988 c. 53; section 34 was amended by section 29 of the Road Traffic Act 1991 (c. 40), section 3 of the Aggravated Vehicle-Taking Act 1992 (c. 11), section 165 of, and paragraph 121 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), sections 56 and 107 of, and Schedule 8 to, the Police Reform Act 2002 (c. 30), section 25 of the Road Safety Act 2006 (c. 49), article 2 of S.I. 2007/3480, paragraphs 2 and 5 of Schedule 27 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), section 56 of, and paragraphs 9 and 12 of Schedule 22 to, the Crime and Courts Act 2013 (c. 22) and section 177 of, and paragraph 90 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25). Section 35 was amended by section 48 of, and paragraph 95 of Schedule 4 to, the Road Traffic Act 1991 (c. 40), section 165 of, and paragraph 122 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 177 of, and 90 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25). Section 44 was amended by regulations 2 and 3 of, and paragraph 10 of Schedule 2 to, S.I. 1990/144 and sections 9, 10 and 59 of, and Schedule 7 to, the Road Safety Act 2006 (c. 49).

(**d**) 2020 c. 17; section 19 was amended by section 46 of, and paragraph 26 of Schedule 13 to, the Counter-Terrorism and Sentencing Act 2021 (c. 11).

(b) the provisions listed in section 24 of the 2020 Act (including section 70 of the Proceeds of Crime Act 2002(**a**)*); and*

(c) paragraph 11 of Schedule 16 to the 2020 Act.

See section 70(5) of the Proceeds of Crime Act 2002 for the court's power to make the statement to which this rule refers.

See also rules 9.15 (Committal for sentence of offence related to an offence sent for trial) and 28.8 (Sentencing, etc. after committal to the Crown Court). The note to rule 28.8 summarises the statutory provisions that apply.]

Procedure where a party is absent

24.12.—(1) This rule—

(a) applies where a party is absent; but

(b) does not apply where—

(i) the defendant has served a notice of guilty plea under rule 24.8 (Written guilty plea: special rules), or

(ii) the court tries a case under rule 24.9 (Single justice procedure: special rules).

(2) Where the prosecutor is absent, the court may—

(a) if it has received evidence, deal with the case as if the prosecutor were present; and

(b) in any other case—

(i) enquire into the reasons for the prosecutor's absence, and

(ii) if satisfied there is no good reason, exercise its power to dismiss the allegation.

(3) Where the defendant is absent the general rule is that the court must proceed as if the defendant were present and had pleaded not guilty (unless a plea already has been taken), but the general rule—

(a) does not apply if the defendant is under 18;

(b) is subject to the court being satisfied that—

(i) any summons or requisition was served on the defendant a reasonable time before the hearing, or

(ii) in a case in which the hearing has been adjourned, the defendant had reasonable notice of where and when it would resume; and

(c) is subject to rule 24.11(10)(a) (restrictions on passing sentence in the defendant's absence).

(4) Where the defendant is absent, the court—

(a) must exercise its power to issue a warrant for the defendant's arrest and detention in the terms required by rule 13.3(3) (Terms of a warrant for detention or imprisonment), if it passes a custodial sentence; and

(b) may exercise its power to issue a warrant for the defendant's arrest in any other case, if it does not apply the general rule in paragraph (3) of this rule about proceeding in the defendant's absence.

[Note. See sections 11, 15 and 16 of the Magistrates' Courts Act 1980(**b**)*.*

Under section 27 of the 1980 Act, where a magistrates' court dismisses an allegation of an offence classified as one that can be tried either in a magistrates' court or in the Crown Court (in other

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(**a**) 2002 c. 29; section 70 was amended by section 41 of, and paragraph 75 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), section 410 of, and paragraphs 181 and 195 of Schedule 24 to, the Sentencing Act 2020 (c. 17) and section 46 of, and paragraph 19 of Schedule 13 to, the Counter-Terrorism and Sentencing Act 2021 (c. 11).

(**b**) 1980 c. 43; section 14 was amended by section 109 of, and paragraph 205 of Schedule 8 to, the Courts Act 2003 (c. 39).

legislation, described as triable either way), that dismissal has the same effect as an acquittal in the Crown Court.

Under section 11 of the 1980 Act, the court may pass a custodial sentence in the defendant's absence if the case started with the defendant's arrest and charge (and not with a summons or requisition). Section 11(3A) requires that, in that event, the defendant must be brought before the court before being taken to a prison or other institution to begin serving that sentence: see also rule 13.3. Under section 7(1) of the Bail Act 1976(**a**)*, the court has power to issue a warrant for the arrest of a defendant released on bail who has failed to attend court when due to do so.*

Under section 13 of the 1980 Act(**b**)*, the court has power to issue a warrant for the arrest of an absent defendant, instead of proceeding, where—*

(1) the case started with—

(a) the defendant's arrest and charge, or

(b) a summons or requisition, if—

(i) the court is satisfied that that summons or requisition was served on the defendant a reasonable time before the hearing, or

(ii) the defendant was present when the hearing was arranged; and

(2) the offence is punishable with imprisonment; or

(3) the defendant has been convicted and the court considers imposing a disqualification.]

Provision of documents for the court

24.13.—(1) A party who introduces a document in evidence, or who otherwise uses a document in presenting that party's case, must provide a copy for—

(a) each other party;

(b) any witness that party wants to refer to that document;

(c) the court; and

(d) the justices' legal adviser.

(2) Unless the court otherwise directs, on application or on its own initiative, the court officer must provide for the court—

(a) any copy received under paragraph (1) before the hearing begins; and

(b) a copy of the court officer's record of—

(i) information supplied by each party for the purposes of case management, including any revision of information previously supplied,

(ii) each pre-trial direction for the management of the case,

(iii) any pre-trial decision to admit evidence,

(iv) any pre-trial direction about the giving of evidence, and

(v) any admission to which rule 24.6 applies.

(3) Where rule 24.8 (Written guilty plea: special rules) applies, the court officer must provide for the court—

(a) each document served by the prosecutor under rule 24.8(1)(d);

(**a**) 1976 c. 63.

(**b**) 1980 c. 43; section 13 was amended by section 45 of, and paragraph 3 of Schedule 5 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 48 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 3 of the Magistrates' Courts (Procedure) Act 1998 (c. 15), sections 31 and 332 of, and Part 12 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and sections 54 and 149 of, and Part 4 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(b) the defendant's driving record, where the offence is under the Road Traffic Regulation Act 1984(**a**), the Road Traffic Act 1988(**b**), the Road Traffic (Consequential Provisions) Act 1988(**c**) or the Road Traffic (Driver Licensing and Information Systems) Act 1989(**d**);

(c) any other information about the defendant, relevant to sentence, of which the prosecutor served notice under rule 24.8(1); and

(d) the notice of guilty plea and any representations and other information served by the defendant under rule 24.8(4).

(4) Where the court tries a case under rule 24.9 (Single justice procedure: special rules), the court officer must provide for the court—

(a) each document served by the prosecutor under rule 24.9(1)(d);

(b) the defendant's driving record, where the offence is under the Road Traffic Regulation Act 1984, the Road Traffic Act 1988, the Road Traffic (Consequential Provisions) Act 1988 or the Road Traffic (Driver Licensing and Information Systems) Act 1989;

(c) any other information about the defendant, relevant to sentence, of which the prosecutor served notice under rule 24.9(1); and

(d) any notice, representations and other information served by the defendant under rule 24.9(4)(b).

[Note. A written witness statement to which Part 16 applies may only be introduced in evidence if there has been no objection within the time limit to which rule 16.4 refers.

An expert report to which Part 19 applies may only be introduced in evidence if it has been served in accordance with rule 19.3.

See also rule 20.3 for the procedure where a party objects to the introduction of hearsay evidence, including such evidence in a document, and rules 21.3 and 21.4 for the procedure where a party objects to the introduction of evidence of bad character.

A direction about the giving of evidence may be made on an application to which Part 18 applies (Measures to assist a witness or defendant to give evidence).]

Duty of justices' legal adviser

24.14.—(1) A justices' legal adviser must attend the court and carry out the duties listed in this rule, as applicable, unless the court—

(a) includes a District Judge (Magistrates' Courts); and

(b) otherwise directs.

(2) A justices' legal adviser must—

(a) before the hearing begins, by reference to what is provided for the court under rule 24.13 (Provision of documents for the court) draw the court's attention to—

(i) what the prosecutor alleges,

(ii) what the parties say is agreed,

(iii) what the parties say is in dispute, and

(iv) what the parties say about how each expects to present the case, especially where that may affect its duration and timetabling; and

(b) assist the court by—

(**a**) 1984 c. 27.
(**b**) 1988 c. 52.
(**c**) 1988 c. 54.
(**d**) 1989 c. 22.

(i) making a note of the substance of any oral evidence or representations, to help the court recall that information, and

(ii) if the court rules inadmissible part of a written statement introduced in evidence, marking that statement in such a way as to make that clear.

(3) Where the defendant has no legal representative and indicates an intention to plead guilty a justices' legal adviser must, in terms the defendant can understand—

(a) explain the procedures required by—

(i) rule 24.7 (Procedure on plea of guilty), and

(ii) rule 24.11 (Procedure if the court convicts); and

(b) in particular explain—

(i) the right to make representations about the facts alleged by the prosecutor,

(ii) the right to offer mitigation, and

(iii) the importance of providing information about financial and other personal circumstances so that the court can impose the most appropriate sentence.

(4) Where the defendant has served a notice of guilty plea to which rule 24.8 (Written guilty plea: special rules) applies, a justices' legal adviser must—

(a) unless the court otherwise directs, if any member of the public, including any reporter, is present, read aloud to the court—

(i) the material on which the prosecutor relies to set out the facts of the offence and to provide information relevant to sentence (or summarise any written statement included in that material, if the court so directs), and

(ii) any written representations by the defendant; and

(b) otherwise, draw the court's attention to—

(i) what the prosecutor alleges, and any significant features of the material listed in paragraph (4)(a)(i), and

(ii) any written representations by the defendant.

(5) Where the court tries a case under rule 24.9 (Single justice procedure: special rules), a justices' legal adviser must draw the court's attention to—

(a) what the prosecutor alleges, and any significant features of the material on which the prosecutor relies to prove the alleged offence and to provide information relevant to sentence; and

(b) any representations served by the defendant.

[Note. Section 28 of the Courts Act 2003(**a**) *provides for the functions of a justices' legal adviser. See also rule 2.12 (Duties of justices' legal adviser) and sections 12 and 16A of the Magistrates' Courts Act 1980*(**b**)*.*

Under section 12(7ZA) of the 1980 Act(**c**)*, Criminal Procedure Rules may specify which of the documents listed in section 12(7) of that Act*(**d**)*, if any, must be read aloud, and may require them to be read aloud only in circumstances specified in the rules.]*

(**a**) 2003 c. 39; section 28 was amended by section 15 of, and paragraphs 308 and 327 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).

(**b**) 1980 c. 43; section 12 was amended by section 45 of, and paragraph 1 of Schedule 5 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 1 of the Magistrates' Courts (Procedure) Act 1998 (c. 15), section 109 of, and paragraph 203 of Schedule 8 to, the Courts Act 2003 (c. 39), section 308 of, and Part 12 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and section 81 of the Deregulation Act 2015 (c. 20). Section 16A was inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2).

(**c**) 1980 c. 43; section 12(7ZA) was inserted by section 81 of the Deregulation Act 2015 (c. 20).

(**d**) 1980 c. 43; section 12(7) was amended by section 81 of the Deregulation Act 2015 (c. 20).

Duty of court officer and custodian

24.15.—(1) The court officer must—

(a) serve on each party notice of where and when an adjourned hearing will resume, unless—

(i) the party was present when that was arranged,

(ii) the defendant has served a notice of guilty plea to which rule 24.8 (Written guilty plea: special rules) applies, and the adjournment is for not more than 4 weeks, or

(iii) the court tries a case under rule 24.9 (Single justice procedure: special rules), and the adjourned trial will resume under that rule;

(b) if the reason for the adjournment was to postpone sentence, include that reason in any such notice to the defendant;

(c) unless the court otherwise directs, make available to the parties any written report to which rule 24.11 (Procedure if the court convicts) applies;

(d) where the court has ordered a defendant to provide information under section 25 of the Road Traffic Offenders Act 1988(**a**), serve on the defendant notice of that order unless the defendant was present when it was made;

(e) serve on the prosecutor—

(i) any notice of guilty plea to which rule 24.8 (Written guilty plea: special rules) applies, and

(ii) any declaration served under rule 44.2 (Statutory declaration of ignorance of proceedings) that the defendant did not know about the case;

(f) serve on the prosecutor notice of any hearing date arranged in consequence of such a declaration, unless—

(i) the prosecutor was present when that was arranged, or

(ii) the court otherwise directs;

(g) serve on the prosecutor—

(i) notice of any hearing date arranged in consequence of the issue of a summons under rule 24.9 (Single justice procedure: special rules), and in that event

(ii) any notice served by the defendant under rule 24.9(4)(c) or (d) (notice of intention to plead guilty at a hearing or notice of intention to plead not guilty);

(h) record the court's reasons for not proceeding in the defendant's absence where rule 24.12(3)(a) applies; and

(i) give the court such other assistance as it requires.

(2) Where the court passes a sentence of immediate imprisonment or detention, or orders a suspended sentence of imprisonment to take effect, by this rule—

(a) the court requires the defendant to provide, in writing or orally, his or her nationality; and

(b) the custodian must obtain that information and record it.

[Note. See sections 10, 11 and 12 of the Magistrates' Courts Act 1980(**b**)*.*

Under section 25 of the Road Traffic Offenders Act 1988, where the court does not know a defendant's sex or date of birth, then on convicting the defendant of an offence involving obligatory or discretionary disqualification, the court must order the defendant to provide that information.

(**a**) 1988 c. 53; section 25 was amended by section 90 of, and paragraphs 140 and 142 of Schedule 13 to, the Access to Justice Act 1999 (c. 22), section 165 of, and paragraph 118 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 109 of, and paragraph 311 of Schedule 8 to, the Courts Act 2003 (c. 39).

(**b**) 1980 c. 43; section 10 was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53) and section 47 of the Crime and Disorder Act 1998 (c. 37).

Under Part 5, the magistrates' court officer must record details of a case and of the court's decisions.

Under section 86A of the Courts Act 2003(**a**)*, Criminal Procedure Rules must specify stages of proceedings at which the court must require the information to which rule 24.15(2) refers. A person commits an offence if, without reasonable excuse, that person fails to comply with such a requirement, whether by providing false or incomplete information or by providing no information.]*

PART 25

TRIAL AND SENTENCE IN THE CROWN COURT

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[Note. Part 3 contains rules about case management that apply during preparation for trial and at trial. The rules in this Part must be read in conjunction with those rules.]

When this Part applies

25.1. This Part applies in the Crown Court where the court tries a case or the defendant pleads guilty.

[Note. The Crown Court's powers to try an allegation of an offence are contained in sections 45 and 46 of the Senior Courts Act 1981(**b**)*.*

The exercise of the court's powers is affected by—

(a) the classification of the offence (and the general rule, subject to exceptions, is that the Crown Court must try—

(i) an offence classified as one that can be tried only in the Crown Court (in other legislation, described as triable only on indictment), and

(**a**) 2003 c. 39; section 86A was inserted by section 162 of the Policing and Crime Act 2017 (c. 3).
(**b**) 1981 c. 54.

(ii) an offence classified as one that can be tried either in a magistrates' court or in the Crown Court (in other legislation, described as triable either way) that has been allocated for trial in the Crown Court); and

(b) the defendant's age (and the general rule is that an allegation of an offence against a defendant under 18 must be tried in a magistrates' court sitting as a youth court, irrespective of the classification of the offence and without allocation for trial there, unless the offence is—

(i) one of homicide,

(ii) one for which a convicted adult could be imprisoned for 14 years or more,

(iii) one of certain specified offences involving firearms, or

(iv) one of certain specified sexual offences).

See sections 17 and 24 of the Magistrates' Courts Act 1980(**a**) *and section 51A of the Crime and Disorder Act 1998*(**b**)*.*

Under section 34A of the Children and Young Persons Act 1933(**c**)*, the court—*

(a) may require the defendant's parents or guardian to attend court with the defendant, where the defendant is under 18; and

(b) must do so, where the defendant is under 16,

unless satisfied that that would be unreasonable. Part 46 (Representatives) contains rules allowing a parent, guardian or other supporting adult to help a defendant under 18.]

General powers and requirements

25.2.—(1) Where this Part applies, the general rule is that—

(a) the trial must be in public, but that is subject to the court's power to—

(i) impose a restriction on reporting what takes place at a public hearing, or public access to what otherwise would be a public hearing,

(ii) withhold information from the public during a public hearing, or

(iii) order a trial in private;

(b) the court must not proceed if the defendant is absent, unless the court is satisfied that—

(i) the defendant has waived the right to attend, and

(ii) the trial will be fair despite the defendant's absence; and

(c) the court must not sentence the defendant to imprisonment or detention unless—

(i) the defendant has a legal representative,

(ii) the defendant has been sentenced to imprisonment or detention on a previous occasion in the United Kingdom, or

(iii) the defendant could have been represented under legal aid but is not because section 226(7), (8) of the Sentencing Act 2020(**d**) applies to him or her.

(**a**) 1980 c. 43; section 24 was amended by paragraph 47 of Schedule 14 to the Criminal Justice Act 1982 (c. 48), sections 17, 68 and 101 of, and paragraph 6 of Schedule 8 and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), paragraph 40 of Schedule 10, and Schedule 11, to the Criminal Justice and Public Order Act 1994 (c. 33), sections 47 and 119 of, and paragraph 40 of Schedule 8, to the Crime and Disorder Act 1998 (c. 37), paragraph 64 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 42 of, and paragraphs 1 and 9 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44) and sections 49 and 65 of, and paragraph 1 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38).

(**b**) 1998 c. 37; section 51A was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 6 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**c**) 1933 c. 12; section 34A was inserted by section 56 of the Criminal Justice Act 1991 (c. 53) and amended by section 107 of, and paragraph 1 of Schedule 5 to, the Local Government Act 2000 (c. 22).

(**d**) 2020 c. 17.

(2) Before proceeding to trial the court must—

(a) if more than one indictment has been preferred or proposed—

(i) identify the indictment or indictments on which the prosecutor wants the defendant to be tried, and

(ii) identify any indictment or count in an indictment on which the prosecutor does not want to proceed;

(b) obtain the prosecutor's confirmation, in writing or orally, that each indictment on which the defendant is about to be tried sets out—

(i) a statement of each offence that the prosecutor wants the court to try, and

(ii) such particulars of the conduct constituting the commission of each such offence as the prosecutor relies upon to make clear what is alleged;

(c) ensure that the defendant is correctly identified by each indictment on which the defendant is about to be tried;

(d) satisfy itself that each allegation has been explained to the defendant, in terms the defendant can understand (with help, if necessary);

(e) invite any objection to the terms or validity of any indictment on which the defendant is about to be tried; and

(f) ensure that it has given—

(i) any direction needed to impose a reporting restriction or to withhold information from the public, and

(ii) subject to that, any direction needed to facilitate public observation and reporting.

(3) The court may adjourn the trial at any stage.

(4) Subject to paragraph (5), unless the court otherwise directs no further proceedings may be taken on an indictment or count in an indictment on which under this rule the prosecutor chooses not to proceed.

(5) Paragraph (4) does not apply to any count in an indictment which becomes a count in the indictment required by rule 25.16(3)(e) (substituted indictment for sentencing purposes).

[Note. See section 226(7), (8) of the Sentencing Act 2020, which applies to a defendant if—

(a) representation was made available to the defendant for the purposes of the proceedings under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 but was withdrawn because of the defendant's conduct or because it appeared that the defendant's financial resources were such that he or she was not eligible for such representation;

(b) the defendant applied for such representation and the application was refused because it appeared that the defendant's financial resources were such that he or she was not eligible for such representation; or

(c) having been informed of the right to apply for such representation and having had the opportunity to do so, the defendant refused or failed to apply.

Part 6 contains rules about reporting, etc. restrictions. For a list of the court's powers to impose reporting and access restrictions, see the note to rule 6.1.

Part 10 contains rules about the content and service of indictments. Under section 2(6ZA) of the Administration of Justice (Miscellaneous Provisions) Act 1933(**a**)*, no objection to the indictment may be taken after the trial commences by reason of any failure to observe those rules.]*

(**a**) 1933 c. 36; section 2(6ZA) was inserted by section 116 of the Coroners and Justice Act 2009 (c. 25).

Application for ruling on procedure, evidence or other question of law

25.3.—(1) This rule applies to an application—

(a) about—

(i) case management, or any other question of procedure, or

(ii) the introduction or admissibility of evidence, or any other question of law; and

(b) that has not been determined before the trial begins.

(2) The application is subject to any other rule that applies to it (for example, as to the time and form in which the application must be made).

(3) Unless the court otherwise directs, the application must be made, and the court's decision announced, in the absence of the jury (if there is one).

[Note. See also rule 3.21 (Pre-trial hearings in the Crown Court: general rules).]

Procedure on plea of guilty

25.4.—(1) This rule applies if—

(a) the defendant pleads guilty to an offence; and

(b) the court is satisfied that the plea represents a clear acknowledgement of guilt.

(2) The court need not receive evidence unless rule 25.16(4) applies (determination of facts for sentencing).

[Note. See also rule 3.32 (Arraigning the defendant on the indictment).]

Application to vacate a guilty plea

25.5.—(1) This rule applies where a party wants the court to vacate a guilty plea.

(2) Such a party must—

(a) apply in writing—

(i) as soon as practicable after becoming aware of the grounds for doing so, and

(ii) in any event, before the final disposal of the case, by sentence or otherwise; and

(b) serve the application on—

(i) the court officer, and

(ii) the prosecutor.

(3) Unless the court otherwise directs, the application must—

(a) explain why it would be unjust for the guilty plea to remain unchanged;

(b) indicate what, if any, evidence the applicant wishes to call;

(c) identify any proposed witness; and

(d) indicate whether legal professional privilege is waived, specifying any material name and date.

Selecting the jury

25.6.—(1) This rule—

(a) applies where—

(i) the defendant pleads not guilty,

(ii) the defendant declines to enter a plea and the court treats that as a not guilty plea, or

(iii) the court determines that the defendant is not fit to be tried; but

(b) does not apply where—

(i) the court orders a trial without a jury because of a danger of jury tampering or where jury tampering appears to have taken place, or

(ii) the court tries without a jury counts on an indictment after a trial of sample counts with a jury.

(2) The court must select a jury to try the case from the panel, or part of the panel, of jurors summoned by the Lord Chancellor to attend at that time and place.

(3) Where it appears that too few jurors to constitute a jury will be available from among those so summoned, the court—

(a) may exercise its own power to summon others in the court room, or in the vicinity, up to the number likely to be required, and add their names to the panel summoned by the Lord Chancellor; but

(b) must inform the parties, if they are absent when the court exercises that power.

(4) The court must select the jury by drawing at random each juror's name from among those so summoned and—

(a) announcing each name so drawn; or

(b) announcing an identifying number assigned by the court officer to that person, where the court is satisfied that that is necessary.

(5) If too few jurors to constitute a jury are available from the panel after all their names have been drawn, the court may—

(a) exercise its own power to summon others in the court room, or in the vicinity, up to the number required; and

(b) announce—

(i) the name of each person so summoned, or

(ii) an identifying number assigned by the court officer to that person, where the court is satisfied that that is necessary.

(6) The jury the court selects—

(a) must comprise no fewer than 12 jurors; and

(b) may comprise as many as 14 jurors to begin with, where the court expects the trial to last for more than 4 weeks.

(7) Where the court selects a jury comprising more than 12 jurors, the court must explain to them that—

(a) the purpose of selecting more than 12 jurors to begin with is to fill any vacancy or vacancies caused by the discharge of any of the first 12 before the prosecution evidence begins;

(b) any such vacancy or vacancies will be filled by the extra jurors in order of their selection from the panel;

(c) the court will discharge any extra juror or jurors remaining by no later than the beginning of the prosecution evidence; and

(d) any juror who is discharged for that reason then will be available to be selected for service on another jury, during the period for which that juror has been summoned.

(8) Each of the 12 or more jurors the court selects—

(a) must take an oath or affirm; and

(b) becomes a full jury member until discharged.

(9) The oath or affirmation must be in these terms, or in any corresponding terms that the juror declares to be binding on him or her—

> "I swear by Almighty God [*or* I do solemnly, sincerely and truly declare and affirm] that I will faithfully try the defendant and give a true verdict according to the evidence."

[Note. See sections 2, 5, 6, and 11 of the Juries Act 1974(**a**)*. See also rule 38.7 (Discharging jurors).*

Under sections 44 and 46 of the Criminal Justice Act 2003(**b**)*, the court may try a case without a jury where there is a danger of jury tampering, or where jury tampering appears to have taken place. Under section 17 of the Domestic Violence, Crime and Victims Act 2004*(**c**)*, the court may try sample counts with a jury and other counts without a jury. Part 3 (preparation for trial in the Crown Court) contains rules about an application for such a trial.*

Sections 1, 3, 4, 5 and 6 of the Oaths Act 1978(**d**) *provide for the taking of oaths and the making of affirmations, and for the words that must be used.*

Part 26 contains other rules about jurors.]

Discharging jurors

25.7.—(1) The court may exercise its power to discharge a juror at any time—

(a) after the juror completes the oath or affirmation; and

(b) before the court discharges the jury.

(2) No later than the beginning of the prosecution evidence, if the jury then comprises more than 12 jurors the court must discharge any in excess of 12 in reverse order of their selection from the panel.

(3) The court may exercise its power to discharge the jury at any time—

(a) after each juror has completed the oath or affirmation; and

(b) before the jury has delivered its verdict on each offence charged in the indictment.

(4) The court must exercise its power to discharge the jury when, in respect of each offence charged in the indictment, either—

(a) the jury has delivered its verdict on that offence; or

(b) the court has discharged the jury from reaching a verdict.

[Note. See sections 16 and 18 of the Juries Act 1974(**e**)*.]*

Objecting to jurors

25.8.—(1) A party who objects to the panel of jurors must serve notice explaining the objection on the court officer and on the other party before the first juror's name or number is drawn.

(2) A party who objects to the selection of an individual juror must—

(a) tell the court of the objection—

(i) after the juror's name or number is announced, and

(ii) before the juror completes the oath or affirmation; and

(b) explain the objection.

(3) A prosecutor who exercises the prosecution right without giving reasons to prevent the court selecting an individual juror must announce the exercise of that right before the juror completes the oath or affirmation.

(**a**) 1974 c. 23; section 2 was amended by section 61 of the Administration of Justice Act 1982 (c. 53) and Part 10 of Schedule 37 to the Criminal Justice Act 2003 (c. 44). Section 5 was amended by section 15 of, and paragraphs 77 and 78 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4). Section 6 was amended by paragraph 45 of Schedule 15 to the Criminal Justice Act 1988 (c. 33). Section 11 was amended by section 58 of, and paragraph 8 of Schedule 10 and Schedule 11 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28).

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

(**c**) 2004 c. 28.

(**d**) 1978 c. 19.

(**e**) 1974 c. 23; section 16 was amended by sections 121 and 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33).

(4) The court must determine an objection under paragraph (1) or (2)—

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

(b) in the absence of the jurors, unless the court otherwise directs.

[Note. See section 29 of the Juries Act 1825(**a**) *and section 12 of the Juries Act 1974*(**b**)*.]*

Procedure on plea of not guilty

25.9.—(1) This rule applies where—

(a) the defendant pleads not guilty; or

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

(2) In the following sequence—

(a) where there is a jury, the court must—

(i) inform the jurors of each offence charged in the indictment to which the defendant pleads not guilty, and

(ii) explain to the jurors that it is their duty, after hearing the evidence, to decide whether the defendant is guilty or not guilty of each offence;

(b) the prosecutor may summarise the prosecution case, concisely outlining the facts and the matters likely to be in dispute;

(c) where there is a jury, to help the jurors to understand the case and resolve any issue in it the court may—

(i) invite the defendant concisely to identify what is in issue, if necessary in terms approved by the court, and

(ii) if the defendant declines to do so, direct that the jurors be given a copy of any defence statement served under rule 15.4 (Defence disclosure), edited if necessary to exclude any reference to inappropriate matters or to matters evidence of which would not be admissible;

(d) the prosecutor must introduce the evidence on which the prosecution case relies;

(e) subject to paragraph (3), at the end of the prosecution evidence, on the defendant's application or on its own initiative, the court—

(i) may direct the jury (if there is one) to acquit on the ground that the prosecution evidence is insufficient for any reasonable court properly to convict, but

(ii) must not do so unless the prosecutor has had an opportunity to make representations;

(f) subject to paragraph (4), at the end of the prosecution evidence, the court must ask whether the defendant intends to give evidence in person and, if the answer is 'no', then the court must satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary)—

(i) the right to give evidence in person, and

(ii) that if the defendant does not give evidence in person, or refuses to answer a question while giving evidence, the court may draw such inferences as seem proper;

(g) the defendant may summarise the defence case, if he or she intends to call at least one witness other than him or herself to give evidence in person about the facts of the case;

(h) in this order (or in a different order, if the court so directs) the defendant may—

(i) give evidence in person,

(ii) call another witness, or witnesses, to give evidence in person, and

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(**a**) 1825 c. 50; section 29 was amended by section 40 of, and paragraph 3 of Schedule 4 to, the Courts Act 1971 (c. 23). There are other amendments not relevant to this rule.

(**b**) 1974 c. 23; section 12 was amended by section 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33).

(iii) introduce any other evidence;

(i) a party may introduce further evidence if it is then admissible (for example, because it is in rebuttal of evidence already introduced);

(j) the prosecutor may make final representations, where—

(i) the defendant has a legal representative,

(ii) the defendant has called at least one witness, other than the defendant him or herself, to give evidence in person about the facts of the case, or

(iii) the court so permits; and

(k) the defendant may make final representations.

(3) Paragraph (2)(e) does not apply in relation to a charge of murder, manslaughter, attempted murder, or causing harm contrary to section 18 or 20 of the Offences against the Person Act 1861(**a**) until the court has heard all the evidence (including any defence evidence), where the defendant is charged with—

(a) any of those offences; and

(b) an offence of causing or allowing a child or vulnerable adult to die or to suffer serious physical harm, contrary to section 5 of the Domestic Violence, Crime and Victims Act 2004(**b**).

(4) Paragraph (2)(f) does not apply where it appears to the court that, taking account of all the circumstances, the defendant's physical or mental condition makes it undesirable for the defendant to give evidence in person.

(5) Where there is more than one defendant, this rule applies to each in the order their names appear in the indictment, or in an order directed by the court.

(6) Unless the jury (if there is one) has retired to consider its verdict, the court may allow a party to introduce evidence, or make representations, after that party's opportunity to do so under paragraph (2).

(7) Unless the jury has already reached a verdict on a count, the court may exercise its power to—

(a) discharge the jury from reaching a verdict on that count;

(b) direct the jury to acquit the defendant on that count; or

(c) invite the jury to convict the defendant, if the defendant pleads guilty to the offence charged by that count.

[Note. See also rule 3.32 (Arraigning the defendant on the indictment).

Under section 6E of the Criminal Procedure and Investigations Act 1996(**c**)*, the court may make the direction for which rule 25.9(2)(c)(ii) provides, on application or on the court's own initiative.*

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

Under section 35 of the Criminal Justice and Public Order Act 1994(**d**)*, the court may draw such inferences as appear proper from a defendant's failure to give evidence, or refusal without good cause to answer a question while doing so. The procedure set out in rule 25.9(2)(f) and (4) is prescribed by that section.*

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

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

(**c**) 1996 c. 25; section 6E was inserted by section 36 of the Criminal Justice Act 2003 (c. 44).

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

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

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

Section 2 of the Criminal Procedure Act 1865(**c**) *and section 3 of the Criminal Evidence Act 1898*(**d**) *restrict the circumstances in which the prosecutor may make final representations without the court's permission. See also section 1 of the Criminal Procedure (Right of Reply) Act 1964*(**e**).

The procedure set out in rule 25.9(3) is prescribed by sections 6 and 6A of the Domestic Violence, Crime and Victims Act 2004(**f**).

Under section 17 of the Criminal Justice Act 1967(**g**), *the court may direct the jury to acquit where the prosecutor offers no evidence.*

See rule 25.14 for the procedure on taking the verdict and rule 25.16 for the procedure if the court convicts the defendant.]

Defendant unfit to plead

25.10.—(1) This rule applies where—

(a) it appears to the court, on application or on its own initiative, that the defendant may not be fit to be tried; and

(b) the defendant has not by then been acquitted of each offence charged by the indictment.

(2) The court—

(a) must exercise its power to decide, without a jury, whether the defendant is fit to be tried; but

(b) may postpone the exercise of that power until immediately before the opening of the defence case.

(3) Where the court determines that the defendant is not fit to be tried—

(a) the court must exercise its power to appoint a person to put the case for the defence, taking account of all the circumstances and in particular—

(i) the willingness and suitability (including the qualifications and experience) of that person,

(ii) the nature and complexity of the case,

(iii) any advantage of continuity of representation, and

(iv) the defendant's wishes and needs;

(b) the court must select a jury, if none has been selected yet; and

(c) rule 25.9 (Procedure on plea of not guilty) applies, if the steps it lists have not already been taken, except that—

(i) everything which that rule requires to be done by the defendant may be done instead by the person appointed to put the case for the defence,

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(**a**) 1898 c. 36.
(**b**) 1984 c. 60.
(**c**) 1865 c. 18; section 2 was amended by section 10(2) of, and Part III of Schedule 3 to, the Criminal Law Act 1967 (c. 58).
(**d**) 1898 c. 36; section 3 was amended by section 1(2) of the Criminal Procedure (Right of Reply) Act 1964 (c. 34).
(**e**) 1964 c. 34; section 1 was amended by section 1 of, and the Schedule to, the Statute Law (Repeals) Act 1974 (c. 22).
(**f**) 2004 c. 28; section 6 was amended by section 3 of, and paragraphs 7 and 8 of the Schedule to, the Domestic Violence, Crime and Victims (Amendment) Act 2012 (c. 4) and section 6A was inserted by section 2 of that Act.
(**g**) 1967 c. 80; section 17 was amended by paragraph 42 of Schedule 36 to the Criminal Justice Act 2003 (c. 44).

(ii) under rule 25.9(2)(a), the court must explain to the jurors that their duty is to decide whether or not the defendant did the act or made the omission charged as an offence, not whether the defendant is guilty of that offence, and

(iii) rule 25.9(2)(f) does not apply (warning of consequences of defendant not giving evidence).

(4) Paragraphs (5) and (6) of this rule apply where—

(a) the jury decides that the defendant did the act or made the omission charged as an offence;

(b) the court makes a hospital order and a restriction order;

(c) while the restriction order remains in effect the Secretary of State receives medical advice that the defendant can properly be tried and decides to remit the defendant to the Crown Court for trial; and

(d) the Secretary of State so notifies the court officer.

(5) The prosecutor must serve on the court officer the medical report or reports by reference to which the defendant has been assessed as properly to be tried.

(6) The court must give directions—

(a) for the return of the defendant to the court, which initial directions may be given—

(i) without a hearing, or

(ii) at a hearing, which must take place in the defendant's absence; and then

(b) for the future conduct of the case, which further directions must be given—

(i) at a hearing, and

(ii) in the defendant's presence.

(7) Directions under paragraph (6)(a)—

(a) may include directions under rule 3.10 (Directions for commissioning medical reports, other than for sentencing purposes) for the commissioning of any further report required by the court;

(b) may set a timetable providing for the date by which representations about the future conduct of the case must be served; and

(c) must set a date for a hearing under paragraph (6)(b).

(8) At the hearing under paragraph (6)(b)—

(a) rule 3.21 (Pre-trial hearings in the Crown Court: general rules) applies even if a plea and trial preparation hearing has been conducted in the case before; and

(b) among other things, the court must decide whether to grant or withhold bail.

[Note. See sections 4 and 4A of the Criminal Procedure (Insanity) Act 1964(**a**)*.*

Under section 4 of the 1964 Act, the court must not determine the defendant's fitness to be tried except on the evidence of two or more registered medical practitioners, at least one of whom is approved as having special experience in the diagnosis or treatment of mental disorder. Under section 4A, if satisfied that the defendant did the act or made the omission charged as an offence the jury must make a finding to that effect, and if not so satisfied must acquit the defendant.

Under section 5A of the 1964 Act(**b**)*, where a hospital order and a restriction order have effect, and after consultation with the responsible clinician, the Secretary of State may remit a defendant for trial if satisfied that the defendant can properly be tried.]*

(**a**) 1964 c. 84; sections 4 and 4A were substituted 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).

(**b**) 1964 c. 84; section 5A was inserted by section 24 of the Domestic Violence, Crime and Victims Act 2004 (c. 28), amended by section 15 of the Mental Health Act 2007 (c. 12) and repealed for certain purposes by paragraph 114 of Schedule 2 to the Sentencing (Pre-consolidation Amendments) Act 2020 (c. 9).

Evidence of a witness in person

25.11.—(1) This rule applies where a party wants to introduce evidence by calling a witness to give that evidence in person.

(2) Unless the court otherwise directs—

(a) a witness waiting to give evidence must not wait inside the courtroom, unless that witness is—

(i) a party, or

(ii) an expert witness;

(b) a witness who gives evidence in the courtroom must do so from the place provided for that purpose; and

(c) a witness' address—

(i) must not be given in public unless the address is relevant to an issue in the case, and

(ii) may be given in writing to the court, parties and jury.

(3) Before the witness gives evidence—

(a) the party who introduces the witness' evidence must explain how that evidence is admissible, unless it is only evidence of fact within the witness' direct knowledge; and

(b) the witness must take an oath or affirm, unless other legislation otherwise provides.

(4) In the following sequence—

(a) the party who calls a witness may ask questions in examination-in-chief;

(b) if the witness gives evidence for the prosecution—

(i) the defendant, if there is only one, may ask questions in cross-examination, or

(ii) subject to the court's directions, each defendant, if there is more than one, may ask such questions, in the order their names appear in the indictment or as directed by the court;

(c) if the witness gives evidence for a defendant—

(i) subject to the court's directions, each other defendant, if there is more than one, may ask questions in cross-examination, in the order their names appear in the indictment or as directed by the court, and

(ii) the prosecutor may ask such questions; and

(d) the party who called the witness may ask questions in re-examination arising out of any cross-examination.

(5) If other legislation so permits, at any time while giving evidence a witness may refer to a record of that witness' recollection of events.

(6) The court may—

(a) ask a witness questions; and in particular

(b) where the defendant is not represented, ask a witness any question necessary in the defendant's interests.

[Note. Section 53 of the Youth Justice and Criminal Evidence Act 1999(**a**) *provides that everyone is competent to give evidence in criminal proceedings unless unable to understand questions put or give intelligible answers. See also section 1 of the Criminal Evidence Act 1898*(**b**)*.*

(**a**) 1999 c. 23.

(**b**) 1898 c. 36; section 1 was amended by section 1 of the Criminal Evidence Act 1979 (c. 16), section 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), sections 80(9) and 119(2) of, and Schedule 7 to, the Police and Criminal Evidence Act 1984 (c. 60), sections 31 and 168 of, and paragraph 2 of Schedule 10, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 67 of, and paragraph 1 of Schedule 4, and Schedule 6 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23) and sections 331 and 332 of, and paragraph 80 of Schedule 36, and Part 5 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

Part 19 contains rules about the introduction of evidence of expert opinion. Part 20 contains rules about the introduction of hearsay evidence.

Sections 1, 3, 5 and 6 of the Oaths Act 1978(**a**) *provide for the taking of oaths and the making of affirmations, and for the words that must be used. Section 28 of the Children and Young Persons Act 1963*(**b**) *provides that in a youth court, and where a witness in any court is under 18, an oath must include the words 'I promise' in place of the words 'I swear'. Under sections 55 and 56 of the Youth Justice and Criminal Evidence Act 1999, a person may give evidence without taking an oath, or making an affirmation, where that person (i) is under 14 or (ii) has an insufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth which is involved in taking an oath.*

The questions that may be put to a witness—

(a) by a party are governed by rules of evidence, for example—

(i) the rule that a question must be relevant to what is in issue,

(ii) the rule that the party who calls a witness must not ask that witness a leading question about what is in dispute, and

(iii) the rule that a party who calls a witness may contradict that witness only in limited circumstances (see section 3 of the Criminal Procedure Act 1865)(**c**)*;*

(b) by the court are in its discretion, but that is subject to—

(i) rules of evidence, and

(ii) rule 1.3 (the application by the court of the overriding objective).

Under sections 34, 35 and 36 of the Youth Justice and Criminal Evidence Act 1999(**d**)*, a defendant who is not represented may not cross-examine a witness where—*

(a) the defendant is charged with a sexual offence against the witness;

(b) the defendant is charged with a sexual offence, or one of certain other offences, and the witness is a child; or

(c) the court prohibits the defendant from cross-examining the witness.

Part 23 contains rules relevant to restrictions on cross-examination.

Under section 139 of the Criminal Justice Act 2003(**e**)*, a witness may refresh his or her memory by referring to a record made earlier, either contained in a document made or verified by the witness, or in the transcript of a sound recording, if—*

(a) the witness states that it records his or her recollection of events at that earlier time; and

(b) that recollection is likely to have been significantly better when the record was made than by the time the witness gives evidence in person.

In some circumstances, a witness may give evidence in accordance with special measures directed by the court under section 19 of the Youth Justice and Criminal Evidence Act 1999(**f**)*, or by live link under section 32 of the Criminal Justice Act 1988*(**g**) *or section 51 of the Criminal Justice Act 2003. Part 18 contains relevant rules.]*

(**a**) 1978 c. 19.
(**b**) 1963 c. 37; section 28 was amended by section 2 of the Oaths Act 1978 (c. 19) and section 100 of, and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53).
(**c**) 1865 c. 18.
(**d**) 1999 c. 23; section 35 was amended by sections 139 and 140 of, and paragraph 41 of Schedule 6 and Schedule 7 to, the Sexual Offences Act 2003 (c. 42) and section 148 of, and paragraphs 35 and 36 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4).
(**e**) 2003 c. 44.
(**f**) 1999 c. 23.
(**g**) 1988 c. 33; section 32 was amended by section 55 of the Criminal Justice Act 1991 (c. 53), section 29 of, and paragraph 16 of Schedule 2 to, the Criminal Appeal Act 1995 (c. 35), section 62 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 67 of, and Schedule 6 and paragraph 3 of Schedule 7 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23) and paragraphs 24 and 26 of the Schedule to S.I. 2004/2035.

Evidence of a witness in writing

25.12.—(1) This rule applies where a party wants to introduce in evidence the written statement of a witness to which applies—

(a) Part 16 (Written witness statements);

(b) Part 19 (Expert evidence); or

(c) Part 20 (Hearsay evidence).

(2) That party must explain how the evidence is admissible unless it is—

(a) evidence of fact within the direct knowledge of the person who made the written statement served under rule 16.4 (Written witness statement in evidence);

(b) contained in an expert's report served under rule 19.3 (Introduction of expert evidence); or

(c) identified as hearsay in a notice served under rule 20.2 (Notice to introduce hearsay evidence).

(3) If the court admits such evidence each relevant part of the statement must be read or summarised aloud, unless the court otherwise directs.

[Note. See Parts 16, 19 and 20, and the other legislation to which those Parts apply. The admissibility of evidence that a party introduces is governed by rules of evidence.

A written witness statement to which Part 16 applies may only be introduced in evidence if there has been no objection within the time limit to which rule 16.4 refers.

An expert report to which Part 19 applies may only be introduced in evidence if it has been served in accordance with rule 19.3.

Rule 20.3 provides for opposing the introduction of hearsay evidence, including such evidence in a document.

Where a witness gives evidence in person, a previous written statement by that witness may be admissible as evidence under section 119 (Inconsistent statements) or under section 120 (Other previous statements of witnesses) of the Criminal Justice Act 2003.]

Evidence by admission

25.13.—(1) This rule applies where—

(a) a party introduces in evidence a fact admitted by another party; or

(b) parties jointly admit a fact.

(2) Unless the court otherwise directs, a written record must be made of the admission.

[Note. See section 10 of the Criminal Justice Act 1967(**a**)*. The admissibility of evidence that a party introduces is governed by rules of evidence.]*

Directions to the jury and taking the verdict

25.14.—(1) This rule applies where there is a jury.

(2) The court must give the jury directions about the relevant law at any time at which to do so will assist jurors to evaluate the evidence.

(3) After following the sequence in rule 25.9 (Procedure on plea of not guilty), the court must—

(a) to help the jury to come to a verdict—

(i) give jurors directions about the relevant law, and

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

(ii) summarise for them, to such extent as is necessary, the evidence relevant to the issues they must decide;

(b) give those directions orally and, as a general rule, in writing as well;

(c) direct the jury to retire to consider its verdict;

(d) if necessary, recall the jury—

(i) to answer jurors' questions, or

(ii) to give directions, or further directions, about considering and delivering its verdict or verdicts, including, if appropriate, directions about reaching a verdict by a majority;

(e) in a case in which the jury is required to return a single verdict—

(i) recall the jury (unless already recalled) when it informs the court that it has reached its verdict, and

(ii) direct the delivery of that verdict there and then;

(f) in a case in which the jury is required to return two or more verdicts—

(i) recall the jury (unless already recalled) when it informs the court that it has reached a verdict or verdicts, and

(ii) ask the jury whether its members all agree on every verdict required;

(g) if the answer to that question is 'yes', direct the delivery of each of those verdicts there and then; and

(h) if the answer to that question is 'no'—

(i) direct the delivery there and then of any unanimous verdict that has been reached, or

(ii) postpone the taking of any such verdict while the jury considers each other verdict required.

(4) Directions to the jury under paragraph (3)(a) may include questions that the court invites jurors to answer in coming to a verdict.

(5) The court may give the jury other assistance in writing.

(6) When the court directs the jury to deliver its verdict or verdicts, the court must ask the foreman chosen by the jury, in respect of each count—

(a) whether the jury has reached a verdict on which all the jurors agree;

(b) if so, whether that verdict is guilty or not guilty;

(c) if not, where the jury has deliberated for at least 2 hours and if the court decides to invite a majority verdict, then—

(i) whether at least 10 (of 11 or 12 jurors), or 9 (of 10 jurors), agreed on a verdict,

(ii) if so, is that verdict guilty or not guilty, and

(iii) if (and only if) such a verdict is guilty, how many jurors agreed to that verdict and how many disagreed.

(7) Where evidence has been given that the defendant was insane, so as not to be responsible for the act or omission charged as the offence, then under paragraph (5)(b) the court must ask whether the jury's verdict is guilty, not guilty, or not guilty by reason of insanity.

[Note. Under section 17 of the Juries Act 1974(**a**)*, the court may accept the verdict of a majority, as long as the jury has had at least 2 hours for deliberation.*

Under section 6 of the Criminal Law Act 1967, the jury may convict a defendant of an offence other than one charged by the indictment if that offence is proved by the evidence.

(**a**) 1974 c. 23.

The verdict to which rule 25.14(6) refers is provided for by section 2 of the Trial of Lunatics Act 1883(**a**)*. The evidence required before such a verdict may be reached is prescribed by section 1 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991*(**b**)*.]*

Conviction or acquittal without a jury

25.15.—(1) This rule applies where—

(a) the court tries the case without a jury; and

(b) after following the sequence in rule 25.9 (Procedure on plea of not guilty).

(2) In respect of each count, the court must give reasons for its decision to convict or acquit.

[Note. Under sections 44 and 46 of the Criminal Justice Act 2003(**c**)*, the court may try a case without a jury where there is a danger of jury tampering, or where jury tampering appears to have taken place. Under section 17 of the Domestic Violence, Crime and Victims Act 2004*(**d**)*, the court may try sample counts with a jury and other counts without a jury. Part 3 (preparation for trial in the Crown Court) contains rules about an application for such a trial.]*

Procedure if the court convicts

25.16.—(1) This rule applies where the court convicts the defendant.

(2) The court may exercise its power—

(a) if the defendant is an individual—

(i) to require a pre-sentence report,

(ii) to commission a medical report,

(iii) to require a statement of the defendant's assets and other financial circumstances;

(b) if the defendant is a corporation, to require such information as the court directs about the defendant's corporate structure and financial resources;

(c) to adjourn sentence pending—

(i) receipt of any such report, statement or information,

(ii) the verdict in a related case.

(3) The prosecutor must—

(a) summarise the prosecution case, if the sentencing court has not heard evidence;

(b) identify in writing any offence that the prosecutor proposes should be taken into consideration in sentencing;

(c) provide information relevant to sentence, including—

(i) any previous conviction of the defendant, and the circumstances where relevant,

(ii) any statement of the effect of the offence on the victim, the victim's family or others;

(d) identify any other matter relevant to sentence, including—

(i) the legislation applicable,

(ii) any sentencing guidelines, or guideline cases,

(iii) aggravating and mitigating features affecting the defendant's culpability and the harm which the offence caused, was intended to cause or might foreseeably have caused, and

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(**a**) 1883 c. 38; section 2 was amended by section 17 of, and Schedule 2 to, the Criminal Lunatics Act 1884 (c. 64) and sections 1 and 8 of the Criminal Procedure (Insanity) Act 1964 (c. 84).
(**b**) 1991 c. 25.
(**c**) 2003 c. 44.
(**d**) 2004 c. 28.

(iv) the effect of such of the information listed in paragraph (2) as the court may need to take into account; and

(e) if the court so directs, where no single indictment contains every count on which the defendant is to be sentenced provide a substituted indictment for sentencing purposes that contains every such count and indicates—

(i) the indictment from which each such count derives,

(ii) the defendant's plea to each such count,

(iii) if a guilty plea, the date on which that plea was entered, and

(iv) otherwise, the date on which the defendant was convicted on that count.

(4) Where the defendant pleads guilty, the court may give directions for determining the facts on the basis of which sentence must be passed if—

(a) the defendant wants to be sentenced on a basis agreed with the prosecutor; or

(b) in the absence of such agreement, the defendant wants to be sentenced on the basis of different facts to those disclosed by the prosecution case.

(5) Where the court has power to order the endorsement of the defendant's driving record, or power to order the defendant to be disqualified from driving—

(a) if other legislation so permits, a defendant who wants the court not to exercise that power must introduce the evidence or information on which the defendant relies;

(b) the prosecutor may introduce evidence; and

(c) the parties may make representations about that evidence or information.

(6) Before passing sentence—

(a) the court must give the defendant an opportunity to make representations and introduce evidence relevant to sentence;

(b) where the defendant is under 18, the court may give the defendant's parents, guardian or other supporting adult, if present, such an opportunity as well; and

(c) if the court requires more information, it may exercise its power to adjourn the hearing.

(7) When the court has taken into account all the evidence, information and any report available, the court must—

(a) as a general rule, pass sentence at the earliest opportunity;

(b) when passing sentence—

(i) explain the reasons,

(ii) explain to the defendant its effect, the consequences of failing to comply with any order or pay any fine, and any power that the court has to vary or review the sentence, unless the defendant is absent or the defendant's ill-health or disorderly conduct makes such an explanation impracticable, and

(iii) give any such explanation in terms the defendant, if present, can understand (with help, if necessary); and

(c) deal with confiscation, costs and any behaviour order.

(8) The general rule is subject to the court's power to defer sentence for up to 6 months.

[Note. See Sections 31, 52, 59, 63, 124, 125 and 126 of the Sentencing Act 2020(**a**)*.*

(**a**) 2020 c. 17.

Under section 30 of the Sentencing Act 2020, the general rule (subject to exceptions) is that the court must obtain and consider a pre-sentence report—

(a) where it is considering a custodial sentence or a community sentence;

(b) where it thinks the defendant may pose a significant risk of causing serious harm to the public by further offending.

Under section 32(3) of the Sentencing Act 2020, where the court obtains a written pre-sentence report about a defendant who is under 18, it may direct that information in it must be withheld, if it would be likely to create a risk of significant harm to the defendant.

Rule 28.8 of these Rules applies to commissions for medical reports.

Under section 35 of the Sentencing Act 2020, the court may require a defendant who is an individual to provide a statement of assets and other financial circumstances if the defendant is convicted.

Under section 20A of the Criminal Justice Act 1991(**a**)*, it is an offence for a defendant knowingly or recklessly to make a false or incomplete statement of assets or other financial circumstances, or to fail to provide such a statement, in response to a request by a court officer on behalf of the court.*

The Sentencing Council may issue sentencing guidelines under section 120 of the Coroners and Justice Act 2009(**b**)*.*

For the circumstances in which a court may (and, in some cases, must) order the endorsement of a defendant's driving record, or the disqualification of a defendant from driving, see sections 34, 35 and 44 of the Road Traffic Offenders Act 1988(**c**)*. Under that legislation, in some circumstances the court has discretion not to make such an order. See also rule 29.1.*

The evidence that may be introduced is subject to rules of evidence.

In addition to the specific powers to which this rule applies, the court has a general power to adjourn a trial: see rule 25.2.

Part 28 contains rules about sentencing procedure in special cases. Part 31 contains rules about behaviour orders. Part 33 contains rules about confiscation and related orders. Part 45 contains rules about costs.

Under section 3 of the Sentencing Act 2020, if (among other things) the defendant consents, the court may defer sentence for up to 6 months, for the purpose of allowing it to take account of the defendant's conduct after conviction, or any change in the defendant's circumstances.]

Provision of documents for the court

25.17.—(1) Unless the court otherwise directs, a party who introduces a document in evidence, or who otherwise uses a document in presenting that party's case, must provide a copy for—

(**a**) 1991 c. 53; section 20A was inserted by section 168 of, and paragraph 43 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33) and amended by sections 95 and 109 of, and paragraph 350 of Schedule 8 to, the Courts Act 2003 (c. 39) and section 44 of, and paragraph 26 of Schedule 16 to, the Crime and Courts Act 2013 (c. 22).

(**b**) 2009 c. 25.

(**c**) 1988 c. 53; section 34 was amended by section 29 of the Road Traffic Act 1991 (c. 40), section 3 of the Aggravated Vehicle-Taking Act 1992 (c. 11), section 165 of, and paragraph 121 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), sections 56 and 107 of, and Schedule 8 to, the Police Reform Act 2002 (c. 30), section 25 of the Road Safety Act 2006 (c. 49), article 2 of S.I. 2007/3480, paragraphs 2 and 5 of Schedule 27 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), section 56 of, and paragraphs 9 and 12 of Schedule 22 to, the Crime and Courts Act 2013 (c. 22) and section 177 of, and paragraph 90 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25). Section 35 was amended by section 48 of, and paragraph 95 of Schedule 4 to, the Road Traffic Act 1991 (c. 40), section 165 of, and paragraph 122 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 177 of, and 90 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25). Section 44 was amended by regulations 2 and 3 of, and paragraph 10 of Schedule 2 to, S.I. 1990/144 and sections 9, 10 and 59 of, and Schedule 7 to, the Road Safety Act 2006 (c. 49).

(a) each other party;

(b) any witness that party wants to refer to the document; and

(c) the court.

(2) If the court so directs, a party who introduces or uses a document for such a purpose must provide a copy for the jury.

(3) Unless the court otherwise directs, on application or on its own initiative, the court officer must provide for the court—

(a) any copy received under paragraph (1) before the trial begins;

(b) a copy of the court officer's record of—

(i) information supplied by each party for the purposes of case management, including any revision of information previously supplied,

(ii) each pre-trial direction for the management of the case,

(iii) any pre-trial decision to admit evidence,

(iv) any pre-trial direction about the giving of evidence, and

(v) any admission to which rule 25.13 (Evidence by admission) applies;

(c) any other document served on the court officer for the use of the court; and

(d) any evidence or other material prepared for the court.

Duty of court officer and custodian

25.18.—(1) The court officer must—

(a) serve on each party notice of where and when an adjourned hearing will resume, unless that party was present when that was arranged;

(b) if the reason for the adjournment was to postpone sentence, include that reason in any such notice to the defendant;

(c) unless the court otherwise directs, make available to the parties any written report to which rule 25.16(2) applies (pre-sentence and medical reports);

(d) where the court has ordered a defendant to provide information under section 25 of the Road Traffic Offenders Act 1988(**a**), serve on the defendant notice of that order unless the defendant was present when it was made;

(e) give the court such other assistance as it requires, including—

(i) selecting jurors from the panel summoned by the Lord Chancellor, under rule 25.6 (Selecting the jury),

(ii) taking the oaths or affirmations of jurors and witnesses, under rules 25.6 and 25.11 (Evidence of a witness in person),

(iii) informing the jurors of the offence or offences charged in the indictment, and of their duty, under rule 25.9 (Procedure on plea of not guilty),

(iv) retaining a copy of any written directions given to the jury under rule 25.14(2) or (3)(a),

(v) retaining a copy of any written material given to assist the jury under rule 25.14(5), and

(vi) asking the jury foreman to deliver the verdict, under rule 25.14(6).

(2) Where the court passes a sentence of immediate imprisonment or detention, or orders a suspended sentence of imprisonment to take effect, by this rule—

(**a**) 1988 c. 53; section 25 was amended by section 90 of, and paragraphs 140 and 142 of Schedule 13 to, the Access to Justice Act 1999 (c. 22), section 165 of, and paragraph 118 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 109 of, and paragraph 311 of Schedule 8 to, the Courts Act 2003 (c. 39).

(a) the court requires the defendant to provide, in writing or orally, his or her nationality; and

(b) the custodian must obtain that information and record it.

[Note. See also section 82 of the Senior Courts Act 1981(**a**) *(Duties of officers of Crown Court).*

Under Part 5, the court officer must—

(a) record details of a case and of the court's decisions; and

(b) give public notice of specified details about a trial, including by such arrangements as the Lord Chancellor directs.

Under section 25 of the Road Traffic Offenders Act 1988, where the court does not know a defendant's sex or date of birth, then on convicting the defendant of an offence involving obligatory or discretionary disqualification, the court must order the defendant to provide that information.

Under section 86A of the Courts Act 2003(**b**)*, Criminal Procedure Rules must specify stages of proceedings at which the court must require the information to which rule 25.18(2) refers. A person commits an offence if, without reasonable excuse, that person fails to comply with such a requirement, whether by providing false or incomplete information or by providing no information.]*

PART 26

JURORS

Contents of this Part

Appeal against officer's refusal to excuse or postpone jury service	rule 26.1
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Appeal against officer's refusal to excuse or postpone jury service

26.1.—(1) This rule applies where a person summoned for jury service in the Crown Court, the High Court or the county court wants to appeal against a refusal by an officer on the Lord Chancellor's behalf—

(a) to excuse that person from such service; or

(b) to postpone the date on which that person is required to attend for such service.

(2) The appellant must appeal to the court to which the appellant has been summoned.

(3) The appellant must—

(a) apply in writing, as soon as reasonably practicable; and

(b) serve the application on the court officer.

(4) The application must—

(a) attach a copy of—

(i) the jury summons, and

(**a**) 1981 c. 54; section 82 was amended by section 15 of, and paragraphs 114 and 135 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4) and sections 116 and 178 of, and Part 3 of Schedule 3 to, the Coroners and Justice Act 2009 (c. 25).

(**b**) 2003 c. 39; section 86A was inserted by section 162 of the Policing and Crime Act 2017 (c. 3).

(ii) the refusal to excuse or postpone which is under appeal; and

(b) explain why the court should excuse the appellant from jury service, or postpone its date, as appropriate.

(5) The court to which the appeal is made—

(a) may extend the time for appealing, and may allow the appeal to be made orally;

(b) may determine the appeal at a hearing in public or in private, or without a hearing;

(c) may adjourn any hearing of the appeal; but

(d) must not determine an appeal unless the appellant has had a reasonable opportunity to make representations in person.

[Note. See sections 9 and 9A of the Juries Act 1974(**a**)*.*

Where a person summoned for jury service—

(a) fails to attend as required; or

(b) after attending as required, when selected under rule 25.6—

(i) is not available, or

(ii) is unfit for jury service by reason of drink or drugs

that conduct may be punished as if it were a contempt of court. See section 20 of the Juries Act 1974 and rules 48.5 to 48.8 (contempt of court). The maximum penalty which the court can impose is a fine of £1,000.]

Excusal from jury service by court

26.2. At any time before a juror completes the oath or affirmation, the court may exercise its power to excuse him or her from jury service for lack of capacity to act effectively as a juror because of an insufficient understanding of English—

(a) on the court's own initiative, or where the court officer refers the juror to the court; and

(b) after enquiry of the juror.

[Note. See section 10 of the Juries Act 1974(**b**)*.]*

Provision of information for jurors

26.3. The court officer must arrange for each juror to receive—

(a) by such means as the Lord Chancellor directs, general information about jury service and about a juror's responsibilities;

(b) written notice of the prohibitions against—

(i) research by a juror into the case,

(ii) disclosure by a juror of any such research to another juror during the trial,

(iii) conduct by a juror which suggests that that juror intends to try the case otherwise than on the evidence, and

(iv) disclosure by a juror of the deliberations of the jury; and

(c) written warning that breach of those prohibitions is an offence, for which the penalty is imprisonment or a fine or both, and may be a contempt of court.

(**a**) 1974 c. 23; section 9 was amended by paragraphs 1, 3, 4, 5 and 6 of Schedule 33, and Part 10 of Schedule 37, to the Criminal Justice Act 2003 (c. 44) and paragraph 172 of Schedule 8 to the Courts Act 2003 (c. 39). Section 9A was inserted by section 120 of the Criminal Justice Act 1988 (c. 33) and amended by paragraphs 1, 7, 8, 9, 10 and 11 of Schedule 33 to the Criminal Justice Act 2003 (c. 44) and paragraph 172 of Schedule 8 to the Courts Act 2003 (c. 39).

(**b**) 1974 c. 23; section 10 was amended by section 168 of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33) and sections 65 and 109 of, and paragraph 4 of Schedule 4 and Schedule 10 to, the Courts Act 2003 (c. 39).

*[Note. See sections 20A, 20B, 20C and 20D of the Juries Act 1974(**a**).]*

Assessment of juror's availability for long trial, etc.

26.4.—(1) The court may invite each member of a panel of jurors to provide such information, by such means and at such a time as the court directs, about—

(a) that juror's availability to try a case expected to last for longer than the juror had expected to serve; and

(b) any association of that juror with, or any knowledge by that juror of—

(i) a party or witness, or

(ii) any other person, or any place, of significance to the case.

(2) Where jurors provide information under this rule, the court may postpone the selection of the jury to try a case to allow each juror an opportunity to review and amend that information before that selection.

(3) Using that information, the court may exercise its power to excuse a juror from selection as a member of the jury to try a case, but the court must not—

(a) excuse a juror without allowing the parties an opportunity to make representations; or

(b) refuse to excuse a juror without allowing that juror such an opportunity.

Surrender of electronic communication devices by jurors

26.5.—(1) This rule applies where the court can order the members of a jury to surrender for a specified period any electronic communication devices that they possess.

(2) The court may make such an order—

(a) on application; or

(b) on its own initiative.

(3) A party who wants the court to make such an order must—

(a) apply as soon as reasonably practicable;

(b) notify each other party;

(c) specify for what period any device should be surrendered; and

(d) explain why—

(i) the proposed order is necessary or expedient in the interest of justice, and

(ii) the terms of the proposed order are a proportionate means of safeguarding those interests.

*[Note. See section 15A of the Juries Act 1974(**b**).]*

Interpretation for a deaf juror

26.6.—(1) This rule applies where under section 9C of the Juries Act 1974(**c**) the court appoints one or more British Sign Language interpreters to enable a person who is deaf to act effectively as a juror.

(2) Each such interpreter must take an oath or affirmation in these terms, or in any corresponding terms that the interpreter declares to be binding on him or her—

(**a**) 1974 c. 23; sections 20A, 20B, 20C and 20D were inserted by sections 71, 72, 73 and 74 respectively of the Criminal Justice and Courts Act 2015 (c. 2).
(**b**) 1974 c. 23; section 15A was inserted by section 69 of the Criminal Justice and Courts Act 2015 (c. 2).
(**c**) 1974 c. 23; section 9C was inserted by section 196 of the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

"I swear by Almighty God [*or* I do solemnly, sincerely and truly declare and affirm] that I will faithfully interpret all such matters and things as shall be required of me according to the best of my skill and understanding. I will enable communication among the jurors so that all may discharge their duties and I will not interfere in, influence or disclose the deliberations of the jury."

PART 27

RETRIAL AFTER ACQUITTAL

Contents of this Part

General

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Application for certificate — rule 27.2

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Application for reporting restriction pending application for order for retrial — rule 27.3
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Application of other rules about procedure in the Court of Appeal — rule 27.7

GENERAL

When this Part applies

27.1.—(1) Rule 27.2 applies where, under section 54 of the Criminal Procedure and Investigations Act 1996(**a**), the Crown Court or a magistrates' court can certify for the High Court that interference or intimidation has been involved in proceedings leading to an acquittal.

(2) Rules 27.3 to 27.7 apply where, under section 77 of the Criminal Justice Act 2003(**b**), the Court of Appeal can—

(a) quash an acquittal for a serious offence and order a defendant to be retried; or

(b) order that an acquittal outside the United Kingdom is no bar to the defendant being tried in England and Wales,

if there is new and compelling evidence and it is in the interests of justice to make the order.

APPLICATION FOR CERTIFICATE TO ALLOW ORDER FOR RETRIAL

Application for certificate

27.2.—(1) This rule applies where—

(a) a defendant has been acquitted of an offence;

(b) a person has been convicted of one of the following offences involving interference with or intimidation of a juror or a witness (or potential witness) in any proceedings which led to the defendant's acquittal—

(i) perverting the course of justice,

(**a**) 1996 c. 25.
(**b**) 2003 c. 44.

(ii) intimidation etc. of witnesses, jurors and others under section 51(1) of the Criminal Justice and Public Order Act 1994(**a**), or

(iii) aiding, abetting, counselling, procuring, suborning or inciting another person to commit an offence under section 1 of the Perjury Act 1911(**b**); and

(c) the prosecutor wants the court by which that person was convicted to certify for the High Court that there is a real possibility that, but for the interference or intimidation, the defendant would not have been acquitted.

(2) The prosecutor must—

(a) apply in writing as soon as practicable after that person's conviction; and

(b) serve the application on—

(i) the court officer, and

(ii) the defendant who was acquitted, if the court so directs.

(3) The application must—

(a) give details, with relevant facts and dates, of—

(i) the conviction for interference or intimidation, and

(ii) the defendant's acquittal; and

(b) explain—

(i) why there is a real possibility that, but for the interference or intimidation, the defendant would not have been acquitted, and

(ii) why it would not be contrary to the interests of justice to prosecute the defendant again for the offence of which he or she was acquitted, despite any lapse of time or other reason.

(4) The court may—

(a) extend the time limit under paragraph (2);

(b) allow an application to be in a different form to one issued under the Practice Direction, or to be made orally; and

(c) determine an application under this rule—

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

(ii) without a hearing.

(5) If the court gives a certificate, the court officer must serve it on—

(a) the prosecutor; and

(b) the defendant who was acquitted.

[Note: See Section 54 of the Criminal Procedure and Investigations Act 1996 (Acquittals tainted by intimidation, etc.).

For the procedure on application to the High Court, see rules 77.6 to 77.15 of the Civil Procedure Rules 1998(**c**)*.]*

(**a**) 1994 c. 33; section 51 was amended by section 29 of, and paragraph 19 of Schedule 2 to, the Criminal Appeal Act 1995 (c. 35), section 67 of, and paragraphs 21 and 22 of Schedule 4 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraphs 62 and 64 of Schedule 36 to the Criminal Justice Act 2003 (c. 44), section 45 of, and paragraph 36 of Schedule 17 to, the Crime and Courts Act 2013 (c. 22) and section 50 of, and paragraph 14 of Schedule 11 to, the Criminal Justice and Courts Act 2015 (c. 2). It is further amended by paragraph 11 of Schedule 36 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(**b**) 1911 c. 6.

(**c**) S.I. 1998/3132; rules 77.6 to 77.15 were inserted by S.I. 2010/1953.

Application for reporting restriction pending application for order for retrial

27.3.—(1) This rule applies where—

(a) no application has been made under rule 27.4 (Application for order for retrial);

(b) an investigation by officers has begun into an offence with a view to an application under that rule; and

(c) the Director of Public Prosecutions wants the Court of Appeal to make, vary or remove an order for a reporting restriction under section 82 of the Criminal Justice Act 2003 (Restrictions on publication in the interests of justice).

(2) The Director must—

(a) apply in writing; and

(b) serve the application on—

(i) the Registrar, and

(ii) the defendant, unless the court otherwise directs.

(3) The application must, as appropriate—

(a) explain why the Director wants the court to direct that it need not be served on the defendant until the application under rule 27.4 is served;

(b) specify the proposed terms of the order, and for how long it should last;

(c) explain why an order in the terms proposed is necessary; and

(d) explain why an order should be varied or removed.

[Note: For other rules about reporting restrictions, see Part 6.]

Application for order for retrial

27.4.—(1) This rule applies where—

(a) a defendant has been acquitted—

(i) in the Crown Court, or on appeal from the Crown Court, of an offence listed in Part 1 of Schedule 5 to the Criminal Justice Act 2003(**a**) (qualifying offences), or

(ii) in proceedings elsewhere than in the United Kingdom of an offence under the law of that place, if what was alleged would have amounted to or included one of those listed offences; and

(b) with the Director of Public Prosecutions' written consent, a prosecutor wants the Court of Appeal to make an order, as the case may be—

(i) quashing the acquittal in the Crown Court and ordering the defendant to be retried for the offence, or

(ii) declaring whether the acquittal outside the United Kingdom is a bar to the defendant's trial in England and Wales and, if it is, whether that acquittal shall not be such a bar.

(2) Such a prosecutor must—

(a) apply in writing;

(b) serve the application on the Registrar; and

(c) not more than 2 business days later serve on the defendant who was acquitted—

(i) the application, and

(**a**) 2003 c. 44; Part 1 of Schedule 5 was amended by section 26 of, and paragraph 3 of Schedule 2 to, the Corporate Manslaughter and Corporate Homicide Act 2007 (c. 19).

(ii) a notice charging the defendant with the offence, unless the defendant has already been arrested and charged under section 87 of the Criminal Justice Act 2003(**a**) (arrest, under warrant or otherwise, and charge).

(3) The application must—

(a) give details, with relevant facts and dates, of the defendant's acquittal;

(b) explain—

(i) what new and compelling evidence there is against the defendant, and

(ii) why in all the circumstances it would be in the interests of justice for the court to make the order sought;

(c) include or attach any application for the following, with reasons—

(i) an order under section 80(6) of the Criminal Justice Act 2003(**b**) (Procedure and evidence) for the production of any document, exhibit or other thing which in the prosecutor's opinion is necessary for the determination of the application,

(ii) an order under that section for the attendance before the court of any witness who would be a compellable witness at the trial the prosecutor wants the court to order, or

(iii) an order for a reporting restriction under section 82 of the Criminal Justice Act 2003(**c**) (Restrictions on publication in the interests of justice); and

(d) attach—

(i) written witness statements of the evidence on which the prosecutor relies as new and compelling evidence against the defendant,

(ii) relevant documents from the trial at which the defendant was acquitted, including a record of the offence or offences charged and of the evidence given, and

(iii) any other document or thing that the prosecutor thinks the court will need to decide the application.

[Note. See sections 75, 76, 77, 80 and 82 of the Criminal Justice Act 2003(**d**)*. Under Part 1 of Schedule 5 to that Act, the qualifying offences include murder and other serious offences against the person, offences of importation and exportation of Class A drugs, offences of causing explosions and other serious damage, terrorism offences and war crimes and other international offences.*

The time limit for serving an application on the defendant is prescribed by section 80(2) of the 2003 Act. It may be extended but not shortened.]

Respondent's notice

27.5.—(1) A defendant on whom a prosecutor serves an application may serve a respondent's notice, and must do so if the defendant wants to make representations to the court.

(2) Such a defendant must serve the respondent's notice on—

(a) the Registrar; and

(b) the prosecutor,

not more than 20 business days after service of the application.

(3) The respondent's notice must—

(a) give the date on which the respondent was served with the prosecutor's application;

(b) summarise any relevant facts not contained in that application;

(c) explain the defendant's grounds for opposing that application;

(**a**) 2003 c. 44.
(**b**) 2003 c. 44.
(**c**) 2003 c. 44.
(**d**) 2003 c. 44; section 76 was amended by S.I. 2012/1809.

(d) include or attach any application for the following, with reasons—

(i) an extension of time within which to serve the respondent's notice,

(ii) bail pending the hearing of the prosecutor's application, if the defendant is in custody,

(iii) a direction to attend in person any hearing that the defendant could attend by live link, if the defendant is in custody,

(iv) an order under section 80(6) of the Criminal Justice Act 2003 (Procedure and evidence) for the production of any document, exhibit or other thing which in the defendant's opinion is necessary for the determination of the prosecutor's application, or

(v) an order under that section for the attendance before the court of any witness who would be a compellable witness at the trial the prosecutor wants the court to order; and

(e) attach or identify any other document or thing that the defendant thinks the court will need to decide the application.

Application to Crown Court for summons or warrant

27.6.—(1) This rule applies where—

(a) the prosecutor has served on the Registrar an application under rule 27.4 (Application for order for retrial);

(b) the defendant is not in custody as a result of arrest under section 88 of the Criminal Justice Act 2003(**a**) (Bail and custody before application); and

(c) the prosecutor wants the Crown Court to issue—

(i) a summons requiring the defendant to appear before the Court of Appeal at the hearing of the prosecutor's application, or

(ii) a warrant for the defendant's arrest

under section 89 of the 2003 Act(**b**) (Bail and custody before hearing).

(2) The prosecutor must—

(a) apply in writing; and

(b) serve the application on the Crown Court officer.

(3) The application must—

(a) explain what the case is about, including a brief description of the defendant's acquittal, the new evidence and the stage that the application to the Court of Appeal has reached;

(b) specify—

(i) the decision that the prosecutor wants the Crown Court to make,

(ii) each offence charged, and

(iii) any relevant previous bail decision and the reasons given for it; and

(c) propose the terms of any suggested condition of bail.

[Note. Under section 87 of the Criminal Justice Act 2003(**c**)*, in the circumstances prescribed by that section a justice of the peace may issue a warrant for the arrest of the defendant who was acquitted and that defendant may be charged with an offence that is to be the subject of an application to the Court of Appeal under rule 27.4.*

(**a**) 2003 c. 44; section 88 was amended by section 148 of, and paragraphs 59 and 63 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4).
(**b**) 2003 c. 44.
(**c**) 2003 c. 44.

Under section 88 of the 2003 Act, in the circumstances prescribed by that section a defendant who has been arrested and charged must be brought before the Crown Court and that court must either grant bail for that defendant to attend the Court of Appeal on the hearing of an application under rule 27.4, or remand the defendant in custody.

Under section 89 of the 2003 Act, where the prosecutor has made an application to the Court of Appeal under rule 27.4—

(a) if the defendant is in custody, the Crown Court must decide whether to remand him or her in custody to be brought before the Court of Appeal or to grant bail for that purpose; or

(b) if the defendant is not in custody, and if the prosecutor so applies, the Crown Court may either issue a summons for the defendant to attend the Court of Appeal or issue a warrant for the defendant's arrest.]

Application of other rules about procedure in the Court of Appeal

27.7. On an application under rule 27.4 (Application for order for retrial)—

(a) the rules in Part 36 (Appeal to the Court of Appeal: general rules) apply with the necessary modifications;

(b) rules 39.8, 39.9 and 39.10 (bail and bail conditions in the Court of Appeal) apply as if the references in those rules to appeal included references to an application under rule 27.4; and

(c) rule 39.14 (Renewal or setting aside of order for retrial) applies as if the reference to section 7 of the Criminal Appeal Act 1968(**a**) were a reference to section 84 of the Criminal Justice Act 2003(**b**) (Retrial).

[Note. See also the notes to the rules listed in this rule.

For the powers of the Court of Appeal that may be exercised by one judge of that court or by the Registrar, and for the right to renew an application for directions to a judge or to the Court of Appeal, see the Criminal Justice Act 2003 (Retrial for Serious Offences) Order 2005(**c**) *and rule 36.5 (Renewing an application refused by a judge or the Registrar).*

For rules governing applications for reporting restrictions, see Part 6. For rules governing proceedings in the Crown Court about bail, see Part 14.]

PART 28

SENTENCING PROCEDURES IN SPECIAL CASES AND ON COMMITTAL FOR SENTENCE, ETC.

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Reasons for not following usual sentencing requirements	rule 28.1
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(**a**) 1968 c. 19; section 7 was amended by sections 43 and 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33) and paragraph 44 of Schedule 36 to the Criminal Justice Act 2003 (c. 44).
(**b**) 2003 c. 44.
(**c**) S.I. 2005/679.

Information to be supplied on committal to custody
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[Note. See also—

(a) Part 24, which contains rules about the general procedure on sentencing in a magistrates' court;

(b) Part 25, which contains rules about the general procedure on sentencing in the Crown Court;

(c) Part 29 (Road traffic penalties);

(d) Part 30 (Enforcement of fines and other orders for payment); and

(e) Part 32 (Breach, revocation and amendment of community and other orders).]

Reasons for not following usual sentencing requirements

28.1.—(1) This rule applies where the court decides—

(a) not to follow a relevant sentencing guideline;

(b) not to make, where it could—

(i) a reparation order (unless it passes a custodial or community sentence),

(ii) a compensation order,

(iii) a slavery and trafficking reparation order, or

(iv) a travel restriction order;

(c) not to order, where it could—

(i) that a suspended sentence of imprisonment is to take effect,

(ii) the endorsement of the defendant's driving record, or

(iii) the defendant's disqualification from driving, for the usual minimum period or at all; or

(d) under section 74 or section 388 of the Sentencing Act 2020(**a**), to pass a lesser sentence than it otherwise would have passed because the defendant has assisted, or has agreed to assist, an investigator or prosecutor in relation to an offence.

(2) The court must explain why it has so decided, when it explains the sentence that it has passed.

(3) Where paragraph (1)(d) applies, the court must arrange for such an explanation to be given to the defendant and to the prosecutor in writing, if the court thinks that it would not be in the public interest to explain in public.

[Note. See sections 52, 54 and 55 of the Sentencing Act 2020(**b**); *section 8(7) of the Modern Slavery Act 2015*(**c**)*; section 33(2) of the Criminal Justice and Police Act 2001*(**d**)*; paragraph 14(1) of Schedule 16 to the 2020 Act; section 47(1) of the Road Traffic Offenders Act 1988*(**e**)*; and sections 74 and 388 of the 2020 Act.*

(**a**) 2020 c. 17; section 74 was amended by section 10 of the Counter-Terrorism and Sentencing Act 2021 (c. 11) and is further amended by section 408 of, and paragraph 38B of Schedule 22 to, the 2020 Act with effect from a date to be appointed.
(**b**) 2020 c. 17.
(**c**) 2015 c. 30.
(**d**) 2001 c. 16.
(**e**) 1988 c. 53.

For the duty to explain the sentence the court has passed, see section 52(1) of the 2020 Act and rules 24.11(9) (procedure where a magistrates' court convicts) and 25.16(7) (procedure where the Crown Court convicts).

Under section 59 of the 2020 Act, the court when sentencing must follow any relevant sentencing guideline unless satisfied that to do so would be contrary to the interests of justice.

For the circumstances in which the court may make—

(a) a reparation or compensation order, see sections 110 and 134 of the 2020 Act;

(b) a slavery and trafficking reparation order, see section 8 of the 2015 Act;

(c) a travel restriction order against a defendant convicted of drug trafficking, see sections 33 and 34 of the 2001 Act(**a**)*.]*

Notice of requirements of suspended sentence and community, etc. orders

28.2.—(1) This rule applies where the court—

(a) makes a suspended sentence order;

(b) imposes a requirement under—

(i) a community order,

(ii) a youth rehabilitation order, or

(iii) a suspended sentence order; or

(c) orders the defendant to attend meetings with a supervisor.

(2) The court officer must notify—

(a) the defendant of—

(i) the length of the sentence suspended by a suspended sentence order, and

(ii) the period of the suspension;

(b) the defendant and, where the defendant is under 14, an appropriate adult, of—

(i) any requirement or requirements imposed, and

(ii) the identity of any responsible officer or supervisor, and the means by which that person may be contacted;

(c) any responsible officer or supervisor, and, where the defendant is under 14, the appropriate qualifying officer (if that is not the responsible officer), of—

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

(ii) the offence or offences of which the defendant was convicted, and

(iii) the requirement or requirements imposed; and

(d) the person affected, where the court imposes a requirement—

(i) for the protection of that person from the defendant, or

(ii) requiring the defendant to reside with that person.

(3) If the court imposes an electronic monitoring requirement, the monitor of which is not the responsible officer, the court officer must—

(a) notify the defendant and, where the defendant is under 16, an appropriate adult, of the monitor's identity, and the means by which the monitor may be contacted; and

(b) notify the monitor of—

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

(ii) the offence or offences of which the defendant was convicted,

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(**a**) 2001 c. 16; section 33 was amended by sections 39(3) and 39(4) of the Identity Cards Act 2006 (c. 15).

(iii) the place or places at which the defendant's presence must be monitored,

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

(v) the identity of the responsible officer, and the means by which that officer may be contacted.

[Note. See sections 212(2) and 298(2) of the Sentencing Act 2020(**a**)*; section 190(2) of the 2020 Act; and section 1A(7) of the Street Offences Act 1959*(**b**)*.*

For the circumstances in which the court may—

(a) make a suspended sentence order, see sections 264, 277, 286 and 288 of the 2020 Act;

(b) make a community order (defined by section 200 of the 2020 Act), or a youth rehabilitation order (defined by section 173(1) of that Act), and for the identity and duties of responsible officers and qualifying officers, see generally Chapters 1 and 2 of Part 9 of the 2020 Act; and

(c) order the defendant to attend meetings with a supervisor, see section 1(2A) of the Street Offences Act 1959(**c**)*.*

Under sections 174, 201 or 287 of the 2020 Act, the court may impose an electronic monitoring requirement to secure the monitoring of the defendant's compliance with certain other requirements (for example, a curfew or an exclusion).]

Notification requirements

28.3.—(1) This rule applies where, on a conviction, sentence or order, legislation requires the defendant—

(a) to notify information to the police; or

(b) to be included in a barred list.

(2) The court must tell the defendant that such requirements apply, and under what legislation.

[Note. For the circumstances in which a defendant is required to notify information to the police, see—

(a) Part 2 of, and Schedule 3 to, the Sexual Offences Act 2003(**d**) *(notification for the period specified by section 82 of the Act*(**e**) *after conviction, etc. of an offence listed in Schedule 3 and committed in the circumstances specified in that Schedule);*

(b) Part 4 of the Counter Terrorism Act 2008(**f**) *(notification after conviction of a specified offence of, or connected with, terrorism, for which a specified sentence is imposed).*

For the circumstances in which a defendant will be included in a barred list, see paragraphs 1, 2, 7, 8 and 24 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006(**g**)*. See also paragraph 25 of that Schedule*(**h**)*.*

These requirements are not part of the court's sentence.]

(**a**) 2020 c. 17.
(**b**) 1959 c. 57; section 1A was inserted by section 17(1) and (3) of the Policing and Crime Act 2009 (c. 26).
(**c**) 1959 c. 57; section 1(2A) was inserted by section 17(1) and (3) of the Policing and Crime Act 2009 (c. 26).
(**d**) 2003 c. 42; Schedule 3 was amended by article 2 of S.I. 2007/296, section 63(2) of, and paragraph 63 of Schedule 6 to, the Serious Crimes Act 2007 (c. 27), section 148(1) of, and paragraphs 53 and 58 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4) and section 177(1) of, and paragraph 62 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25). Other amendments to Schedule 3 are not relevant to these Rules.
(**e**) 2003 c. 42; section 82 was amended by section 57 of the Violent Crime Reduction Act 2006 (c. 38).
(**f**) 2008 c. 28.
(**g**) 2006 c. 47; paragraphs 1, 2, 7 and 8 of Schedule 3 were amended by sections 81 and 89 of the Policing and Crime Act 2009 (c. 26). Paragraph 24 was amended by article 2 of S.I. 2008/3050.
(**h**) 2006 c. 47; paragraph 25 of Schedule 3 was amended by article 3 of S.I. 2008/3050 and section 81 of the Policing and Crime Act 2009 (c. 26).

Variation of sentence

28.4.—(1) This rule—

(a) applies where a magistrates' court or the Crown Court can vary, rescind or set aside a sentence, penalty or order, other than an order to which rule 44.3 applies (Setting aside a conviction or varying a costs etc. order); and

(b) authorises the Crown Court, in addition to its other powers, to do so within the period of 56 days beginning with another defendant's acquittal or sentencing where—

(i) defendants are tried separately in the Crown Court on the same or related facts alleged in one or more indictments, and

(ii) one is sentenced before another is acquitted or sentenced.

(2) The court—

(a) may exercise its power—

(i) on application by a party, or on its own initiative,

(ii) at a hearing, in public or in private, or without a hearing; and

(b) must announce, at a hearing in public—

(i) a decision to vary or rescind a sentence or order, or to refuse to do so, and

(ii) the reasons for that decision.

(3) A party who wants the court to exercise that power must—

(a) apply in writing as soon as reasonably practicable after—

(i) the sentence, penalty or order that that party wants the court to vary, rescind or set aside, or

(ii) where paragraph (1)(b) applies, the other defendant's acquittal or sentencing;

(b) serve the application on—

(i) the court officer, and

(ii) each other party; and

(c) in the application—

(i) explain why the sentence, penalty or order should be varied, rescinded or set aside,

(ii) specify the variation that the applicant proposes, and

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

(4) The court must not exercise its power in the defendant's absence unless—

(a) the court makes a variation—

(i) which is proposed by the defendant, or

(ii) the effect of which is that the defendant is no more severely dealt with under the sentence as varied than before; or

(b) the defendant has had an opportunity to make representations at a hearing (whether or not the defendant in fact attends).

(5) The court may—

(a) extend (even after it has expired) the time limit under paragraph (3), unless the court's power to vary or rescind the sentence cannot be exercised; and

(b) allow an application to be made orally.

(6) For the purposes of the announcement required by paragraph (2)(b), the court need not comprise the same member or members as the court by which the decision to be announced was made.

[Note. Under section 142 of the Magistrates' Courts Act 1980(**a**)*, in some cases a magistrates' court can vary or rescind a sentence or other order that it has imposed or made, if that appears to be in the interests of justice. The power cannot be exercised if the Crown Court or the High Court has determined an appeal about that sentence or order. See also rule 44.3 (Setting aside a conviction or varying a costs etc. order), which governs the exercise by a magistrates' court of the power conferred by section 142 of the 1980 Act in the circumstances to which that rule applies.*

Under section 16M of the 1980 Act(**b**) *a magistrates' court can set aside a penalty imposed under section 16I of the Act*(**c**) *on a defendant who accepts the automatic online conviction option under section 16H*(**d**) *if the amount of the penalty appears to the court to be unjust. If the court sets aside such a penalty it may impose any sentence that it could have imposed for the offence if the defendant had pleaded guilty at the first opportunity.*

Under section 385 of the Sentencing Act 2020(**e**)*, the Crown Court can vary or rescind a sentence or other order that it has imposed or made. The power cannot be exercised—*

(a) after the period of 56 days beginning with the sentence or order (but see the note below); or

(b) if an appeal or application for permission to appeal against that sentence or order has been determined.

Under section 385(7) of the 2020 Act, Criminal Procedure Rules can extend that period of 56 days where another defendant is tried separately in the Crown Court on the same or related facts alleged in one or more indictments.]

Application to vary or discharge a compensation, etc. order

28.5.—(1) This rule applies where on application by the defendant a magistrates' court can vary or discharge—

(a) a compensation order; or

(b) a slavery and trafficking reparation order.

(2) A defendant who wants the court to exercise that power must—

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

(b) serve the application on the magistrates' court officer;

(c) where the order was made in the Crown Court, serve a copy of the application on the Crown Court officer; and

(d) in the application, specify the order that the defendant wants the court to vary or discharge and explain (as applicable)—

(i) what civil court finding shows that the injury, loss or damage was less than it had appeared to be when the order was made,

(ii) in what circumstances the person for whose benefit the order was made has recovered the property for the loss of which it was made,

(iii) why a confiscation order, unlawful profit order or slavery and trafficking reparation order makes the defendant now unable to pay compensation or reparation in full, or

(iv) in what circumstances the defendant's means have been reduced substantially and unexpectedly, and why they seem unlikely to increase for a considerable period.

(3) The court officer must serve a copy of the application on the person for whose benefit the order was made.

(**a**) 1980 c. 43; section 142 was amended by sections 26 and 29 of, and Schedule 3 to, the Criminal Appeal Act 1995 (c. 35).
(**b**) 1980 c. 43; section 16M was inserted by section 3 of the Judicial Review and Courts Act 2022 (c. 35).
(**c**) 1980 c. 43; section 16I was inserted by section 3 of the Judicial Review and Courts Act 2022 (c. 35).
(**d**) 1980 c. 43; section 16H was inserted by section 3 of the Judicial Review and Courts Act 2022 (c. 35).
(**e**) 2020 c. 17.

(4) The court must not vary or discharge the order unless—

(a) the defendant, and the person for whose benefit it was made, each has had an opportunity to make representations at a hearing (whether or not either in fact attends); and

(b) where the order was made in the Crown Court, the Crown Court has notified its consent.

[Note. For the circumstances in which—

(a) the court may make a compensation order, see section 133 of the Sentencing Act 2020(**a**)*;*

(b) the court may make a slavery and trafficking reparation order, see section 8 of the Modern Slavery Act 2015(**b**)*;*

(c) a magistrates' court with power to enforce such an order may vary or discharge it under the 2020 Act, see section 143. (Under section 143(3), where the order was made in the Crown Court, the magistrates' court must first obtain the Crown Court's consent.)]

Application to remove, revoke or suspend a disqualification or restriction

28.6.—(1) This rule applies where, on application by the defendant, the court can remove, revoke or suspend a disqualification or restriction included in a sentence (except a disqualification from driving).

(2) A defendant who wants the court to exercise such a power must—

(a) apply in writing, no earlier than the date on which the court can exercise the power;

(b) serve the application on the court officer; and

(c) in the application—

(i) specify the disqualification or restriction, and

(ii) explain why the defendant wants the court to remove, revoke or suspend it.

(3) The court officer must serve a copy of the application on the chief officer of police for the local justice area.

[Note. Part 29 contains rules about disqualification from driving. See in particular rule 29.2.

Part 34 (Appeal to the Crown Court) and Part 35 (Appeal to the High Court by case stated) contain rules about applications to suspend disqualifications pending appeal.

For the circumstances in which the court may—

(a) remove a disqualification from keeping a dog, see section 4(6) of the Dangerous Dogs Act 1991(**c**)*. The court may not consider an application made within 1 year of the disqualification; or, after that, within 1 year of any previous application that was refused.*

(b) revoke or suspend a travel restriction order against a defendant convicted of drug trafficking, see section 35 of the Criminal Justice and Police Act 2001(**d**)*. The court may not consider an application made within 2 years of the disqualification, in any case; or, after that, before a specified period has expired.]*

Application for a restitution order by the victim of a theft

28.7.—(1) This rule applies where, on application by the victim of a theft, the court can order a defendant to give that person goods obtained with the proceeds of goods stolen in that theft.

(2) A person who wants the court to exercise that power if the defendant is convicted must—

(a) apply in writing as soon as practicable (without waiting for the verdict);

(**a**) 2020 c. 17.
(**b**) 2015 c. 30.
(**c**) 1991 c. 65; section 4(6) was amended by section 109(1) of, and paragraph 353 of Schedule 8 to, the Courts Act 2003 (c. 39).
(**d**) 2001 c. 16; section 35 was amended by sections 39(3) of the Identity Cards Act 2006 (c. 15).

(b) serve the application on the court officer; and

(c) in the application—

(i) identify the goods, and

(ii) explain why the applicant is entitled to them.

(3) The court officer must serve a copy of the application on each party.

(4) The court must not determine the application unless the applicant and each party has had an opportunity to make representations at a hearing (whether or not each in fact attends).

(5) The court may—

(a) extend (even after it has expired) the time limit under paragraph (2); and

(b) allow an application to be made orally.

[Note. For the circumstances in which the court may order—

(a) the return of stolen goods, see section 147 of the Sentencing Act 2020(**a**)*;*

(b) the defendant to give the victim of the theft goods that are not themselves the stolen goods but which represent their proceeds, see section 147(1)(b) of the 2020 Act.]

Directions for commissioning medical reports for sentencing purposes

28.8.—(1) This rule applies where for sentencing purposes the court requires—

(a) a medical examination of the defendant and a report; or

(b) information about the arrangements that could be made for the defendant where the court is considering—

(i) a hospital order, or

(ii) a guardianship order.

(2) The court must—

(a) identify each issue in respect of which the court requires expert medical opinion and the legislation applicable;

(b) specify the nature of the expertise likely to be required for giving such opinion;

(c) identify each party or participant by whom a commission for such opinion must be prepared, who may be—

(i) a party (or party's representative) acting on that party's own behalf,

(ii) a party (or party's representative) acting on behalf of the court, or

(iii) the court officer acting on behalf of the court;

(d) where there are available to the court arrangements with the National Health Service under which an assessment of a defendant's mental health may be prepared, give such directions as are needed under those arrangements for obtaining the expert report or reports required;

(e) where no such arrangements are available to the court, or they will not be used, give directions for the preparation of a commission or commissions for an expert report or expert reports, including—

(i) such directions as can be made about supplying the expert or experts with the defendant's medical records,

(ii) directions about the other information, about the defendant and about the offence or offences alleged to have been committed by the defendant, which is to be supplied to each expert, and

(iii) directions about the arrangements that will apply for the payment of each expert;

(**a**) 2020 c. 17.

(f) set a timetable providing for—

(i) the date by which a commission is to be delivered to each expert,

(ii) the date by which any failure to accept a commission is to be reported to the court,

(iii) the date or dates by which progress in the preparation of a report or reports is to be reviewed by the court officer, and

(iv) the date by which each report commissioned is to be received by the court; and

(g) identify the person (each person, if more than one) to whom a copy of a report is to be supplied, and by whom.

(3) A commission addressed to an expert must—

(a) identify each issue in respect of which the court requires expert medical opinion and the legislation applicable;

(b) include—

(i) the information required by the court to be supplied to the expert,

(ii) details of the timetable set by the court, and

(iii) details of the arrangements that will apply for the payment of the expert;

(c) identify the person (each person, if more than one) to whom a copy of the expert's report is to be supplied; and

(d) request confirmation that the expert from whom the opinion is sought—

(i) accepts the commission, and

(ii) will adhere to the timetable.

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

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

(a) section 35 of the Mental Health Act 1983(**a**)*, under which the court may order the defendant's detention in hospital to obtain a medical report;*

(b) section 36 of the 1983 Act(**b**)*, under which the Crown Court may order the defendant's detention in hospital instead of in custody pending trial or sentence;*

(c) section 37 of the 1983 Act(**c**)*, under which the court may order the defendant's detention and treatment in hospital, or make a guardianship order, instead of disposing of the case in another way (section 37(3) allows a magistrates' court to make such an order without convicting the defendant if satisfied that the defendant did the act or made the omission charged);*

(**a**) 1983 c. 20; section 35 was amended by sections 1(4) and 10(1) and (2) of, and paragraphs 1 and 5 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 208(1) of, and paragraphs 53 and 54 of Schedule 21 to, the Legal Services Act 2007 (c. 29).

(**b**) 1983 c. 20; section 36 was amended by sections 1(4), 5(1) and (2) and 10(1) and (3) of, and paragraphs 1 and 6 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 208(1) of, and paragraphs 53 and 55 of Schedule 21 to, the Legal Services Act 2007 (c. 29).

(**c**) 1983 c. 20; section 37 was amended by sections 55 and 56 of, and paragraph 12 of Schedule 4 and Schedule 6 to, the Crime (Sentences) Act 1997 (c. 43), section 67 of, and paragraph 11 of Schedule 4 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 90 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 304 of, and paragraphs 37 and 38 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44), sections 49 and 65 of, and paragraph 2 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38), sections 1, 4, 10, 55 and paragraphs 1 and 7 of Schedule 1, and Part 1 of Schedule 11 to, the Mental Health Act 2007 (c. 12), sections 6 and 149 of, and paragraph 30 of Schedule 4, and Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4), sections 122 and 142 of, and paragraph 1 of Schedule 19 and paragraph 2 of Schedule 26 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and section 28 of, and paragraph 1 of Schedule 5 to, the Criminal Justice and Courts Act 2015 (c. 2). It is further amended by section 148 of, and paragraph 8 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4) with effect from a date to be appointed.

(d) section 38 of the 1983 Act(**a**)*, under which the court may order the defendant's temporary detention and treatment in hospital instead of disposing of the case in another way;*

(e) section 232 of the Sentencing Act 2020(**b**)*, under which the court must usually obtain and consider a medical report before passing a custodial sentence if the defendant is, or appears to be, mentally disordered;*

(f) paragraphs 16 and 17 of Schedule 9 to the 2020 Act (in the case of a defendant aged 18 or over), or paragraphs 28 and 29 of Schedule 6 to that Act (in the case of a defendant who is under 18), under which the court may impose a mental health treatment requirement.

For the purposes of the legislation listed in (b), (c) and (d) above, the court requires the written or oral evidence of at least two registered medical practitioners, at least one of whom is approved as having special experience in the diagnosis or treatment of mental disorder. For the purposes of (a), (e) and (f), the court requires the evidence of one medical practitioner so approved.

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

Part 19 (Expert evidence) contains rules about the content of expert medical reports.

For the authorities from whom the court may require information about hospital treatment or guardianship, see sections 39 and 39A of the 1983 Act(**d**)*.*

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

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

Information to be supplied on committal to custody or admission to hospital or guardianship

28.9.—(1) This rule applies where the court—

(a) orders the defendant's committal to custody on withholding bail or on sentencing;

(b) orders the defendant's detention and treatment in hospital; or

(c) makes a guardianship order.

(2) Where paragraph (1)(a) applies, unless the court otherwise directs the court officer must, as soon as practicable, serve on or make available to the custodian any psychiatric, psychological or other medical report about the defendant received by the court for the purposes of the case.

(**a**) 1983 c. 20; section 38 was amended by section 49(1) of the Crime (Sentences) Act 1997 (c. 43), sections 1(4) and 10(1) and (5) of, and paragraphs 1 and 8 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 208(1) of, and paragraphs 53 and 56 of Schedule 21 to, the Legal Services Act 2007 (c. 29).

(**b**) 2020 c. 17.

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

(**d**) 1983 c. 20; section 39 was amended by sections 2(1) and 5(1) of, and paragraph 107 of Schedule 1 and Schedule 3 to, the Health Authorities Act 1995 (c. 17), section 2(5) of, and paragraphs 42 and 46 of Schedule 2 to, the National Health Service Reform and Health Care Professions Act 2002 (c. 17), section 31(1) and (2) of the Mental Health Act 2007 (c. 12), article 3 of, and paragraph 13 of the Schedule to, S.I. 2007/961 and section 55 of, and paragraphs 24 and 28 of Schedule 5 to, the Health and Social Care Act 2012 (c. 7). Section 39A was inserted by section 27(1) of the Criminal Justice Act 1991 (c. 53).

(**e**) 1985 c. 23; section 19(3) was amended by section 166 of the Criminal Justice Act 1988 (c. 33), section 7 of, and paragraph 8 of Schedule 3 to, the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), sections 40 and 67 of, and paragraph 4 of Schedule 7 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 165 of, and paragraph 99 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 378 of, and paragraph 107 of Schedule 16 to, the Armed Forces Act 2006 (c. 52).

(**f**) S.I. 1986/1335; regulation 17 was amended by regulations 2 and 13 of S.I. 2008/2448, regulation 20 was amended by regulations 2 and 14 of S.I. 2008/2448 and by regulations 4 and 7 of S.I. 2012/1804, and regulation 25 was amended by regulations 2 and 10 of S.I. 2009/2720.

(3) Where paragraph (1)(b) or (c) applies, unless the court otherwise directs the court officer must, as soon as practicable, serve on or make available to (as applicable) the hospital or the guardian—

(a) a record of the court's order;

(b) such information as the court has received that appears likely to assist in treating or otherwise dealing with the defendant, including information about—

(i) the defendant's mental condition,

(ii) the defendant's other circumstances, and

(iii) the circumstances of the offence.

[Note. Rule 13.3 provides for the terms of a warrant for detention or imprisonment. Rule 13.4 provides for the information that such a warrant must contain.

For the circumstances in which the court may order the defendant's detention and treatment in hospital, see sections 35, 36, 37, 38 and 44 of the Mental Health Act 1983(**a**)*. For the circumstances in which the court may make a guardianship order, see the same section 37.]*

Committal or remission, etc. for sentence

28.10.—(1) This rule applies where a magistrates' court or the Crown Court ('the transferring court')—

(a) commits, remits or transfers a case to another court—

(i) for sentence, or

(ii) for the defendant to be dealt with for breach of a deferred sentence, a conditional discharge, or a suspended sentence of imprisonment, imposed by that other court;

(b) deals with a deferred sentence, a conditional discharge, or a suspended sentence of imprisonment, imposed by another court; or

(c) makes an order that another court is, or may be, required to enforce.

(2) Unless the transferring court otherwise directs, the court officer must, as soon as practicable—

(a) where paragraph (1)(a) applies, make available to the other court of a record of any relevant—

(i) certificate of conviction,

(ii) magistrates' court register entry,

(iii) decision about bail, for the purposes of section 5 of the Bail Act 1976(**b**),

(iv) note of evidence,

(v) statement or other document introduced in evidence,

(vi) medical or other report,

(vii) representation order or application for such order,

(viii) interim driving disqualification, and

(**a**) 1983 c. 20; section 44 was amended by sections 10, 40 and 55 of, and Part 8 of Schedule 11 to, the Mental Health Act 2007 (c. 12).

(**b**) 1976 c. 63; section 5 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 60 of the Criminal Justice Act 1982 (c. 48), paragraph 1 of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 53 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 129(1) of the Criminal Justice and Police Act 2001 (c. 16), paragraph 182 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36, and Parts 2, 4 and 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27).

(ix) statement by the court for the purposes of section 70(5) of the Proceeds of Crime Act 2002(**a**);

(b) where paragraph (1)(b) or (c) applies, make available to the other court the transferring court's order; and

(c) in every case, notify the defendant and, where the defendant is under 16, a parent or guardian, of the location of the other court.

[Note. For the circumstances in which—

(a) a magistrates' court may (and, in some cases, must) commit the defendant to the Crown Court for sentence, see rules 9.15 (Committal for sentence of offence related to an offence sent for trial), 24.11 (Procedure if the court convicts) and 28.13 (Sentencing, etc. after committal to the Crown Court) (the note to rule 28.13 summarises the statutory provisions that apply);

(b) a magistrates' court may adjourn the case to another magistrates' court for sentence, see section 10 of the Magistrates' Courts Act 1980(**b**) *and section 28 of the Sentencing Act 2020*(**c**)*;*

(c) a magistrates' court or the Crown Court may (and, in some cases, must) adjourn the case to a youth court for sentence, see sections 25 and 26 of the 2020 Act;

(d) a youth court may adjourn the case to a magistrates' court for sentence, see section 27 of the 2020 Act;

(e) a magistrates' court may transfer a fine to be enforced to another court, see sections 89 and 90 of the 1980 Act(**d**)*;*

(f) the Crown Court may remit the defendant to a magistrates' court for sentence after committal for sentence to the Crown Court, or following a guilty plea in the Crown Court, see section 25A of the 2020 Act(**e**)*. Under section 25A(3) of the Act, in deciding whether to remit a defendant the Crown Court must take into account (a) any other related offence before the Crown Court (whether the same, or a different, person is accused or has been convicted of the other offence), and (b) any allocation guideline.*

For the court's powers where it convicts a defendant who is subject to a deferred sentence, a conditional discharge, or a suspended sentence of imprisonment, imposed by another court, see section 10 of, and Schedules 2 and 16 to, the 2020 Act.

Under section 132 of the 2020 Act, a fine imposed or other sum ordered to be paid in the Crown Court is enforceable by a magistrates' court specified in the order, or from which the case was committed or sent to the Crown Court.

See also sections 212(4), 298(4) and 190(4) of the 2020 Act and section 1A(9) of the Street Offences Act 1959(**f**)*.*

(**a**) 2002 c. 29; section 70 was amended by section 41 of, and paragraph 75 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), section 410 of, and paragraphs 181 and 195 of Schedule 24 to, the Sentencing Act 2020 (c. 17) and section 46 of, and paragraph 19 of Schedule 13 to, the Counter-Terrorism and Sentencing Act 2021 (c. 11).

(**b**) 1980 c. 43; section 10 was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53) and section 47 of the Crime and Disorder Act 1998 (c. 37).

(**c**) 2020 c. 17.

(**d**) 1980 c. 43; section 89 was amended by section 47 of the Criminal Justice and Public Order Act 1994 (c. 33), paragraphs 95 and 107 of Schedule 13 to the Access to Justice Act 1999 (c. 22), paragraph 225 of Schedule 8 to the Courts Act 2003 (c. 39) and articles 46 and 49 of S.I. 2006/1737. Section 90 was amended by section 47(2) of the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 226 of Schedule 8 to the Courts Act 2003 (c. 39) and articles 46 and 50 of S.I. 2006/1737.

(**e**) 2020 c. 17; section 25A was inserted by section 11 of the Judicial Review and Courts Act 2022 (c. 35).

(**f**) 1959 c. 57; section 1A was inserted by section 17(1) and (3) of the Policing and Crime Act 2009 (c. 26).

See also rule 9.16 (Sending back or referring case for magistrates' court trial), which applies to the exercise of the Crown Court's powers under (a) section 46ZA of the Senior Courts Act 1981(**a**)*, and (b) paragraph 6 of Schedule 3 to the Crime and Disorder Act 1998*(**b**)*.]*

Assistance to an investigator, etc.: applications under the Sentencing Act 2020

28.11.—(1) This rule applies where on application by the prosecutor the Crown Court can—

(a) reduce a sentence that it passes, under section 74 or section 388 of the Sentencing Act 2020(**c**) (assistance or agreement to assist before or after sentence); or

(b) increase a sentence that it has passed, under section 387 of the Sentencing Act 2020(**d**) (failure after sentence to give agreed assistance).

(2) A prosecutor who wants the court to exercise that power 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 defendant; and

(c) in the application—

(i) explain why the sentence should be reduced, or increased, as appropriate, and

(ii) identify any other matter relevant to the court's decision, including any sentencing guideline or guideline case.

(3) The general rule is that the application must be determined by the judge who passed the sentence, unless that judge is unavailable.

(4) The court must not determine the application in the defendant's absence unless the defendant has had an opportunity to make representations at a hearing (whether or not the defendant in fact attends).

[Note. Under section 74 of the Sentencing Act 2020(**e**)*, the Crown Court may pass a lesser sentence than it otherwise would have passed because the defendant has assisted, or has agreed to assist, an investigator or prosecutor in relation to an offence.*

Under sections 387 and 388 of the 2020 Act, where the Crown Court has sentenced a defendant a prosecutor may apply to the court—

(a) to reduce the sentence, if the defendant subsequently assists, or agrees to assist, in the investigation or prosecution of an offence; or

(b) to increase a reduced sentence to that which the court otherwise would have passed, if the defendant agreed to give such assistance but subsequently has knowingly failed to do so.

Such an application may be made only where the defendant is still serving the sentence and the prosecutor thinks it is in the interests of justice to apply.]

(**a**) 1981 c. 54; section 46ZA was inserted by section 11 of the Judicial Review and Courts Act 2022 (c. 35).

(**b**) 1998 c. 37; paragraph 6 of Schedule 3 was amended by sections 90 and 106 of, and paragraph 179 of Schedule 13 and Schedule 15 to, the Access to Justice Act 1999 (c. 22), sections 41 of, and paragraphs 15 and 20 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), S.I. 2005/886 and paragraphs 20 and 23 of the Schedule to the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).

(**c**) 2020 c. 17; section 74 was amended by section 10 of the Counter-Terrorism and Sentencing Act 2021 (c. 11) and is further amended by section 408 of, and paragraph 38B of Schedule 22 to, the 2020 Act with effect from a date to be appointed.

(**d**) 2020 c. 17.

(**e**) 2020 c. 17.

Assistance to an investigator, etc.: confidential information for the sentencing court

28.12.—(1) This rule applies where in the exercise of its inherent power the court can reduce a sentence that it passes in a case in which the defendant has assisted an investigator or prosecutor before being sentenced.

(2) An officer who has not been involved in the investigation or prosecution in respect of which the defendant is to be sentenced must prepare a text for the sentencing court which—

(a) describes the capacity in which the defendant provided assistance, and in particular whether the defendant is a covert human intelligence source with the meaning of the Regulation of Investigatory Powers Act 2000(**a**);

(b) gives details of the assistance provided;

(c) describes the effort expended by the defendant in obtaining such information as has been supplied;

(d) gives an indication of whether the defendant is willing to give evidence in support of a prosecution;

(e) assesses the risk, if any, to the defendant or to the defendant's family or associates occasioned by the assistance provided;

(f) assesses the benefit already derived by investigating or prosecuting agencies in consequence of the assistance provided, and in particular give details of any related arrest, conviction or recovery or confiscation of property;

(g) gives details of any financial reward received by the defendant for the assistance;

(h) assesses the potential future use of assistance provided or expected from the defendant; and

(i) includes a statement of whether the defendant does or does not wish any legal representative or advocate acting for the defendant to be made aware of the existence of the text.

(3) Before the court passes sentence—

(a) the officer who prepared the text must—

(i) arrange for its delivery in confidence to the sentencing court and for its subsequent return to the officer, and

(ii) ensure that the prosecution advocate is aware of the existence of the text and of its content; and

(b) the sentencing court—

(i) must consider the content of the text,

(ii) by signature, initial or other endorsement on the text must indicate that it has been considered, and

(iii) must not make, or allow to be made, any other court record of the receipt and consideration of the text.

(4) When passing sentence the court must not—

(a) refer, directly or indirectly, to the text; or

(b) include in the explanation of sentence required by rule 24.11(9) or rule 25.16(7) any indication of the extent, if any, of the effect on sentence of the content of the text.

(5) In the event of an appeal in which the defendant's sentence is or may be in issue—

(a) the officer who prepared the text must arrange for its delivery in confidence to the appeal court and for its subsequent return to the officer; and

(b) the appeal court must take such measures as may be required to maintain the confidentiality of the text.

(**a**) 2000 c. 23.

[Note. Under section 26(8) of the Regulation of Investigatory Powers Act 2000 a person is a covert human intelligence source if that person (a) establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within (b) or (c); (b) covertly uses such a relationship to obtain information or to provide access to any information to another person; or (c) covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.]

Sentencing, etc. after committal to the Crown Court

28.13.—(1) This rule applies where a magistrates' court commits the defendant to the Crown Court—

(a) for sentence; or

(b) to be dealt with under other powers available to the Crown Court after a defendant's conviction.

(2) Rule 25.16 (Trial and sentence in the Crown Court; Procedure if the court convicts) applies as if the defendant had been convicted in the Crown Court.

(3) As well as supplying the information required for sentencing purposes by rule 25.16(3), the prosecutor must identify any offence in respect of which the Crown Court cannot deal with the defendant in a way in which it could have done if the defendant had been convicted in the Crown Court, including—

(a) an offence—

(i) committed for sentence under section 18 or 19, as the case may be, of the Sentencing Act 2020(**a**), and

(ii) in respect of which the magistrates' court did not state the opinion to which section 18(4) or 19(3) of that Act refers;

(b) an offence committed for sentence under section 20 of the 2020 Act; and

(c) an offence—

(i) committed to the Crown Court under section 70 of the Proceeds of Crime Act 2002, and

(ii) in respect of which the magistrates' court did not make the statement to which section 70(5) of that Act refers.

[Note. A magistrates' court may commit a convicted defendant to the Crown Court for sentence under—

(a) section 14 of the Sentencing Act 2020 (Committal for sentence on summary trial of offence triable either way: adults and corporations) where the defendant is over 18 or is a corporation, the offence is one triable either way and the court is of the opinion that the offence of which the defendant has been convicted, or the combination of that offence and one or more offences associated with it, was so serious that the Crown Court should have the power to deal with the defendant in any way that that court could have done if the defendant had been convicted there;

(b) section 16 of the 2020 Act (Committal for sentence of young offenders on summary trial of certain serious offences) where the defendant is under 18, the offence of which the defendant has been convicted is one to which section 16 refers (offences punishable with imprisonment for 14 years or more and certain sexual offences), and the court is of the opinion that the offence of which the defendant has been convicted, or the combination of that offence and one or more offences associated with it, was such that the Crown Court should have the power to impose a sentence of detention under section 250 of the Act;

(**a**) 2020 c. 17; section 19 was amended by section 46 of, and paragraph 26 of Schedule 13 to, the Counter-Terrorism and Sentencing Act 2021 (c. 11).

(c) *section 16A of the 2020 Act*(**a**) *(Committal for sentence of young offenders on summary trial of certain terrorist offences) where the defendant is under 18, the offence of which the defendant has been convicted is one within section 252A of the Act*(**b**) *(terrorism offences attracting special sentence for offenders of particular concern) and the court is of the opinion that the offence of which the defendant has been convicted, or the combination of that offence and one or more offences associated with it, was such that the Crown Court should have the power to impose a sentence of detention for more than 2 years under section 252A;*

(d) *section 18 of the 2020 Act (Committal for sentence on indication of guilty plea to offence triable either way: adult offenders) where the defendant is over 18 and the court has sent the defendant to the Crown Court for trial for a related offence;*

(e) *section 19 of the 2020 Act (Committal for sentence on indication of guilty plea by child with related offences) where the defendant is under 18, the court has sent the defendant to the Crown Court for trial for a related offence, and the offence of which the defendant has been convicted is one to which section 19 refers (offences punishable with imprisonment for 14 years or more and certain sexual offences); or*

(f) *section 20 of the 2020 Act (Committal in certain cases where offender committed in respect of another offence) where the court commits the defendant to the Crown Court for sentence for an offence under any of sections 14 to 19 of the Act, or under one of the other provisions to which section 20 refers, and—*

(i) *if that offence is an indictable offence, then the court may also commit the defendant for sentence for any other offence, or*

(ii) *if that offence is a summary offence, then the court may also commit the defendant for sentence for any other offence of which the court itself has convicted the defendant and which is punishable with imprisonment or disqualification from driving, and for any suspended sentence with which the committing court could deal.*

A magistrates' court must commit a convicted defendant to the Crown Court for sentence under—

(a) *section 15 of the Sentencing Act 2020*(**c**) *(Committal for sentence of dangerous adult offenders) where the defendant is over 18, the offence of which the defendant has been convicted is one to which section 15 refers, and the court is of the opinion that an extended sentence of detention or imprisonment would be available in relation to the offence; or*

(b) *section 17 of the 2020 Act*(**d**) *(Committal for sentence of dangerous young offenders) where the defendant is under 18, the offence of which the defendant has been convicted is one to which section 17 refers, and the court is of the opinion that an extended sentence of detention would be available in relation to the offence.*

Under sections 21 and 22 of the Sentencing Act 2020(**e**) *(Power of Crown Court on committal for sentence of offender under section 14, 15 or 18; Power of Crown Court on committal for sentence of person under 18 under section 16, 16A, 17 or 19), where the defendant is committed for sentence under any of sections 14 to 19 of that Act the Crown Court may deal with the defendant in any way in which it could have done if the defendant had been convicted in that court, unless—*

(a) *the defendant was committed for sentence under section 18 or 19;*

(**a**) 2020 c. 17; section 16A was inserted by section 46 of, and paragraph 26 of Schedule 13 to, the Counter-Terrorism and Sentencing Act 2021 (c. 11).
(**b**) 2020 c. 17; section 252A was inserted by section 22 of the Counter-Terrorism and Sentencing Act 2021 (c. 11).
(**c**) 2020 c. 17; section 15 was amended by section 46 of, and paragraph 11 of Schedule 13 to, the Counter-Terrorism and Sentencing Act 2021 (c. 11).
(**d**) 2020 c. 17; section 17 was amended by section 46 of, and paragraph 26 of Schedule 13 to, the Counter-Terrorism and Sentencing Act 2021 (c. 11).
(**e**) 2020 c. 17; section 22 was amended by section 46 of, and paragraph 26 of Schedule 13 to, the Counter-Terrorism and Sentencing Act 2021 (c. 11).

(b) the magistrates' court did not state the opinion to which either section 18(4) or 19(3), whichever applies, refers (see also rule 9.15 (Committal for sentence for offence related to an offence sent for trial)); and

(c) the defendant is not convicted in the Crown Court of any offence for which the magistrates' court sent the defendant for trial,

in which event the Crown Court may deal with the defendant only in a way in which the magistrates' court could have done.

Under section 23 of the 2020 Act (Power of Crown Court on committal for sentence under section 20), where the defendant is committed for sentence under section 20 of the Act the Crown Court may deal with the defendant only in a way in which the magistrates' court could have done except in relation to any suspended sentence committed under that section, in respect of which the Crown Court may exercise its usual powers on dealing with such a breach.

For other powers of a magistrates' court to commit a defendant to the Crown Court for sentence or otherwise to deal with the defendant, see—

(a) the provisions listed in section 24 of the 2020 Act (Further powers to commit offender to the Crown Court to be dealt with); and

(b) paragraph 11(2) of Schedule 16 to the 2020 Act, under which a magistrates' court may commit the defendant to the Crown Court to be dealt with there if the magistrates' court convicts the defendant of an offence during the operational period of a suspended sentence order made by the Crown Court.

The provisions listed in section 24 of the 2020 Act include section 70 of the Proceeds of Crime Act 2002(**a**)*. Under that section, if a magistrates' court commits a defendant to the Crown Court so that a confiscation order can be considered then the court also may commit the defendant to the Crown Court to be dealt with there for any other offence of which the defendant has been convicted and with which the magistrates' court otherwise could deal. Under section 71 of the 2002 Act, the Crown Court may deal with the defendant in any way in which it could have done if the defendant had been convicted in that court, unless the magistrates' court did not make the statement to which section 70(5) refers. See also rule 24.11(10)(e), which refers to that statement.]*

PART 29

ROAD TRAFFIC PENALTIES

Contents of this Part

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[Note. Part 24 contains rules about the general procedure on sentencing in a magistrates' court. Part 25 contains corresponding rules for the Crown Court.]

Representations about obligatory disqualification or endorsement

29.1.—(1) This rule applies—

(**a**) 2002 c. 29; section 70 was amended by section 41 of, and paragraph 75 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), section 410 of, and paragraphs 181 and 195 of Schedule 24 to, the Sentencing Act 2020 (c. 17) and section 46 of, and paragraph 19 of Schedule 13 to, the Counter-Terrorism and Sentencing Act 2021 (c. 11).

(a) where the court—

(i) convicts the defendant of an offence involving obligatory disqualification from driving and section 34(1) of the Road Traffic Offenders Act 1988(**a**) (Disqualification for certain offences) applies,

(ii) convicts the defendant of an offence where section 35 of the 1988 Act(**b**) (Disqualification for repeated offences) applies, or

(iii) convicts the defendant of an offence involving obligatory endorsement of the defendant's driving record and section 44 of the 1988 Act(**c**) (Orders for endorsement) applies;

(b) unless the defendant is absent.

(2) The court must explain, in terms the defendant can understand (with help, if necessary)—

(a) where paragraph (1)(a)(i) applies (obligatory disqualification under section 34)—

(i) that the court must order the defendant to be disqualified from driving for a minimum of 12 months (or 2 or 3 years, as the case may be, according to the offence and the defendant's driving record), unless the court decides that there are special reasons to order disqualification for a shorter period, or not to order disqualification at all, and

(ii) if applicable, that the period of disqualification will be reduced by at least 3 months if, by no later than 2 months before the end of the reduced period, the defendant completes an approved driving course;

(b) where paragraph (1)(a)(ii) applies (disqualification under section 35)—

(i) that the court must order the defendant to be disqualified from driving for a minimum of 6 months (or 1 or 2 years, as the case may be, according to the defendant's driving record), unless, having regard to all the circumstances, the court decides to order disqualification for a shorter period, or not to order disqualification at all, and

(ii) that circumstances of which the court cannot take account in making its decision are any that make the offence not a serious one; hardship (other than exceptional hardship); and any that during the last 3 years already have been taken into account by a court when ordering disqualification for less than the usual minimum period, or not at all, for repeated driving offences;

(c) where paragraph (1)(a)(iii) applies (obligatory endorsement), that the court must order the endorsement of the defendant's driving record unless the court decides that there are special reasons not to do so; and

(d) in every case, as applicable—

(i) that the court already has received representations from the defendant about whether any such special reasons or mitigating circumstances apply and will take account of them, or

(ii) that the defendant may make such representations now, on oath or affirmation.

(**a**) 1988 c. 53; section 34 was amended by section 29 of the Road Traffic Act 1991 (c. 40), section 3 of the Aggravated Vehicle-Taking Act 1992 (c. 11), section 165 of, and paragraph 121 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), sections 56 and 107 of, and Schedule 8 to, the Police Reform Act 2002 (c. 30), section 25 of the Road Safety Act 2006 (c. 49), article 2 of S.I. 2007/3480, paragraphs 2 and 5 of Schedule 27 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), section 56 of, and paragraphs 9 and 12 of Schedule 22 to, the Crime and Courts Act 2013 (c. 22) and section 177 of, and paragraph 90 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25).

(**b**) 1988 c. 53; section 35 was amended by section 48 of, and paragraph 95 of Schedule 4 to, the Road Traffic Act 1991 (c. 40), section 165 of, and paragraph 122 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 177 of, and paragraph 90 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25).

(**c**) 1988 c. 53; section 44 was amended by regulations 2 and 3 of, and paragraph 10 of Schedule 2 to, S.I. 1990/144 and sections 9, 10 and 59 of, and Schedule 7 to, the Road Safety Act 2006 (c. 49).

(3) Unless the court already has received such representations from the defendant, before it applies rule 24.11 (magistrates' court procedure if the court convicts) or rule 25.16 (Crown Court procedure if the court convicts), as the case may be, the court must—

(a) ask whether the defendant wants to make any such representations; and

(b) if the answer to that question is 'yes', require the defendant to take an oath or affirm and make them.

[Note. For the circumstances in which the court—

(a) may, and in some cases must, order disqualification from driving under the Road Traffic Offenders Act 1988, see sections 26, 34, 35 and 36 of that Act(**a**)*;*

(b) may, for some reasons or in some circumstances, abbreviate or dispense with a period of disqualification otherwise required by the 1988 Act, see sections 34(1) and 35(1), (4) of that Act;

(c) must usually order endorsement, see sections 9, 44 and 96 of, and Schedule 2 to, the 1988 Act.

For the circumstances in which the period of a disqualification from driving must or may be extended where the court also imposes a custodial sentence, see sections 35A and 35B of the 1988 Act(**b**)*.*

For the circumstances in which the period of a disqualification from driving will be reduced if the defendant completes an approved driving course, see section 34A of the 1988 Act(**c**)*.]*

Application to remove a disqualification from driving

29.2.—(1) This rule applies where, on application by the defendant, the court can remove a disqualification from driving.

(2) A defendant who wants the court to exercise that power must—

(a) apply in writing, no earlier than the date on which the court can exercise the power;

(b) serve the application on the court officer; and

(c) in the application—

(i) specify the disqualification, and

(ii) explain why the defendant wants the court to remove it.

(3) The court officer must serve a copy of the application on the chief officer of police for the local justice area.

[Note. For the circumstances in which the court may remove a disqualification from driving imposed under section 34 or 35 of the Road Traffic Offenders Act 1988, see section 42 of the

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(**a**) 1988 c. 53; section 26 was substituted by section 25 of the Road Traffic Act 1991 (c. 40) and amended by paragraph 2 of Schedule 2 to S.I. 1996/1974, paragraphs 140 and 143 of Schedule 13 to the Access to Justice Act 1999 (c. 22), paragraph 119 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraphs 32 and 34 of Schedule 5 to the Crime (International Co-operation) Act 2003 (c. 32), paragraph 312 of Schedule 8 to the Courts Act 2003 (c. 39), sections 10, 59 and 61 of, and paragraphs 30 and 32 of Schedule 3 and Schedule 7 to, the Road Safety Act 2006 (c. 49), section 416 of, and paragraph 99 of Schedule 24 to, the Sentencing Act 2020 (c. 17) and section 208 of, and paragraph 3(2) and (3) of Schedule 10 to, the Police, Crime, Sentencing and Courts Act 2022 (c. 32). Section 36 was substituted by section 32 of the Road Traffic Act 1991 (c. 40) and amended by paragraph 3 of Schedule 2 to S.I. 1996/1974, article 3 of S.I. 1998/1917, sections 9(6), 10, 59 and 61 of, and paragraph 7 of Schedule 2, paragraphs 30 and 39 of Schedule 3 and Schedule 7 to, the Road Safety Act 2006 (c. 49), paragraphs 2 and 6 of Schedule 27 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), section 95 of, and paragraph 5(2) and (3) of Schedule 6 to, the Criminal Justice and Courts Act 2015 (c. 2) and regulations 1 and 3 of S.I. 2018/1251.

(**b**) 1988 c. 53; sections 35A and 35B were inserted by section 137 of, and paragraph 2 of Schedule 16 to, the Coroners and Justice Act 2009 (c. 25). Section 35A was amended by sections 89, 111 and 126 of, and paragraph 5 of Schedule 10, paragraph 1 of Schedule 14 and paragraph 4 of Schedule 21 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and sections 6 and 30 of, and paragraph 11 of Schedule 1 to, the Criminal Justice and Courts Act 2015 (c. 2).

(**c**) 1988 c. 53; section 34A was substituted by section 35 of the Road Safety Act 2006 (c. 49) and temporarily modified by section 177(1) and (2) of, and paragraphs 30 and 31 of Schedule 22 to, the Coroners and Justice Act 2009 (c. 25). It is further amended by paragraph 90(1) and (3) of Schedule 21 to the 2009 Act with effect from a date to be appointed.

Act(**a**)*. The court may not consider an application made within 2 years of the disqualification, in any case; or, after that, before a specified period has expired.]*

Information to be supplied on order for endorsement of driving record, etc.

29.3.—(1) This rule applies where the court—

(a) convicts the defendant of an offence involving obligatory endorsement, and orders there to be endorsed on the defendant's driving record (and on any counterpart licence, if other legislation requires)—

(i) particulars of the conviction,

(ii) particulars of any disqualification from driving that the court imposes, and

(iii) the penalty points to be attributed to the offence;

(b) disqualifies the defendant from driving for any other offence; or

(c) suspends or removes a disqualification from driving.

(2) The court officer must, as soon as practicable, serve on the Secretary of State notice that includes details of—

(a) where paragraph (1)(a) applies—

(i) the local justice area in which the court is acting,

(ii) the dates of conviction and sentence,

(iii) the offence, and the date on which it was committed,

(iv) the sentence, and

(v) the date of birth, and sex, of the defendant, where those details are available;

(b) where paragraph (1)(b) applies—

(i) the date and period of the disqualification, and

(ii) the power exercised by the court; and

(c) where paragraph (1)(c) applies—

(i) the date and period of the disqualification,

(ii) the date and terms of the order for its suspension or removal,

(iii) the power exercised by the court, and

(iv) where the court suspends the disqualification pending appeal, the court to which the defendant has appealed.

[Note. See sections 39(3), 42(5), 44A, 47 and 97A of the Road Traffic Offenders Act 1988(**b**)*.*

Under section 25 of the 1988 Act(**c**)*, the court may order a defendant to disclose his or her date of birth, and sex, where that is not apparent (for example, where the defendant is convicted in his or her absence). Under section 27 of the 1988 Act*(**d**)*, and under section 168 of the Sentencing Act*

(**a**) 1988 c. 53; section 42 was amended by section 48 of, and paragraph 98 of Schedule 4 to, the Road Traffic Act 1991 (c. 40), sections 9, 10 and 59 of, and paragraphs 2 and 8 of Schedule 2, paragraphs 30 and 40 of Schedule 3 and Schedule 7 to, the Road Safety Act 2006 (c. 49) and paragraph 90 of Schedule 21 to the Coroners and Justice Act 2009 (c. 25).

(**b**) 1988 c. 53; section 44A was inserted by section 9(1) and (3) of the Road Safety Act 2006 (c. 49). Section 97A was inserted by section 8 of the Road Safety Act 2006 (c. 49).

(**c**) 1988 c. 53; section 25 was amended by section 90 of, and paragraphs 140 and 142 of Schedule 13 to, the Access to Justice Act 1999 (c. 22), section 165 of, and paragraph 118 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 109 of, and paragraph 311 of Schedule 8 to, the Courts Act 2003 (c. 39).

(**d**) 1988 c. 53; section 27 was amended by regulations 2 and 3 of, and paragraph 3 of Schedule 2 to, S.I. 1990/144, section 48 of, and paragraph 91 of Schedule 4 to, the Road Traffic Act 1991 (c. 40), paragraphs 140 and 144 of Schedule 13 to the Access to Justice Act 1999 (c. 22), paragraph 120 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 16 of the Child Support, Pensions and Social Security Act 2000 (c. 19), paragraph 313 of Schedule 8 to the Courts Act 2003 (c. 39), section 10 of, and paragraphs 30 and 33 of Schedule 3 and Schedule 7 to, the Road Safety Act 2006 (c. 49), and sections 91(3)(a), (b) and 208(1) of, and paragraph 4(2), (3) and (4) of Schedule 10 to, the Police, Crime, Sentencing and Courts Act 2022 (c. 32). It is further amended by paragraphs 52 and 53 of Schedule 32 to the Criminal

2020(**a**)*, the court may order a defendant to produce his or her driving licence, if not already produced.*

For the circumstances in which the court—

(a) must usually order endorsement, see sections 9, 44 and 96 of, and Schedule 2 to, the 1988 Act;

(b) may, and in some cases must, order disqualification from driving under the 1988 Act, see sections 26, 34, 35 and 36 of that Act;

(c) may order disqualification from driving under the 2020 Act, see sections 163 and 164 of that Act;

(d) may suspend a disqualification from driving pending appeal, see sections 39 and 40 of the 1988 Act(**b**) *(Part 34 (Appeal to the Crown Court) and Part 35 (Appeal to the High Court by case stated) contain relevant rules);*

(e) may remove a disqualification from driving imposed under section 34 or 35 of the 1988 Act, see section 42 of that Act (rule 29.2 applies).]

Statutory declaration to avoid fine after fixed penalty notice

29.4.—(1) This rule applies where—

(a) a chief officer of police, or the Secretary of State, serves on the magistrates' court officer a certificate registering, for enforcement as a fine, a sum payable by a defendant after failure to comply with a fixed penalty notice;

(b) the court officer notifies the defendant of the registration; and

(c) the defendant makes a statutory declaration with the effect that there become void—

(i) the fixed penalty notice, or any associated notice sent to the defendant as owner of the vehicle concerned, and

(ii) the registration and any enforcement proceedings.

(2) The defendant must serve that statutory declaration not more than 21 days after service of notice of the registration, unless the court extends that time limit.

(3) The court officer must—

(a) serve a copy of the statutory declaration on the person by whom the certificate was registered;

(b) cancel any endorsement on the defendant's driving record (and on any counterpart licence, if other legislation requires); and

(c) notify the Secretary of State of any such cancellation.

[Note. See sections 72(1), (6), (6A), 73(1) and 74(2) of the Road Traffic Offenders Act 1988(**c**).

For the circumstances in which—

(a) a sum may be registered for enforcement as a fine after failure to comply with a fixed penalty notice, see sections 54, 55, 62, 63, 64, 70 and 71 of the 1988 Act(**d**)*;*

Justice Act 2003 (c. 44) and section 58 of, and Part 4 of Schedule 7 to, the Welfare Reform Act 2009 (c. 24), with effect from dates to be appointed.

(**a**) 2020 c. 17.

(**b**) 1988 c. 53; section 40 was amended by sections 40 and 59 of, and paragraph 50 of Schedule 9 and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**c**) 1988 c. 53; section 72(1) was amended by paragraphs 140 and 151 of Schedule 13 to, the Access to Justice Act 1999 (c. 22).

(**d**) 1988 c. 53; section 54 was amended by regulations 2(2) and 3 of, and paragraph 15 of Schedule 2 to, S.I. 1990/144, sections 48 and 83 of, and paragraph 103 of Schedule 4 and Schedule 8 to, the Road Traffic Act 1991 (c. 40), sections 76 and 108 of the Police Reform Act 2002 (c. 30) and sections 5, 9(6), 10 and 59 of, and paragraphs 1, 3 and 9 of Schedule 1 to, and paragraphs 2 and 14 of Schedule 2 to, the Road Safety Act 2006 (c. 49). Section 62 was amended by section 5 of, and paragraphs 1 and 7 of Schedule 1 to, the Road Safety Act 2006 (c. 49). Section 63 was amended by section 5 of, and paragraphs 1 and 8 of Schedule 1 to, the Road Safety Act 2006 (c. 49). Section 70 was amended by section 109 of, and

(b) the registration may become void on the making of a statutory declaration by the defendant, see sections 72 and 73 of the 1988 Act(**a**).

Under rule 2.11 (Taking of statutory declarations by court officers) a court officer may take the statutory declaration to which this rule refers.]

Application for declaration about a course or programme certificate decision

29.5.—(1) This rule applies where the court can declare unjustified—

(a) a course provider's failure or refusal to give a certificate of the defendant's satisfactory completion of an approved course; or

(b) a programme provider's giving of a certificate of the defendant's failure fully to participate in an approved programme.

(2) A defendant who wants the court to exercise that power must—

(a) apply in writing, not more than 20 business days after—

(i) the date by which the defendant was required to complete the course, or

(ii) the giving of the certificate of failure fully to participate in the programme;

(b) serve the application on the court officer; and

(c) in the application, specify the course or programme and explain (as applicable)—

(i) that the course provider has failed to give a certificate,

(ii) where the course provider has refused to give a certificate, why the defendant disagrees with the reasons for that decision, or

(iii) where the programme provider has given a certificate, why the defendant disagrees with the reasons for that decision.

(3) The court officer must serve a copy of the application on the course or programme provider.

(4) The court must not determine the application unless the defendant, and the course or programme provider, each has had an opportunity to make representations at a hearing (whether or not either in fact attends).

[Note. For the circumstances in which the court may reduce a road traffic penalty on condition that the defendant attend an approved course, or take part in an approved programme, see sections 30A, 34A and 34D of the Road Traffic Offenders Act 1988(**b**)*.*

Under sections 30B, 34B and 34E of the 1988 Act(**c**)*, the court that made the order, or the defendant's local magistrates' court, on application by the defendant may review a course or*

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paragraph 316 of Schedule 8 to, the Courts Act 2003 (c. 39) and sections 5, 9(6) and 59 of, and paragraphs 1 and 12 of Schedule 1, paragraphs 2 and 21 of Schedule 2 and Schedule 7 to, the Road Safety Act 2006 (c. 49). Section 71 was amended by section 63 of, and paragraph 25(1) of Schedule 3 to, the Vehicle Excise and Registration Act 1994 (c. 22), sections 90(1) and 106 of, and paragraphs 140 and 150(1) and (2) of Schedule 13, and table 7 of Schedule 15 to, the Access to Justice Act 1999 (c. 22), section 109(1) of, and paragraph 317(1) and (2) of Schedule 8 to, the Courts Act 2003 (c. 39) and section 9(6) of, and paragraphs 2 and 22 of Schedule 2 to, the Road Safety Act 2006 (c. 49).

(**a**) 1988 c. 53; section 72 was amended by regulations 2(2) and 3 of, and paragraph 20 of Schedule 2 to, S.I. 1990/144, section 90 of, and paragraphs 140 and 151 of Schedule 13 to, the Access to Justice Act 1999 (c. 22) and sections 5, 9, 10 and 59 of, and paragraphs 1 and 13 of Schedule 1, paragraphs 2 and 23 of Schedule 2, paragraphs 30 and 50 of Schedule 3 and Schedule 7 to, the Road Safety Act 2006 (c. 49). Section 73 was amended by section 90 of, and paragraphs 140 and 151 of Schedule 13 to, the Access to Justice Act 1999 (c. 22) and sections 5 and 59 of, and paragraphs 1 and 14 of Schedule 1 and Schedule 7 to, the Road Safety Act 2006 (c. 49).

(**b**) 1988 c. 53; section 30A is inserted by section 34(1) and (3) of the Road Safety Act 2006 (c. 49), with effect from a date to be appointed. Section 34A was substituted by section 35 of the Road Safety Act 2006 (c. 49) and temporarily modified by section 177(1) and (2) of, and paragraphs 30 and 31 of Schedule 22 to, the Coroners and Justice Act 2009 (c. 25). It is further amended by paragraph 90(1) and (3) of Schedule 21 to the 2009 Act with effect from a date to be appointed. Section 34D was inserted by section 15(1) of the Road Safety Act 2006 (c. 49). It is amended by section 177(1) of, and paragraph 90(1) and (5) of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed.

(**c**) 1988 c. 53; section 30B is inserted by section 34(1) and (3) of the Road Safety Act 2006 (c. 49), with effect from a date to be appointed. Section 34B was substituted by section 35 of the Road Safety Act 2006 (c. 49) and temporarily modified by section 177(1) and (2) of, and paragraphs 30 and 32 of Schedule 22 to, the Coroners and Justice Act 2009 (c. 25). Section 34E is inserted by section 15(1) of the Road Safety Act 2006 (c. 49), with effect from a date to be appointed.

programme provider's decision that the defendant has not completed the course satisfactorily, or has not participated fully in the programme.]

Appeal against recognition of foreign driving disqualification

29.6.—(1) This rule applies where—

(a) a Minister gives a disqualification notice under section 57 of the Crime (International Co-operation) Act 2003(**a**); and

(b) the person to whom it is given wants to appeal under section 59 of the Act(**b**) to a magistrates' court.

(2) That person ('the appellant') must serve an appeal notice on—

(a) the court officer, at a magistrates' court in the local justice area in which the appellant lives; and

(b) the Minister, at the address given in the disqualification notice.

(3) The appellant must serve the appeal notice within the period for which section 59 of the 2003 Act provides.

(4) The appeal notice must—

(a) attach a copy of the disqualification notice;

(b) explain which of the conditions in section 56 of the 2003 Act(**c**) is not met, and why section 57 of the Act therefore does not apply; and

(c) include any application to suspend the disqualification, under section 60 of the Act(**d**).

(5) The Minister may serve a respondent's notice, and must do so if—

(a) the Minister wants to make representations to the court; or

(b) the court so directs.

(6) The Minister must—

(a) unless the court otherwise directs, serve any such respondent's notice not more than 10 business days after—

(i) the appellant serves the appeal notice, or

(ii) a direction to do so; and

(b) in any such respondent's notice—

(i) identify the grounds of opposition on which the Minister relies,

(ii) summarise any relevant facts not already included in the disqualification and appeal notices, and

(iii) identify any other document that the Minister thinks the court will need to decide the appeal (and serve any such document with the notice).

(7) Where the court determines an appeal, the general rule is that it must do so at a hearing (which must be in public, unless the court otherwise directs).

(8) The court officer must serve on the Minister—

(a) notice of the outcome of the appeal;

(**a**) 2003 c. 32; section 57 is in force in relation only to an offence of which an offender has been convicted in Ireland. For remaining purposes, it will come into force on a date to be appointed.

(**b**) 2003 c. 32; section 59 is in force in relation only to an offence of which an offender has been convicted in Ireland. For remaining purposes, it will come into force on a date to be appointed. Section 59 was amended by article 2 of, and paragraph 97 of the Schedule to, S.I. 2005/886.

(**c**) 2003 c. 32; section 56 is in force in relation only to an offence of which an offender has been convicted in Ireland. For remaining purposes, it will come into force on a date to be appointed.

(**d**) 2003 c. 32; section 60 is in force in relation only to an offence of which an offender has been convicted in Ireland. For remaining purposes, it will come into force on a date to be appointed. Section 60 was amended by section 40(4) of, and paragraph 79 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(b) notice of any suspension of the disqualification; and

(c) the appellant's driving licence, if surrendered to the court officer.

[Note. Section 56 of the Crime (International Co-operation) Act 2003 sets out the conditions for recognition in the United Kingdom of a foreign driving disqualification, and provides that section 57 of the Act applies where they are met. Under section 57, the appropriate Minister may, and in some cases must, give the person concerned notice that he or she is disqualified in the UK, too, and for what period.

Under section 59 of the 2003 Act, that person may appeal to a magistrates' court. If the court is satisfied that section 57 of the Act does not apply in that person's case, the court must allow the appeal and notify the Minister. Otherwise, it must dismiss the appeal.

The time limit for appeal under section 59 of the 2003 Act is the end of the period of 21 days beginning with the day on which the Minister gives the notice under section 57. That period may be neither extended nor shortened.

Under section 60 of the 2003 Act, the court may suspend the disqualification, on such terms as it thinks fit.

Under section 63 of the 2003 Act(**a**)*, it is an offence for a person to whom the Minister gives a notice under section 57 not to surrender any licence that he or she holds, within the same period as for an appeal.]*

PART 30

ENFORCEMENT OF FINES AND OTHER ORDERS FOR PAYMENT

Contents of this Part

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[Note. Part 13 contains rules about warrants for arrest, detention or imprisonment, including such warrants issued for failure to pay fines, etc.

Part 24 contains rules about the procedure on sentencing in a magistrates' court.

Part 28 contains rules about the exercise of a magistrates' court's powers to enforce an order made by another court.]

When this Part applies

30.1.—(1) This Part applies where a magistrates' court can enforce payment of—

(a) a fine, or a sum that legislation requires the court to treat as a fine; or

(b) any other sum that a court has ordered to be paid—

(**a**) 2003 c. 32; section 63 is in force in relation only to an offence of which an offender has been convicted in Ireland. For remaining purposes, it will come into force on a date to be appointed. It was amended by sections 10(12) and 59 of, and paragraphs 74 and 75 of Schedule 3, and Schedule 7 to, the Road Safety Act 2006 (c. 49).

(i) on a conviction, or

(ii) on the forfeiture of a surety.

(2) Rules 30.7 to 30.9 apply where the court, or a fines officer, issues a warrant for an enforcement agent to take control of a defendant's goods and sell them, using the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007(**a**).

(3) In this Part—

(a) 'defendant' means anyone liable to pay a sum to which this Part applies;

(b) 'payment terms' means by when, and by what (if any) instalments, such a sum must be paid.

[Note. For the means by which a magistrates' court may enforce payment, see—

(a) Part 3 of the Magistrates' Courts Act 1980(**b**)*; and*

(b) Schedule 5 to the Courts Act 2003(**c**) *and the Fines Collection Regulations 2006*(**d**)*.*

Under that Schedule and those Regulations, some enforcement powers may be exercised by a fines officer.

See also section 62 of, and Schedule 12 to, the Tribunals, Courts and Enforcement Act 2007. In that Act, a warrant to which this Part applies is described as 'a warrant of control'.]

Exercise of court's powers; duty of justices' legal adviser

30.2.—(1) The court must not exercise its enforcement powers unless—

(a) the court officer has served on the defendant any collection order or other notice of—

(i) the obligation to pay,

(ii) the payment terms, and

(iii) how and where the defendant must pay; and

(b) the defendant has failed to comply with the payment terms.

(2) A justices' legal adviser must ask such questions as may be needed to obtain information sufficient to allow the court to make such decisions as are required.

[Note. See section 76 of the Magistrates' Courts Act 1980(**e**)*; and paragraphs 12 and 13 of Schedule 5 to the Courts Act 2003*(**f**)*.*

For the functions of a justices' legal adviser, see sections 28 and 29 of the Courts Act 2003(**g**)*. See also rule 2.12 (Duties of justices' legal adviser).]*

Duty to give receipt

30.3.—(1) This rule applies where the defendant makes a payment to—

(a) the court officer specified in an order or notice served under rule 30.2;

(**a**) 2007 c. 15.

(**b**) 1980 c. 43.

(**c**) 2003 c. 39; Schedule 5 was amended by articles 2, 4, 6, 7 and 8 of S.I. 2006/1737, section 62 of, and paragraphs 148 and 149 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15), section 80 of the Criminal Justice and Immigration Act 2008 (c. 4), section 88 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), section 10 of, and paragraphs 24 and 27 of the Schedule to, the Prevention of Social Housing Fraud Act 2013 (c. 3), sections 26 and 27 of the Crime and Courts Act 2013 (c. 22), section 56 of the Criminal Justice and Courts Act 2015 (c. 2) and paragraph 23 of Schedule 5 to the Modern Slavery Act 2015 (c. 30).

(**d**) S.I. 2006/501.

(**e**) 1980 c. 43; section 76 was amended by section 7 of the Maintenance Enforcement Act 1991 (c. 17), section 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), and section 62(3) of, and paragraphs 45 and 46 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**f**) 2003 c. 39; paragraph 13 was amended by articles 2, 4 and 15 of S.I. 2006/1737.

(**g**) 2003 c. 39; section 28 was amended by section 15 of, and paragraphs 308 and 327 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).

(b) another court officer;

(c) any—

(i) custodian of the defendant,

(ii) supervisor appointed to encourage the defendant to pay, or

(iii) responsible officer appointed under a community sentence or a suspended sentence of imprisonment; or

(d) a person executing a warrant to which rule 13.6 (warrants for arrest, detention or imprisonment that cease to have effect on payment) or this Part applies.

(2) The person receiving the payment must—

(a) give the defendant a receipt, unless the method of payment generates an independent record (for example, a bank record); and

(b) as soon as practicable transmit the payment to the court officer specified in an order or notice served under rule 30.2, if the recipient is not that court officer.

[Note. For the effect of payment to a person executing a warrant to which rule 13.6 applies, see that rule and sections 79(**a**) *and 125(1)*(**b**) *of the Magistrates' Courts Act 1980.*

For the circumstances in which the court may appoint a person to supervise payment, see section 88 of the 1980 Act(**c**)*.]*

Appeal against decision of fines officer

30.4.—(1) This rule applies where—

(a) a collection order is in force;

(b) a fines officer makes a decision under one of these paragraphs of Schedule 5 to the Courts Act 2003—

(i) paragraph 22 (Application to fines officer for variation of order or attachment of earnings order, etc.),

(ii) paragraph 31(**d**) (Application to fines officer for variation of reserve terms), or

(iii) paragraph 37(**e**) (Functions of fines officer in relation to defaulters: referral or further steps notice); and

(c) the defendant wants to appeal against that decision.

(2) Unless the court otherwise directs, the defendant must—

(a) appeal in writing not more than 10 business days after the decision;

(b) serve the appeal on the court officer; and

(c) in the appeal—

(i) explain why a different decision should be made, and

(ii) specify the decision that the defendant proposes.

(3) Where the court determines an appeal, the general rule is that it must do so at a hearing.

(**a**) 1980 c. 43; section 79 was amended by paragraph 219 of Schedule 8 to the Courts Act 2003 (c. 39) and section 62 of, and paragraphs 45, 47 and 48 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**b**) 1980 c. 43; section 125 was amended by section 33 of the Police and Criminal Evidence Act 1984 (c. 60), section 65(1) of the Criminal Justice Act 1988 (c. 33), sections 95(1), 97(4) and 106 of, and Part V of Schedule 15 and Table (8) to, the Access to Justice Act 1999 (c. 22), section 109(1) of, and paragraph 238 of Schedule 8 to, the Courts Act 2003 (c. 39) and sections 62(3), 86 and 146 of, and paragraphs 45 and 57 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**c**) 1980 c. 43; section 88 was amended by paragraph 53 of Schedule 14 to the Criminal Justice Act 1982 (c. 48), paragraph 68 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 62 of, and paragraphs 45 and 54 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15). It is further amended by paragraphs 58 and 64 of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43) with effect from a date to be appointed.

(**d**) 2003 c. 39; paragraph 31 was amended by articles 2, 4 and 20 of S.I. 2006/1737.

(**e**) 2003 c. 39; paragraph 37 was amended by articles 2, 4 and 25(a) and (b) of S.I. 2006/1737.

[Note. Under paragraph 12 of Schedule 5 to the Courts Act 2003, where a collection order is in force the court's powers to deal with the defendant's liability to pay the sum for which that order was made are subject to the provisions of that Schedule and to fines collection regulations.

For the circumstances in which a defendant may appeal against a decision to which this rule applies, see paragraphs 23, 32 and 37(9) of Schedule 5 to the 2003 Act(**a**)*. The time limit for appeal is prescribed by those paragraphs. It may be neither extended nor shortened.]*

Application to reduce a fine, vary payment terms or remit a courts charge

30.5.—(1) This rule applies where—

(a) no collection order is in force and the defendant wants the court to—

(i) reduce the amount of a fine, or

(ii) vary payment terms; or

(b) the defendant, a fines officer or an enforcement agent wants the court to remit a criminal courts charge.

(2) Unless the court otherwise directs, such a defendant, fines officer or enforcement agent must—

(a) apply in writing;

(b) serve the application on the court officer;

(c) if the application is to reduce a fine or vary payment terms, explain—

(i) what relevant circumstances have not yet been considered by the court, and

(ii) why the fine should be reduced, or the payment terms varied; and

(d) if the application is to remit a criminal courts charge, explain—

(i) how the circumstances meet the time limits and other conditions in section 50 of the Sentencing Act 2020(**b**), and

(ii) why the charge should be remitted.

(3) The court may determine an application—

(a) at a hearing, which may be in public or in private; or

(b) without a hearing.

[Note. See sections 75, 85 and 85A of the Magistrates' Courts Act 1980(**c**) *and sections 50 and 127 of the Sentencing Act 2020.*

Under section 46 of the 2020 Act, a court must, at the times listed in sections 44 and 45 of that Act, order a defendant convicted of an offence to pay a charge in respect of relevant court costs. Under section 50 of the Act, a magistrates' court may remit the whole or part of such a charge, but—

(a) the court may do so only if it is satisfied that—

(i) the defendant has taken all reasonable steps to pay the charge, having regard to his or her personal circumstances, or

(ii) collection and enforcement of the charge is impracticable;

(b) the court may not do so at a time when the defendant is in prison; and

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(**a**) 2003 c. 39; paragraph 32 was amended by articles 2, 4 and 24(b) of S.I. 2006/1737.

(**b**) 2020 c. 17.

(**c**) 1980 c. 43; section 75 was amended by section 11 of, and paragraph 6 of Schedule 2 to, the Maintenance Enforcement Act 1991 (c. 17). Section 85 was substituted by section 61 of the Criminal Justice Act 1988 (c. 33) and amended by section 55 of, and paragraph 10(2) of Schedule 4 to, the Crime (Sentences) Act 1997 (c. 43), section 109(1) of, and paragraph 222 of Schedule 8 to, the Courts Act 2003 (c. 39) and section 179 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12). It is further amended by paragraphs 25 and 28 of Schedule 32 to the Criminal Justice Act 2003 (c. 44) and section 26 of the Crime and Courts Act 2013 (c. 22), with effect from dates to be appointed. Section 85A was inserted by section 51(1) of the Criminal Justice Act 1982 (c. 48).

(c) the court may not do so unless the periods specified by regulations under section 21E all have expired.]

Claim to avoid fine after penalty notice

30.6.—(1) This rule applies where—

(a) a chief officer of police serves on the magistrates' court officer a certificate registering, for enforcement as a fine, a sum payable by a defendant after failure to comply with a penalty notice; and

(b) the court or a fines officer enforces the fine.

(2) A defendant who claims not to be the person to whom the penalty notice was issued must, unless the court otherwise directs—

(a) make that claim in writing; and

(b) serve it on the court officer.

(3) The court officer must—

(a) notify the chief officer of police by whom the certificate was registered; and

(b) refer the case to the court.

(4) Where such a claim is made—

(a) the general rule is that the court must adjourn the enforcement for 28 days and fix a hearing; but

(b) the court may make a different order.

(5) At any such hearing, the chief officer of police must introduce any evidence to contradict the defendant's claim.

[Note. See section 10 of the Criminal Justice and Police Act 2001(**a**)*.*

For the circumstances in which a sum may be registered for enforcement as a fine after failure to comply with a penalty notice, see sections 8 and 9 of the 2001 Act(**b**)*.]*

Information to be included in a warrant of control

30.7.—(1) A warrant must identify—

(a) each person to whom it is directed;

(b) the defendant against whom it was issued;

(c) the sum for which it was issued and the reason that sum is owed;

(d) the court or fines officer who issued it, unless that is otherwise recorded by the court officer; and

(e) the court office for the court or fines officer who issued it.

(2) A person to whom a warrant is directed must record on it the date and time at which it is received.

(3) A warrant that contains an error is not invalid, as long as—

(a) it was issued in respect of a lawful decision by the court or fines officer; and

(b) it contains enough information to identify that decision.

(**a**) 2001 c. 16; section 10 was amended by paragraphs 1 and 10 of Schedule 23 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**b**) 2001 c. 16; section 8 was amended by section 109(1) of, and paragraph 399 of Schedule 8 to, the Courts Act 2003 (c. 39). Section 9 was amended by section 109(1) of, and paragraph 400(1), (2), (3) and (4) of Schedule 8 to, the Courts Act 2003 (c. 39).

*[Note. See sections 78 and 125ZA of the Magistrates' Courts Act 1980(**a**).]*

Warrant of control: application by enforcement agent for extension of time, etc.

30.8.—(1) This rule applies where an enforcement agent wants the court to exercise a power under Schedule 12 to the Tribunals, Courts and Enforcement Act 2007(**b**), or under regulations made under that Schedule, to—

(a) shorten or extend a time limit;

(b) give the agent authority to—

(i) enter premises which the agent would not otherwise have authority to enter,

(ii) enter or remain on premises at a time at which the agent would not otherwise have authority to be there,

(iii) use reasonable force, in circumstances in which the agent would not otherwise have authority to use such force,

(iv) sell goods by a method which the agent would not otherwise have authority to use, or

(v) recover disbursements which the agent would not otherwise have authority to recover; or

(c) specify the manner in which goods which have not been sold must be disposed of.

(2) Such an enforcement agent must—

(a) apply in writing;

(b) serve the application on the court officer; and

(c) pay any fee prescribed.

(3) The application must—

(a) identify the power that the agent wants the court to exercise;

(b) explain how the conditions for the exercise of that power are satisfied, including any condition that requires the agent to give another person notice of the application;

(c) specify those persons, if any, to whom the agent has given notice in accordance with such a condition; and

(d) propose the terms of the order that the agent wants the court to make;

(4) A person to whom the enforcement agent has given notice of an application and who wants to make representations to the court must—

(a) serve the representations on—

(i) the court officer,

(ii) the enforcement agent, and

(iii) any other person to whom the enforcement agent gave notice;

(b) do so as soon as reasonably practicable and in any event within such period as the court directs; and

(c) in the representations, propose the terms of the order that that person wants the court to make, and explain why.

(5) The court—

(a) must not determine an application unless any person to whom the enforcement agent gave notice—

(**a**) 1980 c. 43; section 78 was amended by sections 37 and 46 of the Criminal Justice Act 1982 (c. 48) and paragraph 219 of Schedule 8 to the Courts Act 2003 (c. 39). Section 125ZA was inserted by section 68 of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**b**) 2007 c. 15.

(i) is present, or

(ii) has had a reasonable opportunity to respond; but

(b) subject to that, may determine an application—

(i) at a hearing, which must be in private unless the court otherwise directs, or

(ii) without a hearing.

[Note. See paragraphs 8, 15, 20, 21, 25, 31, 32 and 41 of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007(**a**)*, regulations 6, 9, 13, 22, 25, 28, 29, 41 and 47 of the Taking Control of Goods Regulations 2013*(**b**) *and regulation 10 of the Taking Control of Goods (Fees) Regulations 2014*(**c**)*. Under paragraph 41 of that Schedule and regulation 41 of the 2013 Regulations, on an application for authority to sell goods otherwise than by public auction the enforcement agent must give notice to a creditor of the defendant in the circumstances described in those provisions.]*

Warrant of control: application to resolve dispute

30.9.—(1) This rule applies where a defendant's goods are sold using the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 and there is a dispute about—

(a) what share of the proceeds of those goods should be paid by the enforcement agent to a co-owner; or

(b) the fees or disbursements sought or recovered by the enforcement agent out of the proceeds.

(2) An enforcement agent, a defendant or a co-owner who wants the court to resolve the dispute 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,

(ii) each other party to the dispute, and

(iii) any other co-owner; and

(c) pay any fee prescribed.

(3) The application must—

(a) identify the warrant of control;

(b) specify the goods sold, the proceeds, and the fees and disbursements sought or recovered by the enforcement agent;

(c) identify the power that the applicant wants the court to exercise;

(d) specify the persons served with the application;

(e) explain the circumstances of the dispute; and

(f) propose the terms of the order that the applicant wants the court to make.

(4) A person served with an application who wants to make representations to the court must—

(a) serve the representations on—

(i) the court officer,

(ii) the applicant, and

(iii) any other person on whom the application was served;

(**a**) 2007 c. 15. Paragraph 31 of Schedule 12 was amended by section 25(1) and (5) of the Crime and Courts Act 2013 (c. 22). Paragraphs 60 and 66 of Schedule 12 were amended by paragraph 52 of Schedule 9 to the Crime and Courts Act 2013 (c. 22).

(**b**) S.I. 2013/1894.

(**c**) S.I. 2014/1.

(b) do so as soon as reasonably practicable and in any event within such period as the court directs; and

(c) in the representations, propose the terms of the order that that person wants the court to make, and explain why.

(5) The court—

(a) must determine an application at a hearing, which must be in private unless the court otherwise directs; but

(b) must not determine an application unless each party—

(i) is present, or

(ii) has had a reasonable opportunity to attend.

[Note. See paragraph 50 of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007(**a**)*, and regulations 15 and 16 of the Taking Control of Goods (Fees) Regulations 2014*(**b**)*.]*

PART 31

BEHAVIOUR ORDERS

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[Note. See Part 3 for the court's general powers to consider an application and to give directions.]

When this Part applies

31.1.—(1) This Part applies where a magistrates' court or the Crown Court can—

(a) make, vary, renew, discharge or revoke a civil order—

(i) as well as, or instead of, passing a sentence, or in any other circumstances in which other legislation allows the court to make such an order, and

(ii) that requires the defendant to do, or not do, something; or

(b) require a person to enter into a recognisance—

(i) to keep the peace and be of good behaviour, or

(ii) (in the Crown Court only) to come up for judgment if called on.

(2) In this Part—

(**a**) 2007 c. 15.
(**b**) S.I. 2014/1.

(a) 'behaviour order' means an order to which paragraph (1)(a) refers; and

(b) 'bind over' means a requirement to which paragraph (1)(b) refers.

(3) A reference to 'hearsay evidence' in this Part is a reference to evidence consisting of hearsay within the meaning of section 1(2) of the Civil Evidence Act 1995(**a**).

[Note. In the circumstances set out in the Acts listed beneath, the court can make a behaviour order—

(a) on conviction, under—

(i) section 14A of the Football Spectators Act 1989(**b**) *(football banning orders),*

(ii) section 360 of the Sentencing Act 2020(**c**) *(restraining orders),*

(iii) sections 1C and 1D of the Crime and Disorder Act 1998(**d**) *(anti-social behaviour orders and interim anti-social behaviour orders),*

(iv) section 366 of the 2020 Act (parenting orders),

(v) section 345 of the 2020 Act (sexual harm prevention orders),

(vi) section 19 or 21 of the Serious Crime Act 2007(**e**) *(serious crime prevention orders),*

(vii) section 331 of the 2020 Act (criminal behaviour orders),

(viii) section 14 of the Modern Slavery Act 2015(**f**) *(slavery and trafficking prevention orders),*

(ix) section 19 of the Psychoactive Substances Act 2016(**g**) *(prohibition orders),*

(x) section 20 of the Immigration Act 2016(**h**) *(labour market enforcement orders),*

(xi) section 19 of the Offensive Weapons Act 2019(**i**) *(knife crime prevention orders),*

(xii) section 342A of the 2020 Act(**j**) *(serious violence reduction orders)*

(xiii) section 376 of the 2020 Act(**k**) *(requirement for parent or guardian of convicted young defendant to take proper care of the defendant and exercise proper control),*

(xiv) section 31(3) of the Domestic Abuse Act 2021(**l**) *(domestic abuse protection orders),*

(xv) section 20(2) of the Public Order Act 2023(**m**) *(serious disruption prevention orders);*

(b) on acquittal, under—

(i) section 5A of the Protection from Harassment Act 1997(**n**) *(restraining orders on acquittal),*

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

(**b**) 1989 c. 37; section 14A was amended by section 1 of, and paragraphs 1 and 2 of Schedule 1 to, the Football (Disorder) Act 2000 (c. 25), section 86(5) of the Anti-Social Behaviour Act 2003 (c. 38), section 139(10) of the Serious Organised Crime and Police Act 2005 (c. 15) and sections 52(2) and 65 of, and paragraphs 1 and 2 of Schedule 3 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38).

(**c**) 2020 c. 17.

(**d**) 1998 c. 37; section 1C was inserted by section 64 of the Police Reform Act 2002 (c. 30) and amended by sections 83 and 86 of the Anti-social Behaviour Act 2003 (c. 38), sections 139, 140, 141 and 174 of, and Part 2 of Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c. 15) and sections 123 and 124 of the Criminal Justice and Immigration Act 2008 (c. 4). Section 1D was inserted by section 65 of the Police Reform Act 2002 (c. 30) and amended by section 139 of the Serious Organised Crime and Police Act 2005 (c. 15). Each section was repealed on 20th October 2014 by section 181 of, and paragraph 24 of Schedule 11 to, the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), subject to the saving provisions of section 33 of that Act.

(**e**) 2007 c. 27; section 21 was amended by section 48 of the Serious Crime Act 2015 (c. 9).

(**f**) 2015 c. 30.

(**g**) 2016 c. 2.

(**h**) 2016 c. 19.

(**i**) 2019 c. 17.

(**j**) 2020 c. 17.

(**k**) 2020 c. 17.

(**l**) 2021 c. 17; section 31 is in force in relation to specified areas, for remaining purposes it has effect from a date to be appointed.

(**m**) 2023 c. 15.

(**n**) 1997 c. 40; section 5A was inserted by section 12(5) of the Domestic Violence, Crime and Victims Act 2004 (c. 28) and amended by paragraph 144 of Schedule 24 to the Sentencing Act 2020 (c. 17).

(ii) section 31(5) of the Domestic Abuse Act 2021 (domestic abuse protection orders on acquittal);

(c) on the making of a finding of not guilty by reason of insanity, or a finding of disability, under section 14 of the Modern Slavery Act 2015 (slavery and trafficking prevention orders);

(d) in proceedings for a genital mutilation offence, under paragraph 3 of Schedule 2 to the Female Genital Mutilation Act 2003(**a**) *(female genital mutilation protection orders); and*

(e) where the Crown Court allows an appeal against conviction, under section 31(6) of the Domestic Abuse Act 2021 (domestic abuse protection orders after appeal).

Under section 1 of the Justices of the Peace Act 1361(**b**)*, section 1(7) of the Justices of the Peace Act 1968*(**c**) *and the inherent powers recognised by those provisions a magistrates' court or the Crown Court can bind over to keep the peace and be of good behaviour a person who or whose case is before the court, by requiring that person to enter into a recognisance (a formal undertaking to pay a specified sum in the event of failure to comply), or to give a surety, or both.*

Under section 79 of the Senior Courts Act 1981(**d**) *the Crown Court can release a convicted defendant pending sentence on a recognisance to come up for judgment if called on and meanwhile to be of good behaviour.*

Section 1(2) of the Civil Evidence Act 1995 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 that Act defines a statement as meaning "any representation of fact or opinion, however made".]

Behaviour orders and bind overs: general rules

31.2.—(1) The court must not make a behaviour order or impose a bind over unless the person to whom it is directed has had an opportunity—

(a) to consider—

(i) what order is proposed and why, and

(ii) the evidence in support; and

(b) to make representations at a hearing (whether or not that person in fact attends).

(2) That restriction does not apply to making—

(a) an interim behaviour order, but unless other legislation otherwise provides such an order has no effect unless the person to whom it is directed—

(i) is present when it is made; or

(ii) is handed a document recording the order not more than 5 business days after it is made; or

(b) a domestic abuse protection order, but in that event the court must give the defendant an opportunity to make representations—

(i) as soon as is just and convenient, and

(ii) at a hearing of which notice has been given to all parties.

(3) Where the court decides not to make, where it could—

(a) a football banning order; or

(b) a parenting order, after a person under 16 is convicted of an offence,

the court must announce, at a hearing in public, the reasons for its decision.

(**a**) 2003 c. 31; Schedule 2 was inserted by section 73 of the Serious Crime Act 2015 (c. 9).
(**b**) 1361 c. 1.
(**c**) 1968 c. 69.
(**d**) 1981 c. 54.

[Note. The Acts listed in the note to rule 31.1 impose requirements specific to each different type of behaviour order. Not all allow the court to make an interim behaviour order.

See section 14A(3) of the Football Spectators Act 1989(**a**)*, section 366 of the Sentencing Act 2020*(**b**) *and section 34 of the Domestic Abuse Act 2021*(**c**)*.]*

Application for behaviour order and notice of terms of proposed order: special rules

31.3.—(1) This rule applies where—

(a) a prosecutor wants the court to make one of the following orders if the defendant is convicted—

(i) an anti-social behaviour order (but this rule does not apply to an application for an interim anti-social behaviour order),

(ii) a serious crime prevention order,

(iii) a criminal behaviour order,

(iv) a prohibition order,

(v) a knife crime prevention order,

(vi) a serious violence reduction order, or

(vii) a serious disruption prevention order;

(b) a prosecutor proposes, on the prosecutor's initiative or at the court's request, a sexual harm prevention order if the defendant is convicted;

(c) a prosecutor proposes a restraining order or domestic abuse protection order whether the defendant is convicted or acquitted; or

(d) a prosecutor proposes a football banning order with additional requirements if the defendant is convicted.

(2) Where paragraph (1)(a) applies (order on application), the prosecutor must serve a notice of intention to apply for such an order on—

(a) the court officer;

(b) the defendant against whom the prosecutor wants the court to make the order; and

(c) any person on whom the order would be likely to have a significant adverse effect,

as soon as practicable (without waiting for the verdict).

(3) A notice under paragraph (2) must—

(a) summarise the relevant facts;

(b) identify the evidence on which the prosecutor relies in support;

(c) attach any written statement that the prosecutor has not already served; and

(d) specify the order that the prosecutor wants the court to make.

(4) A defendant served with a notice under paragraph (2) must—

(a) serve notice of any evidence on which the defendant relies on—

(i) the court officer, and

(ii) the prosecutor,

as soon as practicable (without waiting for the verdict); and

(b) in the notice, identify that evidence and attach any written statement that has not already been served.

(**a**) 1989 c. 37; section 14A was substituted, together with sections 14 and 14B to 14J, for the existing sections 14 to 17, by section 1 of, and paragraphs 1 and 2 of Schedule 1 to, the Football (Disorder) Act 2000 (c. 25).

(**b**) 2020 c. 17.

(**c**) 2021 c. 17; section 34 is in force in relation to specified areas, for remaining purposes it has effect from a date to be appointed.

(5) Where paragraph (1)(b) applies (sexual harm prevention order proposed), the prosecutor must—

(a) serve a draft order on the court officer and on the defendant not less than 2 business days before the hearing at which the order may be made; and

(b) in the draft order specify those prohibitions or requirements which the prosecutor proposes as necessary for the purpose of—

(i) protecting the public or any particular members of the public from sexual harm from the defendant, or

(ii) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the United Kingdom.

(6) Where paragraph (1)(c) applies (restraining order or domestic abuse protection order proposed), the prosecutor must—

(a) serve a draft order on the court officer and on the defendant as soon as practicable (without waiting for the verdict);

(b) in a draft restraining order specify—

(i) those prohibitions which, if the defendant is convicted, the prosecutor proposes for the purpose of protecting a person from conduct which amounts to harassment or will cause fear of violence, or

(ii) those prohibitions which, if the defendant is acquitted, the prosecutor proposes as necessary to protect a person from harassment by the defendant; and

(c) in a draft domestic abuse protection order, specify those requirements (including any prohibitions or restrictions) which the prosecutor proposes as necessary to protect the person for whose protection the order is made from domestic abuse or the risk of domestic abuse, including different kinds of abusive behaviour.

(7) Where paragraph (1)(d) applies (football banning order with additional requirements), the prosecutor must serve a draft order on the court officer and on the defendant not less than 2 business days before the hearing at which the order may be made.

(8) Where the prosecutor wants the court to make an anti-social behaviour order, a prohibition order, a criminal behaviour order or a domestic abuse protection order, the rules about special measures directions in Part 18 (Measures to assist a witness or defendant to give evidence) apply, but—

(a) the prosecutor must apply when serving a notice under paragraph (2); and

(b) the time limits in rule 18.4(a) do not apply.

[Note. The orders listed in rule 31.3(1)(a) may be made on application by the prosecutor. The orders to which rule 31.3(1)(b), (c) and (d) apply require no application and may be made on the court's own initiative. Under section 8 of the Serious Crime Act 2007 a serious crime prevention order may be made only on an application by the Director of Public Prosecutions or the Director of the Serious Fraud Office. See also paragraphs 2, 7 and 13 of Schedule 2 to the 2007 Act.

The court may give a special measures direction under the Youth Justice and Criminal Evidence Act 1999—

(a) on an application for an anti-social behaviour, under section 1I of the Crime and Disorder Act 1998(**a**)*;*

(b) in proceedings for a prohibition order, under section 33 of the Psychoactive Substances Act 2016(**b**)*;*

(**a**) 1998 c. 37; section 1I was inserted by section 143 of the Serious Organised Crime and Police Act 2005 (c. 15), amended by paragraph 72 of Schedule 21 and Part 3 of Schedule 23 to the Coroners and Justice Act 2009 (c. 25) and repealed for specified purposes by paragraph 24 of Schedule 11 to the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

(**b**) 2016 c. 2.

(c) on an application for a criminal behaviour order, under section 340 of the Sentencing Act 2020(**a**)*; and*

(d) in proceedings for a domestic abuse protection order, under section 49 of the Domestic Abuse Act 2021(**b**)*.*

If a party relies on hearsay evidence, see also rules 31.6, 31.7, and 31.8.]

Evidence to assist the court: special rules

31.4.—(1) This rule applies where the court can make on its own initiative—

(a) a football banning order;

(b) a restraining order;

(c) an anti-social behaviour order; or

(d) a domestic abuse protection order.

(2) A party who wants the court to take account of evidence not already introduced must—

(a) serve notice on—

(i) the court officer, and

(ii) every other party,

as soon as practicable (without waiting for the verdict); and

(b) in the notice, identify that evidence; and

(c) attach any written statement containing such evidence.

[Note. If a party relies on hearsay evidence, see also rules 31.6, 31.7, and 31.8.]

Application to vary, renew, discharge or revoke behaviour order

31.5.—(1) The court may vary, renew, discharge or revoke a behaviour order if—

(a) the legislation under which it is made allows the court to do so; and

(b) one of the following applies—

(i) the prosecutor,

(ii) the person to whom the order is directed,

(iii) any other person protected or affected by the order,

(iv) the relevant authority or responsible officer,

(v) the relevant Chief Officer of Police,

(vi) the Director of Public Prosecutions, or

(vii) the Director of the Serious Fraud Office.

(2) A person applying under this rule must—

(a) apply as soon as practicable after becoming aware of the grounds for doing so, explaining—

(i) why the order should be varied, renewed, discharged or revoked, as the case may be, by reference to the legislation under which it was made, and

(ii) what, if any, material circumstances have changed, since the court made the order or last determined an application to vary, renew, discharge or revoke it;

(b) where the application is a second or subsequent application by the applicant in respect of the same order—

(**a**) 2020 c. 17.

(**b**) 2021 c. 17; section 49 is in force in relation to specified areas, for remaining purposes it has effect from a date to be appointed.

(i) give details of each previous application, and

(ii) if the applicant wants the court to decide the application at a hearing, explain why;

(c) in every case, serve the application on—

(i) the court officer, and

(ii) the prosecutor (unless the prosecutor is the person applying under this rule);

(d) unless the order was a restraining order or a domestic abuse protection order, serve the application on, as appropriate—

(i) the person to whom the order was directed, and

(ii) any other person protected or affected by the order; and

(e) serve the application on any other person if the court so directs.

(3) A party who wants the court to take account of any particular evidence before making its decision must, as soon as practicable—

(a) in every case, serve notice on—

(i) the court officer, and

(ii) the prosecutor (unless the prosecutor is the party serving the notice);

(b) unless the order was a restraining order or a domestic abuse protection order, serve the notice on, as appropriate—

(i) the person to whom the order was directed, and

(ii) any other person protected or affected by the order;

(c) serve the notice on any other person if the court so directs; and

(d) in that notice identify the evidence and attach any written statement that has not already been served.

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

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

(b) without a hearing, if—

(i) the legislation under which the order was made so allows, or

(ii) the court considers the application to be an abuse of the court's process.

(5) But the court must not—

(a) dismiss an application under this rule unless the applicant has had an opportunity to make representations; or

(b) allow an application under this rule unless everyone required to be served, by this rule or by the court, has had at least 10 business days in which to make representations, including representations about whether there should be a hearing.

(6) The court officer must—

(a) if the order was a restraining order or a domestic abuse protection order, serve the application under this rule on—

(i) as appropriate, the person to whom the order was directed and any other person protected or affected by the order, and

(ii) the relevant Chief Officer of Police;

(b) serve the application on any other person if the court so directs;

(c) serve any notice of evidence received by the court officer under paragraph (3) on—

(i) each person, if any, on whom the court officer serves the application under this rule, and

(ii) any other person if the court so directs; and

(d) give notice of any hearing to—

(i) the applicant, and

(ii) any person required to be served, by this rule or by the court.

[Note. The legislation that gives the court power to make a behaviour order may limit the circumstances in which it may be varied, renewed, discharged or revoked and may require a hearing. Under section 22E of the Serious Crime Act 2007(**a**)*, where a person already subject to a serious crime prevention order is charged with a serious offence or with an offence of failing to comply with the order, the court may vary the order so that it continues in effect until that prosecution concludes.*

Under section 26 of the Offensive Weapons Act 2019(**b**)*, where the court has made a knife crime prevention order the court may require the applicant and the defendant to attend one or more review hearings to consider whether the order should be varied or discharged. Where a requirement or prohibition imposed by the knife crime prevention order is to have effect after the end of one year from the date the order is made, the court must convene such a review on a specified date within the last 4 weeks of that year.*

If a party relies on hearsay evidence, see also rules 31.6, 31.7 and 31.8.]

Notice of hearsay evidence

31.6.—(1) A party who wants to introduce hearsay evidence must—

(a) serve notice on—

(i) the court officer, and

(ii) every other party directly affected; and

(b) in that notice—

(i) explain that it is a notice of hearsay evidence,

(ii) identify that evidence,

(iii) identify the person who made the statement which is hearsay, or explain why if that person is not identified, and

(iv) explain why that person will not be called to give oral evidence.

(2) A party may serve one notice under this rule in respect of more than one notice and more than one witness.

[Note. For the time within which to serve a notice of hearsay evidence, see rule 31.3(2) to (4), rule 31.4(2) and rule 31.5(3). See also the requirement in section 2 of the Civil Evidence Act 1995 for reasonable and practicable notice of a proposal to introduce hearsay evidence.

Rules 31.6, 31.7 and 31.8 broadly correspond with rules 3, 4 and 5 of the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999(**c**)*, which apply in civil proceedings in magistrates' courts. Rule 3 of the 1999 Rules however includes a time limit, which may be varied by the court, or a justices' legal adviser, of 21 days before the date fixed for the hearing, for service of a hearsay notice.]*

Cross-examination of maker of hearsay statement

31.7.—(1) This rule applies where a party wants the court's permission to cross-examine a person who made a statement which another party wants to introduce as hearsay.

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

(a) apply in writing, with reasons, not more than 5 business days after service of the notice of hearsay evidence; and

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(**a**) 2007 c. 27; section 22E was inserted by section 49 of the Serious Crime Act 2015 (c. 9).

(**b**) 2019 c. 17; section 26 is in force in relation to the metropolitan police district, for remaining purposes it has effect from a date to be appointed.

(**c**) S.I. 1999/681, amended by S.I. 2005/617.

(b) serve the application on—

(i) the court officer,

(ii) the party who served the hearsay evidence notice, and

(iii) every party on whom the hearsay evidence notice was served.

(3) The court may decide an application under this rule with or without a hearing.

(4) But the court must not—

(a) dismiss an application under this rule unless the applicant has had an opportunity to make representations at a hearing (whether or not the applicant in fact attends); or

(b) allow an application under this rule unless everyone served with the application has had at least 5 business days in which to make representations, including representations about whether there should be a hearing.

[Note. See also section 3 of the Civil Evidence Act 1995.]

Credibility and consistency of maker of hearsay statement

31.8.—(1) This rule applies where a party wants to challenge the credibility or consistency of a person who made a statement which another party wants to introduce as hearsay.

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

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

(i) the court officer, and

(ii) the party who served the notice of hearsay evidence,

not more than 5 business days after service of that hearsay evidence notice; and

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

(3) The party who served the hearsay notice—

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

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

(i) the court officer, and

(ii) every party on whom the hearsay notice was served,

not more than 5 business days after service of the notice under paragraph (2).

[Note. Section 5(2) of the Civil Evidence Act 1995 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(**a**)*.]*

Notice to supervisor of requirement for supervision or monitoring

31.9.—(1) This rule applies where—

(a) the legislation under which a behaviour order is made allows the court to impose a requirement for supervision or electronic monitoring; and

(b) the court imposes such a requirement.

(2) The court officer must—

(**a**) 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 paragraph 79 of Schedule 36 and Schedule 37 to the Criminal Justice Act 2003 (c. 44).

(a) inform the person to be responsible for the supervision or monitoring ('the supervisor') of the defendant's name, address and, if available, telephone number, and as appropriate—

(i) details of the requirement to be supervised or monitored, and

(ii) details of the place at which the defendant's presence must be monitored and the period or periods during which the defendant's presence at that place must be monitored;

(b) inform the defendant of the supervisor's identity and the means by which the supervisor may be contacted; and

(c) notify the supervisor of any subsequent variation, renewal, discharge or revocation of the requirement.

[Note. The legislation that gives the court power to make a behaviour order may specify circumstances in which a requirement for supervision or electronic monitoring may be imposed.

Under section 347A of the Sentencing Act 2020(**a**) *and under section 36 of the Domestic Abuse Act 2021*(**b**) *a sexual harm prevention order or a domestic abuse protection order, respectively, which imposes a requirement, other than an electronic monitoring requirement, on the defendant must specify the person or organisation responsible for supervising compliance with that requirement. Under section 23 of the Public Order Act 2023*(**c**) *a serious disruption prevention order which imposes a requirement other than a notification requirement under section 24 of that Act*(**d**) *must similarly specify a supervisor. Before including such a requirement in an order the court must receive evidence from that supervisor about the requirement's suitability and enforceability.*

Under section 348A of the Sentencing Act 2020(**e**) *and under section 37 of the Domestic Abuse Act 2021*(**f**) *a sexual harm prevention order or a domestic abuse protection order, respectively, which imposes an electronic monitoring requirement on the defendant must specify the person responsible for that monitoring. If there is a person other than the defendant without whose co-operation it would be impracticable to secure that monitoring, the requirement may not be imposed without that person's consent.]*

Bind over: exercise of court's powers

31.10.—(1) Where the court can impose a bind over—

(a) the court must decide, in this sequence—

(i) whether or not to do so and if so in what terms, and then

(ii) the amount of the recognisance to require; and

(b) the court may exercise its powers—

(i) on application or on the court's own initiative, and

(ii) at a hearing in public, as a general rule, or, in exceptional circumstances, in private.

(2) Before imposing a bind over the court must—

(a) take into account, as well as any representations under rule 31.2 (Behaviour orders and bind overs: general rules)—

(i) any evidence introduced, and

(ii) any admission made; and

(**a**) 2020 c. 17; section 347A was inserted by section 175 of the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

(**b**) 2021 c. 17; section 36 is in force in relation to specified areas, for remaining purposes it has effect from a date to be appointed.

(**c**) 2023 c. 15.

(**d**) 2023 c. 15.

(**e**) 2020 c. 17; section 348A is inserted by section 178 of the Police, Crime, Sentencing and Courts Act 2022 (c. 32) with effect from a date to be appointed.

(**f**) 2021 c. 17; section 37 is in force in relation to specified areas, for remaining purposes it has effect from a date to be appointed.

(b) satisfy itself so that it is sure that the criteria for the bind over are met.

(3) Before deciding the amount of any recognisance to require the court must take into account, as well as any representations under rule 31.2, such information as is readily available about the financial circumstances of the person to be bound over.

(4) As a general rule the court must not impose a bind over for more than 12 months.

(5) If the court decides to impose a bind over—

(a) the court must explain, in terms the person to be bound over can understand (with help if necessary)—

(i) the effect of the court's decision,

(ii) the consequences of refusing to enter into a recognisance,

(iii) the consequences of breaching the bind over, and

(iv) the possibility of appeal; and

(b) the court must announce its decision and reasons at a hearing in public.

(6) A bind over must be in writing and must—

(a) describe in ordinary language the conduct from which the person to be bound over must refrain;

(b) specify the amount of the recognisance;

(c) specify the duration of the bind over; and

(d) identify any surety who is not the person to be bound over.

(7) If the Crown Court requires the person to be bound over to come up for judgment, the bind over also must specify—

(a) any date on which, and place and time at which, that person must attend court; or

(b) the means by which that person will be given notice of such a date, place and time.

(8) The court officer must serve the bind over as soon as practicable—

(a) in every case, on the person bound by it; and

(b) as applicable, on each party or other party.

[Note. Under section 1 of the Justices of the Peace Act 1361(**a**)*, section 1(7) of the Justices of the Peace Act 1968*(**b**) *and the inherent powers recognised by those provisions, before imposing a bind over the court must be satisfied that—*

(a) a breach of the peace involving violence or a threat of immediate violence has occurred; or

(b) there is a real risk of violence in the future perpetrated by—

(i) the person to be bound over, or

(ii) another person as a natural consequence of the conduct of the person to be bound over.]

Bind over: refusal or breach

31.11.—(1) Where a person to be bound over refuses to enter into a recognisance, the court must—

(a) consider such other steps as may be available, for example continuing or starting a prosecution; and

(b) treat committal to custody as a last resort.

(**a**) 1361 c. 1.
(**b**) 1968 c. 69.

(2) Where a person bound over is alleged to have breached a requirement, before the court forfeits the recognisance it must satisfy itself on the balance of probabilities that a breach has occurred.

(3) In addition to paragraph (1) or (2), as applicable, before committing to custody or forfeiting a recognisance the court must follow the procedure required by rule 48.8 (contempt of court by obstruction, disruption, etc.; procedure on enquiry) as if—

(a) the refusal or breach were a contempt of court; and

(b) the committal or forfeiture were a punishment for such a contempt.

[Note. Under section 1(7) of the Justices of the Peace Act 1968 if a person whom the court decides to bind over refuses to enter into a recognisance the court can commit that person to custody.

Payment of the sum due under a recognisance that is forfeit can be enforced under section 58 of the Magistrates' Courts Act 1980(**a**)*.]*

Court's power to vary requirements under this Part

31.12. Unless other legislation otherwise provides, the court may—

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

(b) allow a notice or application to be given in a different form, or presented orally; and

(c) dispense with a requirement for service (even after service was required).

PART 32

BREACH, REVOCATION AND AMENDMENT OF COMMUNITY AND OTHER ORDERS

Contents of this Part

When this Part applies	rule 32.1
Application by responsible officer or supervisor	rule 32.2
Application by defendant or person affected	rule 32.3
Procedure on application by responsible officer or supervisor	rule 32.4

When this Part applies

32.1. This Part applies where—

(a) the person responsible for a defendant's compliance with an order to which applies—

(i) Schedule 5, 7, 10 or 16 to the Sentencing Act 2020(**b**), or

(ii) the Schedule to the Street Offences Act 1959(**c**),

wants the court to deal with that defendant for failure to comply;

(b) one of the following wants the court to exercise any power it has to revoke or amend such an order—

(i) the responsible officer or supervisor,

(ii) the defendant, or

(iii) where the legislation allows, a person affected by the order; or

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(**a**) 1980 c. 43; section 58 was amended by section 17 of, and paragraphs 39 and 40 of Schedule 10 to, the Crime and Courts Act 2013 (c. 22).

(**b**) 2020 c. 17.

(**c**) 1959 c. 57; Schedule: Orders under section 1(2A) was inserted by section 17(1) and (4) of the Policing and Crime Act 2009 (c. 26).

(c) the court considers exercising on its own initiative any power it has to revoke or amend such an order.

[Note. In the Sentencing Act 2020—

(a) Schedule 5 deals with the breach, revocation and amendment of reparation orders;

(b) Schedule 7 deals with the breach, revocation and amendment of youth rehabilitation orders;

(c) Schedule 10 deals with the breach, revocation and amendment of community orders; and

(d) Schedule 16 deals with the breach or amendment of suspended sentence orders, and the effect of a further conviction.

Application by responsible officer or supervisor

32.2.—(1) This rule applies where—

(a) the responsible officer or supervisor wants the court to—

(i) deal with a defendant for failure to comply with an order to which this Part applies, or

(ii) revoke or amend such an order; or

(b) the court considers exercising on its own initiative any power it has to—

(i) revoke or amend such an order, and

(ii) summon the defendant to attend for that purpose.

(2) Rules 7.2 to 7.4, which deal, among other things, with starting a prosecution in a magistrates' court, apply—

(a) as if—

(i) a reference in those rules to an allegation of an offence included a reference to an allegation of failure to comply with an order to which this Part applies, and

(ii) a reference to the prosecutor included a reference to the responsible officer or supervisor; and

(b) with the necessary consequential modifications.

Application by defendant or person affected

32.3.—(1) This rule applies where—

(a) the defendant wants the court to exercise any power it has to revoke or amend an order to which this Part applies; or

(b) where the legislation allows, a person affected by such an order wants the court to exercise any such power.

(2) That defendant, or person affected, must—

(a) apply in writing, explaining why the order should be revoked or amended; and

(b) serve the application on—

(i) the court officer,

(ii) the responsible officer or supervisor, and

(iii) as appropriate, the defendant or the person affected.

Procedure on application by responsible officer or supervisor

32.4.—(1) Except for rules 24.8 (Written guilty plea: special rules) and 24.9 (Single justice procedure: special rules), the rules in Part 24, which deal with the procedure at a trial in a magistrates' court, apply—

(a) as if—

(i) a reference in those rules to an allegation of an offence included a reference to an allegation of failure to comply with an order to which this Part applies,

(ii) a reference to the court's verdict included a reference to the court's decision to revoke or amend such an order, or to exercise any other power it has to deal with the defendant, and

(iii) a reference to the court's sentence included a reference to the exercise of any such power; and

(b) with the necessary consequential modifications.

(2) The court officer must serve on each party any order revoking or amending an order to which this Part applies.

PART 33

CONFISCATION AND RELATED PROCEEDINGS

Contents of this Part

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Interpretation

33.1. In this Part words and expressions used have the same meaning as in Part 2 of the Proceeds of Crime Act 2002 and:

'document' means anything in which information of any description is recorded;

'hearsay evidence' means evidence consisting of hearsay within the meaning of section 1(2) of the Civil Evidence Act 1995(**a**);

'restraint proceedings' means proceedings under sections 42 and 58(2) and (3) of the Proceeds of Crime Act 2002(**b**);

'receivership proceedings' means proceedings under sections 48, 49, 50, 51, 54(4), 59(2) and (3), 62 and 63 of the 2002 Act(**c**);

'witness statement' means a written statement signed by a person which contains the evidence, and only that evidence, which that person would be allowed to give orally.

Application for registration of Scottish or Northern Ireland order

33.2.—(1) This rule applies to an application for registration of an order under article 6 of the Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002(**d**).

(2) The application may be made without notice.

(3) The application must be in writing and may be supported by a witness statement which must—

(a) exhibit the order or a certified copy of the order; and

(b) to the best of the witness' ability, give full details of the realisable property located in England and Wales in respect of which the order was made and specify the person holding that realisable property.

(4) If the court registers the order, the applicant must serve notice of the registration on—

(a) any person who holds realisable property to which the order applies; and

(b) any other person whom the applicant knows to be affected by the order.

(5) The permission of the Crown Court under rule 33.8 (Service outside the jurisdiction) is not required to serve the notice outside England and Wales.

Application to vary or set aside registration

33.3.—(1) An application to vary or set aside registration of an order under article 6 of the Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002 may be made to the Crown Court by—

(a) any person who holds realisable property to which the order applies; and

(b) any other person affected by the order.

(2) The application must be in writing and may be supported by a witness statement.

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

(**b**) 2002 c. 29; section 42 was amended by sections 74(2) and 92 of, and paragraphs 1 and 23 of Schedule 8, and Schedule 14 to, the Serious Crime Act 2007 (c. 27). Section 58(2) was amended by section 62(3) of, and paragraphs 142 and 143 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**c**) 2002 c. 29; sections 49, 62 and 63 were amended by sections 74 and 82(1) of, and paragraphs 1, 29 and 30 of Schedule 8 to, the Serious Crime Act 2007 (c. 27). Section 59(2) was amended by section 62(3) of, and paragraphs 142 and 144 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**d**) S.I. 2002/3133.

(3) The application and any witness statement must be lodged with the Crown Court.

(4) The application must be served on the person who applied for registration at least 5 business days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(5) No property in England and Wales may be realised in pursuance of the order before the Crown Court has decided the application.

Register of orders

33.4.—(1) The Crown Court must keep, under the direction of the Lord Chancellor, a register of the orders registered under article 6 of the Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002.

(2) The register must include details of any variation or setting aside of a registration under rule 33.3 and of any execution issued on a registered order.

(3) If the person who applied for registration of an order which is subsequently registered notifies the Crown Court that the court which made the order has varied or discharged the order, details of the variation or discharge, as the case may be, must be entered in the register.

Statements of truth

33.5.—(1) Any witness statement required to be served by this Part must be verified by a statement of truth contained in the witness statement.

(2) A statement of truth is a declaration by the person making the witness statement to the effect that the witness statement is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true.

(3) The statement of truth must be signed by the person making the witness statement.

(4) If the person making the witness statement fails to verify the witness statement by a statement of truth, the Crown Court may direct that it shall not be admissible as evidence.

Use of witness statements for other purposes

33.6.—(1) Except as provided by this rule, a witness statement served in proceedings under Part 2 of the Proceeds of Crime Act 2002 may be used only for the purpose of the proceedings in which it is served.

(2) Paragraph (1) does not apply if and to the extent that—

(a) the witness gives consent in writing to some other use of it;

(b) the Crown Court gives permission for some other use; or

(c) the witness statement has been put in evidence at a hearing held in public.

Service of documents

33.7.—(1) Rule 49.1 (Notice required to accompany process served outside the United Kingdom and translations) shall not apply in restraint proceedings and receivership proceedings.

(2) An order made in restraint proceedings or receivership proceedings may be enforced against the defendant or any other person affected by it notwithstanding that service of a copy of the order has not been effected in accordance with Part 4 if the Crown Court is satisfied that the person had notice of the order by being present when the order was made.

Service outside the jurisdiction

33.8.—(1) Where this Part requires a document to be served on someone who is outside England and Wales, it may be served outside England and Wales with the permission of the Crown Court.

(2) Where a document is to be served outside England and Wales it may be served by any method permitted by the law of the country in which it is to be served.

(3) Nothing in this rule or in any court order shall authorise or require any person to do anything in the country where the document is to be served which is against the law of that country.

(4) Where this Part requires a document to be served a certain period of time before the date of a hearing and the recipient does not appear at the hearing, the hearing must not take place unless the Crown Court is satisfied that the document has been duly served.

Certificates of service

33.9.—(1) Where this Part requires that the applicant for an order in restraint proceedings or receivership proceedings serve a document on another person, the applicant must lodge a certificate of service with the Crown Court within 5 business days of service of the document.

(2) The certificate must state—

(a) the method of service;

(b) the date of service; and

(c) if the document is served under rule 4.9 (Service by another method), such other information as the court may require when making the order permitting service by that method.

(3) Where a document is to be served by the Crown Court in restraint proceedings and receivership proceedings and the court is unable to serve it, the court must send a notice of non-service stating the method attempted to the party who requested service.

External requests and orders

33.10.—(1) The rules in this Part and in Part 42 (Appeal to the Court of Appeal in confiscation and related proceedings) apply with the necessary modifications to proceedings under the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(**a**) in the same way that they apply to corresponding proceedings under Part 2 of the Proceeds of Crime Act 2002(**b**).

(2) This table shows how provisions of the 2005 Order correspond with provisions of the 2002 Act.

Article of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005	*Section of the Proceeds of Crime Act 2002*
8	41
9	42
10	43
11	44
15	48
16	49
17	58
23	31
27	50
28	51
41	62
42	63
44	65
45	66

(**a**) S.I. 2005/3181.
(**b**) 2002 c. 29.

Confiscation proceedings

33.11.—(1) This rule applies where—

(a) rule 25.16(7) applies (Trial and sentence in the Crown Court; Procedure if the court convicts);

(b) the court can make a confiscation order; and

(c) the prosecutor asks the court to make such an order, or the court considers making such an order on its own initiative.

(2) The court must satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary)—

(a) in every case—

(i) that the court's requirements for information must be obeyed, and

(ii) the potential consequences of not doing so; and

(b) if the court makes a confiscation order—

(i) the amount that must be paid and how that has been calculated,

(ii) the potential consequences of failing to pay that amount, and

(iii) if applicable, the possibility that the prosecutor in future may apply to the court to order the defendant to pay more.

(3) The court must set a confiscation timetable that—

(a) requires the defendant to serve on the court officer and the prosecutor information under section 18 of the Proceeds of Crime Act 2002(**a**) not more than 15 business days after the court sets the timetable (or within such other period as the court directs);

(b) requires the defendant to serve on any person who holds an interest in property in which the defendant also holds an interest ('an interested person') not more than 15 business days after the court sets the timetable (or within such other period as the court directs)—

(i) notice of the confiscation proceedings,

(ii) notice that the defendant has named that person as an interested person, with the reasons why, and

(iii) notice of what that person must do under paragraph (9) of this rule, giving addresses for the court office, the prosecutor and the defendant;

(c) requires the prosecutor to serve on the court officer and the defendant a statement of information under section 16 of the Proceeds of Crime Act 2002(**b**) not more than 20 business days after service of the defendant's section 18 information (or within such other period as the court directs);

(d) requires the defendant to serve on the court officer and the prosecutor a response to the prosecutor's statement of information, under section 17 of the Proceeds of Crime Act 2002(**c**), not more than 30 business days after service of that statement (or within such other period as the court directs); and

(e) fixes a date for the confiscation hearing.

(4) The information from the defendant under section 18 of the 2002 Act must—

(a) list the defendant's property;

(b) give details of the defendant's income;

(**a**) 2002 c. 29; section 18 was amended by section 94 of, and paragraph 7 of Schedule 8 to, the Serious Crime Act 2007 (c. 27) and section 2 of the Serious Crime Act 2015 (c. 9).

(**b**) 2002 c. 29; section 16 was amended by section 94 of, and paragraph 5 of Schedule 8 to, the Serious Crime Act 2007 (c. 27) and section 2 of the Serious Crime Act 2015 (c. 9).

(**c**) 2002 c. 29; section 17 was amended by section 94 of, and paragraph 6 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(c) list any property in which an interested person holds an interest and include—

(i) that person's name and address,

(ii) the name and address of that person's legal representative, if known, and

(iii) details of that person's interest in the property.

(5) In or with the statement of information under section 16 of the 2002 Act the prosecutor must—

(a) set out the grounds for a confiscation order;

(b) list the prosecutor's assertions in a way that allows the defendant to indicate the extent to which (if at all) the defendant accepts each assertion;

(c) identify any interested person known to the prosecutor but not mentioned in the defendant's information, with details of that person's interest;

(d) include a financial investigator's witness statement that sets out the matters of fact on which the prosecutor relies;

(e) include any other witness statement or other evidence relied upon in support of the prosecutor's case; and

(f) if either the defendant's information or the prosecutor's statement of information has mentioned an interested person, apply for further directions.

(6) Where the prosecutor mentions in the statement of information an interested person not also mentioned in the defendant's information, at the same time as serving the statement of information the prosecutor must serve on that person—

(a) notice of the confiscation proceedings;

(b) notice that the prosecutor has named that person as an interested person, with the reasons why; and

(c) notice of what that person must do under paragraph (9) of this rule, giving addresses for the court office, the prosecutor and the defendant.

(7) In or with the response under section 17 of the 2002 Act the defendant must—

(a) state whether, and if so to what extent, the defendant accepts each assertion made by the prosecutor in the statement of information;

(b) in respect of each assertion that the defendant does not accept, give reasons why and particulars of any matters on which the defendant intends to rely;

(c) include any assertion by the defendant that benefit from criminal conduct has been shared with somebody else; and

(d) include any witness statement or other evidence relied upon in support of the defendant's case.

(8) Where part of the defendant's response concerns the interest of an interested person, at the same time as serving the response the defendant must serve that part on that person.

(9) An interested person served with notice of the proceedings by the defendant or by the prosecutor must, not more than 45 business days after service of that notice (or within such other period as the court directs)—

(a) serve a response on the court officer, the prosecutor and the defendant; and

(b) in or with the response—

(i) state whether, and if so to what extent, the interested person accepts the assertions made about that person's interest,

(ii) in respect of each assertion that the interested person does not accept, give reasons why and particulars of any matters on which that person intends to rely,

(iii) give particulars of the person's interest (if any) in the property, and

(iv) include any witness statement or other evidence on which the interested person relies.

(10) The court must—

(a) when setting the confiscation timetable take into account any indication then available that the case will involve unusual complexity; and

(b) review the timetable and give such further directions as may be needed if—

(i) the defendant or the prosecutor identifies an interested person,

(ii) other information may affect the date fixed for the confiscation hearing, or

(iii) either party applies for further directions.

(11) The court must not determine the extent of the defendant's interest in property in which it appears to the court that another person holds an interest unless that interested person has had a reasonable opportunity to make representations.

(12) With or without a hearing, the court may—

(a) shorten or extend a time limit which it has set;

(b) vary, discharge or supplement an order (other than a confiscation order) which it has made where this rule applies; and

(c) postpone the confiscation hearing.

[Note. Under section 6 of the Proceeds of Crime Act 2002(**a**)*, where a defendant is convicted of an offence the Crown Court must (with some exceptions)—*

(a) decide whether the defendant has 'a criminal lifestyle', within the meaning of the Act, or has benefited from particular criminal conduct;

(b) decide the 'recoverable amount', within the meaning of the Act; and

(c) make a confiscation order requiring the defendant to pay that amount.

Under section 14 of the 2002 Act(**b**)*, unless exceptional circumstances apply the court may postpone confiscation proceedings for a maximum of 2 years from the date of conviction, or until the end of a period of 3 months following the determination of an appeal by the defendant against conviction, if that is later.*

Under section 16 of the 2002 Act(**c**)*, where the Crown Court is considering confiscation the prosecutor must give the court a statement of information which the prosecutor believes to be relevant to what the court must decide, within such period as the court directs. Under section 17 of the Act*(**d**)*, where the prosecutor gives such a statement the court may order the defendant to respond and, if the defendant does not do so, then the court may treat the defendant as accepting the prosecutor's allegations. Under section 18, for the purpose of obtaining information to help it in carrying out its functions the court may at any time order the defendant to give it information specified in the order and, if the defendant does not do so, then the court may draw such inference as it believes appropriate. Under section 18A*(**e**)*, for the purpose of obtaining information to help it to determine the extent of the defendant's interest in property the court may at any time order a person who the court thinks may hold an interest in that property to give it information specified in the order and, if that person does not do so, then the court may draw such inference as it believes appropriate.*

(**a**) 2002 c. 29; section 6 was amended by section 336 of, and paragraph 75 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44), section 94 of, and paragraph 2 of Schedule 8 and Schedule 14 to, the Serious Crime Act 2007 (c. 27), section 12 of, and paragraph 12 of the Schedule to, the Prevention of Social Housing Fraud Act 2013 (c. 3), section 88 of, and paragraph 19 of Schedule 4 to, the Serious Crime Act 2015 (c. 9) and section 416 of, and paragraph 181 of Schedule 24 to, the Sentencing Act 2020 (c. 17).

(**b**) 2002 c. 29; section 14 was amended by section 94 of, and paragraph 4 of Schedule 8 and Schedule 14 to, the Serious Crime Act 2007 (c. 27), section 12 of, and paragraph 15 of the Schedule to, the Prevention of Social Housing Fraud Act 2013 (c. 3), section 88 of, and paragraph 21 of Schedule 4 to, the Serious Crime Act 2015 (c. 9) and section 416 of, and paragraph 183 of Schedule 24 to, the Sentencing Act 2020 (c. 17).

(**c**) 2002 c. 29; section 16 was amended by section 74(2) of, and paragraphs 1 and 5 of Schedule 8 to, the Serious Crime Act 2007 (c. 27) and section 2 of the Serious Crime Act 2015 (c. 9).

(**d**) 2002 c. 29; section 17 was amended by section 74(2) of, and paragraphs 1 and 6 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(**e**) 2002 c. 29; section 18A was inserted by section 2 of the Serious Crime Act 2015 (c. 9).

Under section 27 of the 2002 Act(**a**)*, special provisions apply where the defendant absconds.*

See also the rules in Part 3 (Case management) and Part 15 (Disclosure).

For powers to vary a confiscation order see—

(a) rule 28.4 (Variation of sentence); and

(b) rules 33.13 to 33.18.

Under section 97 of the Serious Organised Crime and Police Act 2005(**b**)*, the Secretary of State may by order provide for confiscation orders to be made by magistrates' courts.]*

Application for compliance order

33.12.—(1) This rule applies where—

(a) the prosecutor wants the court to make a compliance order after a confiscation order has been made; or

(b) the prosecutor or a person affected by a compliance order wants the court to vary or discharge the order.

(2) Such a prosecutor or person must—

(a) apply in writing; and

(b) serve the application on—

(i) the court officer, and

(ii) as appropriate, the prosecutor and any person who is affected by the compliance order (or who would be affected if it were made), unless the court otherwise directs.

(3) The application must—

(a) specify—

(i) the confiscation order, and

(ii) the compliance order, if it is an application to vary or discharge that order;

(b) if it is an application for a compliance order—

(i) specify each measure that the prosecutor proposes to ensure that the confiscation order is effective, including in particular any restriction or prohibition on the defendant's travel outside the United Kingdom, and

(ii) explain why each such measure is appropriate;

(c) if it is an application to vary or discharge a compliance order, as appropriate—

(i) specify any proposed variation, and

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

(d) attach any material on which the applicant relies;

(e) propose the terms of the order; and

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

(4) A person who wants to make representations about the application must—

(a) serve the representations on—

(i) the court officer, and

(ii) the applicant;

(b) do so as soon as reasonably practicable after service of the application;

(**a**) 2002 c. 29; section 27 was amended by section 94 of, and paragraph 14 of Schedule 8 and Schedule 14 to, the Serious Crime Act 2007 (c. 27), sections 9 and 88 of the Serious Crime Act 2015 (c. 9) and section 416 of, and paragraph 189 of Schedule 24 to, the Sentencing Act 2020 (c. 17).

(**b**) 2005 c. 15; section 97 was amended by S.I. 2010/976 and sections 40 and 88 of the Serious Crime Act 2015 (c. 9).

(c) attach any material on which that person relies; and

(d) ask for a hearing, if that person wants one, and explain why it is needed.

(5) The court—

(a) may determine the application at a hearing (which must be in private unless the court otherwise directs), or without a hearing; and

(b) may dispense with service on any person of a prosecutor's application for a compliance order if, in particular—

(i) the application is urgent, or

(ii) there are reasonable grounds for believing that to give notice of the application would cause the dissipation of property that otherwise would be available to satisfy the confiscation order.

[Note. See section 13A of the Proceeds of Crime Act 2002(**a**)*.]*

Application for reconsideration

33.13.—(1) This rule applies where the prosecutor wants the court, in view of fresh evidence—

(a) to consider making a confiscation order where the defendant was convicted but no such order was considered;

(b) to reconsider a decision that the defendant had not benefited from criminal conduct; or

(c) to reconsider a decision about the amount of the defendant's benefit.

(2) The application must—

(a) be in writing and give—

(i) the name of the defendant,

(ii) the date on which and the place where any relevant conviction occurred,

(iii) the date on which and the place where any relevant confiscation order was made or varied,

(iv) details of any slavery and trafficking reparation order made by virtue of any relevant confiscation order,

(v) the grounds for the application, and

(vi) an indication of the evidence available to support the application; and

(b) where the parties are agreed on the terms of the proposed order include, in one or more documents—

(i) a draft order in the terms proposed, and

(ii) evidence of the parties' agreement.

(3) The application must be served on—

(a) the court officer; and

(b) the defendant.

(4) The court—

(a) may determine the application without a hearing where the parties are agreed on the terms of the proposed order; but

(b) must determine the application at a hearing in any other case.

(5) Where this rule or the court requires the application to be heard, the court officer must arrange for the court to hear it no sooner than 6 business days after it was served unless the court otherwise directs.

(**a**) 2002 c. 29; section 13A was inserted by section 7 of the Serious Crime Act 2015 (c. 9).

[Note. See sections 19, 20 and 21 of the Proceeds of Crime Act 2002(**a**) *and section 10 of the Modern Slavery Act 2015*(**b**)*.]*

Application for new calculation of available amount

33.14.—(1) This rule applies where the prosecutor or a receiver wants the court to make a new calculation of the amount available for confiscation.

(2) The application—

(a) must be in writing and may be supported by a witness statement;

(b) must identify any slavery and trafficking reparation order made by virtue of the confiscation order; and

(c) where the parties are agreed on the terms of the proposed order, must include in one or more documents—

(i) a draft order in the terms proposed, and

(ii) evidence of the parties' agreement.

(3) The application and any witness statement must be served on the court officer.

(4) The application and any witness statement must be served on—

(a) the defendant;

(b) the receiver, if the prosecutor is making the application and a receiver has been appointed; and

(c) the prosecutor, if the receiver is making the application.

(5) The court—

(a) may determine the application without a hearing where the parties are agreed on the terms of the proposed order; but

(b) must determine the application at a hearing in any other case.

(6) Where this rule or the court requires the application to be heard, the court officer must arrange for the court to hear it no sooner than 6 business days after it was served unless the court otherwise directs.

[Note. See section 22 of the Proceeds of Crime Act 2002(**c**) *and section 10 of the Modern Slavery Act 2015.]*

Variation of confiscation order due to inadequacy of available amount

33.15.—(1) This rule applies where the defendant, the prosecutor or a receiver wants the court to vary a confiscation order because the amount available is inadequate.

(2) The application—

(a) must be in writing and may be supported by a witness statement;

(b) must identify any slavery and trafficking reparation order made by virtue of the confiscation order; and

(c) where the parties are agreed on the terms of the proposed order, must include in one or more documents—

(i) a draft order in the terms proposed, and

(ii) evidence of the parties' agreement.

(**a**) 2002 c. 29; sections 19, 20 and 21 were amended by section 74(2) of, and paragraph 1 and paragraphs 8, 9 and 10 respectively, of Schedule 8 to, the Serious Crime Act 2007 (c. 27). Sections 19 and 20 were further amended by paragraphs 16 and 17 of Schedule 5 to the Modern Slavery Act 2015 (c. 30).

(**b**) 2015 c. 30.

(**c**) 2002 c. 29; section 22 was amended by section 74(2) of, and paragraph 11 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(3) The application and any witness statement must be served on the court officer.

(4) The application and any witness statement must be served on—

(a) the prosecutor;

(b) the defendant, if the receiver is making the application; and

(c) the receiver, if the defendant is making the application and a receiver has been appointed.

(5) The court—

(a) may determine the application without a hearing where the parties are agreed on the terms of the proposed order; but

(b) must determine the application at a hearing in any other case.

(6) Where this rule or the court requires the application to be heard, the court officer must arrange for the court to hear it no sooner than 6 business days after it was served unless the court otherwise directs.

[Note. See section 23 of the Proceeds of Crime Act 2002(**a**) *and section 10 of the Modern Slavery Act 2015.]*

Application by magistrates' court officer to discharge confiscation order

33.16.—(1) This rule applies where a magistrates' court officer wants the court to discharge a confiscation order because the amount available is inadequate or the sum outstanding is very small.

(2) The application must be in writing and give details of—

(a) the confiscation order;

(b) any slavery and trafficking reparation order made by virtue of the confiscation order;

(c) the amount outstanding under the order; and

(d) the grounds for the application.

(3) The application must be served on—

(a) the defendant;

(b) the prosecutor; and

(c) any receiver.

(4) The court may determine the application without a hearing unless a person listed in paragraph (3) indicates, within 5 business days after the application was served, that he or she would like to make representations.

(5) If the court makes an order discharging the confiscation order, the court officer must, at once, send a copy of the order to—

(a) the magistrates' court officer who applied for the order;

(b) the defendant;

(c) the prosecutor; and

(d) any receiver.

[Note. See sections 24 and 25 of the Proceeds of Crime Act 2002(**b**) *and section 10 of the Modern Slavery Act 2015.]*

(**a**) 2002 c. 29; section 23 was amended by section 74(2) of, and paragraph 12 of Schedule 8 to, the Serious Crime Act 2007 (c. 27) and section 8 of the Serious Crime Act 2015 (c. 9).

(**b**) 2002 c. 29; sections 24 and 25 were amended by section 109(1) of, and paragraphs 406(a) and 406(b), respectively, of Schedule 8 to, the Courts Act 2003 (c. 39).

Application for variation of confiscation order made against an absconder

33.17.—(1) This rule applies where the defendant wants the court to vary a confiscation order made while the defendant was an absconder.

(2) The application must be in writing and supported by a witness statement which must give details of—

(a) the confiscation order;

(b) any slavery and trafficking reparation order made by virtue of the confiscation order;

(c) the circumstances in which the defendant ceased to be an absconder;

(d) the defendant's conviction of the offence or offences concerned; and

(e) the reason why the defendant believes the amount required to be paid under the confiscation order was too large.

(3) The application and witness statement must be served on the court officer.

(4) The application and witness statement must be served on the prosecutor at least 5 business days before the date fixed by the court for hearing the application, unless the court specifies a shorter period.

[Note. See section 29 of the Proceeds of Crime Act 2002(**a**) *and section 10 of the Modern Slavery Act 2015.]*

Application for discharge of confiscation order made against an absconder

33.18.—(1) This rule applies where the defendant wants the court to discharge a confiscation order made while the defendant was an absconder and—

(a) the defendant since has been tried and acquitted of each offence concerned; or

(b) the prosecution has not concluded or is not to proceed.

(2) The application must be in writing and supported by a witness statement which must give details of—

(a) the confiscation order;

(b) the date on which the defendant ceased to be an absconder;

(c) the acquittal of the defendant if he or she has been acquitted of the offence concerned; and

(d) if the defendant has not been acquitted of the offence concerned—

(i) the date on which the defendant ceased to be an absconder,

(ii) the date on which the proceedings taken against the defendant were instituted and a summary of steps taken in the proceedings since then, and

(iii) any indication that the prosecutor does not intend to proceed against the defendant.

(3) The application and witness statement must be served on the court officer.

(4) The application and witness statement must be served on the prosecutor at least 5 business days before the date fixed by the court for hearing the application, unless the court specifies a shorter period.

(5) If the court orders the discharge of the confiscation order, the court officer must serve notice on any other court responsible for enforcing the order.

[Note. See section 30 of the Proceeds of Crime Act 2002(**b**)*.]*

(**a**) 2002 c. 29.
(**b**) 2002 c. 29.

Application for increase in term of imprisonment in default

33.19.—(1) This rule applies where—

(a) a court varies a confiscation order; and

(b) the prosecutor wants the court in consequence to increase the term of imprisonment to be served in default of payment.

(2) The application must be made in writing and give details of—

(a) the name and address of the defendant;

(b) the confiscation order;

(c) the grounds for the application; and

(d) the enforcement measures taken, if any.

(3) On receipt of the application, the court officer must—

(a) at once, send to the defendant and any other court responsible for enforcing the order, a copy of the application; and

(b) fix a time, date and place for the hearing and notify the applicant and the defendant of that time, date and place.

(4) If the court makes an order increasing the term of imprisonment in default, the court officer must, at once, send a copy of the order to—

(a) the applicant;

(b) the defendant;

(c) where the defendant is in custody at the time of the making of the order, the person having custody of the defendant; and

(d) any other court responsible for enforcing the order.

[Note. See section 39(5) of the Proceeds of Crime Act 2002(**a**)*.]*

Compensation – general

33.20.—(1) This rule applies where a person who held realisable property wants the court to award compensation for loss suffered in consequence of anything done in relation to that property in connection with confiscation proceedings.

(2) The application must be in writing and may be supported by a witness statement.

(3) The application and any witness statement must be served on the court officer.

(4) The application and any witness statement must be served on—

(a) the person alleged to be in default; and

(b) the person or authority by whom the compensation would be payable,

at least 5 business days before the date fixed by the court for hearing the application, unless the court directs otherwise.

[Note. See section 72 of the Proceeds of Crime Act 2002(**b**)*.]*

Compensation – confiscation order made against absconder

33.21.—(1) This rule applies where—

(**a**) 2002 c. 29; section 39(5) was amended by section 74(2) of, and paragraphs 1 and 21(2) of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(**b**) 2002 c. 29; section 72 was amended by section 50(6) of, and paragraph 97 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11), section 61 of the Policing and Crime Act 2009 (c. 26) and sections 15 and 55 of, and paragraphs 108 and 114 of Schedule 8 and paragraphs 14 and 19 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22).

(a) the court varies or discharges a confiscation order made against an absconder;

(b) a person who held realisable property suffered loss as a result of the making of that confiscation order; and

(c) that person wants the court to award compensation for that loss.

(2) The application must be in writing and supported by a witness statement which must give details of—

(a) the confiscation order;

(b) the variation or discharge of the confiscation order;

(c) the realisable property to which the application relates; and

(d) the loss suffered by the applicant as a result of the confiscation order.

(3) The application and witness statement must be served on the court officer.

(4) The application and witness statement must be served on the prosecutor at least 5 business days before the date fixed by the court for hearing the application, unless the court specifies a shorter period.

[Note. See section 73 of the Proceeds of Crime Act 2002(**a**)*.]*

Payment of money held or detained in satisfaction of confiscation order

33.22.—(1) An order under section 67 of the Proceeds of Crime Act 2002(**b**) requiring the payment of money to a magistrates' court officer ('a payment order') shall—

(a) be directed to—

(i) the relevant financial institution concerned, where the money is held in an account maintained with that relevant financial institution, or

(ii) the person on whose authority the money is detained, in any other case;

(b) name the person against whom the confiscation order has been made;

(c) state the amount which remains to be paid under the confiscation order;

(d) state the name and address of the relevant financial institution at which the account in which the money ordered to be paid is held and the sort code, if known;

(e) state the name in which the account in which the money ordered to be paid is held and the account number of that account, if the account number is known;

(f) state the amount which the relevant financial institution is required to pay to the court officer under the payment order;

(g) give the name and address of the court officer to whom payment is to be made; and

(h) require the relevant financial institution to make payment within a period of 5 business days beginning on the day on which the payment order is made, unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances.

(2) In this rule 'confiscation order' has the meaning given to it by section 88(6) of the Proceeds of Crime Act 2002.

[Note. Under section 67(8) of the Proceeds of Crime Act 2002(**c**)*, "relevant financial institution" means a bank, a building society, an electronic money institution or a payment institution; "electronic money institution" means an institution or person registered by the Financial Conduct Authority under the Electronic Money Regulations 2011; and "payment institution" means a person registered by that Authority under the Payment Services Regulations 2017.]*

(**a**) 2002 c. 29.

(**b**) 2002 c. 29; section 67 was amended by section 109 of, and paragraph 409 of Schedule 8 to, the Courts Act 2003 (c. 39), section 74 of, and paragraph 33 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), section 14 of the Serious Crime Act 2015 (c. 9) and section 26 of the Criminal Finances Act 2017 (c. 22).

(**c**) 2002 c. 29; section 67(8) was substituted by sections 26 and 58 of the Criminal Finances Act 2017 (c. 22) and amended by section 219 of, and paragraph 11 of Schedule 8 to, the Economic Crime and Corporate Transparency Act 2023 (c. 56).

Application to realise seized property or to realise or destroy cryptoassets

33.23.—(1) This rule applies where a magistrates' court can make an order—

(a) under section 67A of the Proceeds of Crime Act 2002(**a**) authorising the realisation of seized personal property;

(b) under section 67B of the 2002 Act(**b**) determining any storage, insurance or realisation costs recoverable by the officer;

(c) under section 67ZA of the 2002 Act(**c**) requiring the realisation of seized cryptoassets; or

(d) under section 67AA of the 2002 Act(**d**) authorising the destruction of seized cryptoassets.

(2) An applicant for such an order must—

(a) apply in writing; and

(b) serve the application on—

(i) the court officer, and

(ii) any person whom the applicant believes would be affected by an order, including (where the application concerns cryptoassets) the UK-connected cryptoasset service provider which administers the crypto wallet in which the cryptoassets are held.

(3) The application must—

(a) specify the property or cryptoassets concerned;

(b) explain the applicant's entitlement to apply and, as applicable—

(i) how the proposed realisation of personal property meets the conditions prescribed by section 67A of the 2002 Act,

(ii) how any storage, etc. costs have been calculated,

(iii) how the proposed realisation of cryptoassets meets the conditions prescribed by section 67ZA of the 2002 Act, and

(iv) how the proposed destruction of cryptoassets meets the conditions prescribed by section 67AA of the 2002 Act;

(c) attach any material on which the applicant relies; and

(d) propose the terms of the order, including an assessment of the market value of any cryptoassets ordered to be destroyed.

(4) The court may—

(a) determine the application at a hearing, or without a hearing;

(b) consider an application made orally instead of in writing; and

(c) consider an application which has not been served on a person likely to be affected by an order.

(5) If the court authorises a realisation of personal property or a realisation or destruction of cryptoassets, the applicant must—

(a) notify any person affected by the order who was absent when it was made; and

(b) serve on the court officer a list of those so notified.

(**a**) 2002 c. 29; section 67A was inserted by section 58 of the Policing and Crime Act 2009 (c. 26) and amended by section 14 of the Serious Crime Act 2015 (c. 9).

(**b**) 2002 c. 29; section 67B was inserted by section 58 of the Policing and Crime Act 2009 (c. 26).

(**c**) 2002 c. 29; section 67ZA was inserted by section 219 of, and paragraph 12 of Schedule 8 to, the Economic Crime and Corporate Transparency Act 2023 (c. 56).

(**d**) 2002 c. 29; section 67AA was inserted by section 219 of, and paragraph 13 of Schedule 8 to, the Economic Crime and Corporate Transparency Act 2023 (c. 56).

[Note. Under sections 67ZA and 67A of the Proceeds of Crime Act 2002, one of the officers listed in section 41A of the Act(**a**) *may apply to a magistrates' court for authority to realise personal property or cryptoassets seized by such an officer if—*

(a) a confiscation order has been made against a person who holds that property or those cryptoassets; and

(b) no receiver has been appointed in relation to that property or those cryptoassets.

Under section 67AA of the 2002 Act, in those same circumstances an officer may apply to a magistrates' court for authority to destroy cryptoassets if it is not reasonably practicable to realise them or there are reasonable grounds to believe that their realisation would be contrary to the public interest, having regard in particular to how likely it is that the entry of the cryptoassets into general circulation would facilitate criminal conduct by any person.

Under section 67B of the 2002 Act, if a magistrates' court makes an order under section 67A then on the same or a subsequent occasion the court may determine an amount which may be recovered by the applicant in respect of reasonable costs incurred in storing or insuring the property, or realising it.

In the 2002 Act, for the purposes of the provisions to which this rule refers—

(a) section 84(**b**) *makes general provisions about property; and*

(b) section 84A(**c**) *defines "cryptoasset" and related expressions.]*

Appeal about decision on application to realise seized property or to realise or destroy cryptoassets

33.24.—(1) This rule applies where on an application under rule 33.23 for an order to realise seized property or to realise or destroy cryptoassets—

(a) a magistrates' court decides not to make such an order and an officer who is entitled to apply wants to appeal against that decision to the Crown Court, under section 67C(1) of the Proceeds of Crime Act 2002(**d**);

(b) a magistrates' court makes such an order and a person who is affected by that decision, other than the defendant against whom the confiscation order was made, wants to appeal against it to the Crown Court, under section 67C(2) of the 2002 Act; or

(c) a magistrates' court makes a decision about storage, etc. costs and an officer who is entitled to apply wants to appeal against that decision to the Crown Court, under section 67C(4) of the 2002 Act.

(2) The appellant must serve an appeal notice—

(a) on the Crown Court officer and on any other party; and

(b) not more than 15 business days after the magistrates' court's decision, or, if applicable, service of notice under rule 33.23(5).

(3) The appeal notice must—

(a) specify the decision under appeal;

(b) where paragraph (1)(a) applies, explain why the property should be realised; and

(c) in any other case, propose the order that the appellant wants the court to make, and explain why.

(4) Rule 34.11 (Constitution of the Crown Court) applies on such an appeal.

(**a**) 2002 c. 29; section 41A was inserted by section 52 of the Policing and Crime Act 2009 (c. 26) and amended by section 61 of, and paragraph 112 of Schedule 8 and paragraph 15 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22).
(**b**) 2002 c. 29; section 84 was amended by S.I. 2016/1034.
(**c**) 2002 c. 29; section 84A was inserted by section 219 of, and paragraph 18 of Schedule 8 to, the Economic Crime and Corporate Transparency Act 2023 (c. 56).
(**d**) 2002 c. 29; section 67C was inserted by section 58 of the Policing and Crime Act 2009 (c. 26).

[Note. Under section 67C of the Proceeds of Crime Act 2002(**a**)*, an officer entitled to apply for an order under section 67ZA, 67A, 67AA or 67B of that Act (authority to realise seized property or requirement to realise cryptoassets towards satisfaction of a confiscation order; authority to destroy cryptoassets; determination of storage, etc. costs) may appeal against a refusal to make an order, or against a costs determination; and a person affected by an order, other than the owner defendant against whom the confiscation order was made, may appeal against the order.]*

Application for direction about surplus proceeds

33.25.—(1) This rule applies where—

(a) on an application under rule 33.23, a magistrates' court has made an order authorising the realisation of personal property or requiring the realisation of cryptoassets;

(b) an officer holds proceeds of that realisation;

(c) the confiscation order has been fully paid; and

(d) the officer, or a person who had or has an interest in the property or cryptoassets represented by the proceeds, wants a magistrates' court or the Crown Court to determine under section 67D of the Proceeds of Crime Act 2002(**b**)—

(i) to whom the remaining proceeds should be paid, and

(ii) in what amount or amounts.

(2) Such a person must—

(a) apply in writing; and

(b) serve the application on—

(i) the court officer, and

(ii) as appropriate, the officer holding the proceeds, or any person to whom such proceeds might be paid.

(3) The application must—

(a) specify the property or cryptoassets realised;

(b) explain the applicant's entitlement to apply;

(c) describe the distribution proposed by the applicant and explain why that is proposed;

(d) attach any material on which the applicant relies; and

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

(4) A person who wants to make representations about the application must—

(a) serve the representations on—

(i) the court officer,

(ii) the applicant, and

(iii) any other person to whom proceeds might be paid;

(b) do so as soon as reasonably practicable after service of the application;

(c) attach any material on which that person relies; and

(d) ask for a hearing, if that person wants one, and explain why it is needed.

(5) The court—

(a) must not determine the application unless the applicant and each person on whom it was served—

(i) is present, or

(**a**) 2002 c. 29; section 67C was inserted by section 58 of the Policing and Crime Act 2009 (c. 26) and amended by section 219 of, and paragraph 14 of Schedule 8 to, the Economic Crime and Corporate Transparency Act 2023 (c. 56).

(**b**) 2002 c. 29; section 67D was inserted by section 58 of the Policing and Crime Act 2009 (c. 26) and amended by section 219 of, and paragraph 14 of Schedule 8 to, the Economic Crime and Corporate Transparency Act 2023 (c. 56).

(ii) has had an opportunity to attend or to make representations; but

(b) subject to that, may determine the application—

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

(ii) in the absence of any party to the application.

[Note. Under section 67D of the Proceeds of Crime Act 2002, a magistrates' court or the Crown Court may determine to whom, and in what proportions, any surplus proceeds of realisation must be distributed. Once a magistrates' court has made such a determination, the Crown Court may not do so, and vice versa.]

SEIZURE AND DETENTION PROCEEDINGS

Application for approval to seize property or to search

33.26.—(1) This rule applies where an officer wants the approval of a magistrates' court under section 47G of the Proceeds of Crime Act 2002(**a**)—

(a) under section 47C of that Act(**b**), to seize—

(i) realisable property which is not cash or exempt property, or

(ii) any free property which is a cryptoasset-related item; or

(b) to search premises or a person or vehicle for property to be seized, under section 47D, 47E or 47F of that Act(**c**).

(2) Such an officer must—

(a) apply in writing; and

(b) serve the application on the court officer.

(3) The application must—

(a) explain—

(i) the applicant's entitlement to apply, and

(ii) how the proposed seizure meets the conditions prescribed by sections 47B, 47C and, if applicable, 47D, 47E or 47F of the 2002 Act(**d**);

(b) if applicable, specify any premises, person or vehicle to be searched;

(c) attach any material on which the applicant relies; and

(d) propose the terms in which the applicant wants the court to give its approval.

(4) The court—

(a) must determine the application—

(i) at a hearing, which must be in private unless the court otherwise directs, and

(ii) in the applicant's presence; but

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

(**a**) 2002 c. 29; section 47G was inserted by section 55 of the Policing and Crime Act 2009 (c. 26) and amended by section 55 of, and paragraphs 14 and 17 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22) and section 13 of the Serious Crime Act 2015 (c. 9).

(**b**) 2002 c. 29; section 47C was inserted by section 55 of the Policing and Crime Act 2009 (c. 26) and amended by section 61 of, and paragraph 16 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22) and section 219 of, and paragraph 3 of Schedule 8 to, the Economic Crime and Corporate Transparency Act 2023 (c. 56).

(**c**) 2002 c. 29; sections 47D, 47E and 47F were inserted by section 55 of the Policing and Crime Act 2009 (c. 26).

(**d**) 2002 c. 29; section 47B was inserted by section 55 of the Policing and Crime Act 2009 (c. 26) and amended by section 13 of the Serious Crime Act 2015 (c. 9) and section 219 of, and paragraph 2 of Schedule 8 to, the Economic Crime and Corporate Transparency Act 2023 (c. 56).

*[Note. Under section 47C of the Proceeds of Crime Act 2002, if any of the conditions listed in section 47B of the Act are met then one of the officers listed in section 47A(**a**) may seize—*

(a) realisable property other than cash or exempt property as defined in section 47C, if the officer has reasonable grounds for suspecting that—

(i) the property may otherwise be made unavailable for satisfying any confiscation order that has been or may be made against a defendant; or

(ii) the value of the property may otherwise be diminished as a result of conduct by the defendant or any other person; and

(b) any free property if the officer has reasonable grounds for suspecting that it is a cryptoasset-related item as defined in section 47C.

In the 2002 Act, for the purposes of the provisions to which this rule refers—

*(a) section 82(**b**) defines "free property";*

(b) section 83 defines "realisable property";

(c) section 84 makes general provisions about property; and

(d) section 84A defines "cryptoasset" and related expressions.

Under sections 47D, 47E and 47F of the 2002 Act, such an officer may search premises, a person or a vehicle, respectively, for such property, on the conditions listed in those sections.

By sections 47C(6), 47D(2), 47E(4), 47F(6) and 47G of the 2002 Act, such an officer may seize property, and may search for it, only with the approval of a magistrates' court or, if that is impracticable, the approval of a senior officer (as defined by section 47G), unless in the circumstances it is not practicable to obtain the approval of either.]

Application to extend detention period

33.27.—(1) This rule applies where an officer who is entitled to apply, or the prosecutor, wants a magistrates' court to make an order, under section 47M of the Proceeds of Crime Act 2002(**c**), extending the period for which seized property may be detained.

(2) Such an officer or prosecutor must—

(a) apply in writing; and

(b) serve the application on—

(i) the court officer, and

(ii) any person whom the applicant believes would be affected by an order.

(3) The application must—

(a) specify—

(i) the property to be detained, and

(ii) whether the applicant wants it to be detained for a specified period or indefinitely;

(b) explain—

(i) the applicant's entitlement to apply, and

(**a**) 2002 c. 29; section 47A was inserted by section 55 of the Policing and Crime Act 2009 (c. 26) and amended by section 55 of the Crime and Courts Act 2013 (c. 22), section 58 of, and paragraph 3 of Schedule 1 to, the Criminal Finances Act 2017 (c. 22) and S.I. 2018/285.

(**b**) 2002 c. 29; section 82 was amended by section 178 of, and paragraph 5 of Schedule 6 to, the Serious Organised Crime and Police Act 2005 (c. 15), section 100 of, and paragraph 7 of Schedule 3 to, the Counter-Terrorism Act 2008 (c. 28), section 116 of, and paragraph 101 of Schedule 7 to, Policing and Crime Act 2009 (c. 26), sections 34 and 58 of, and paragraph 22 of Schedule 5 to, the Criminal Finances Act 2017 (c. 22), section 416 of, and paragraph 196 of Schedule 24 to, the Sentencing Act 2020 (c. 17) and section 219 of, and paragraph 3 of Schedule 9 to, the Economic Crime and Corporate Transparency Act 2023 (c. 56).

(**c**) 2002 c. 29; section 47M was inserted by section 55 of the Policing and Crime Act 2009 (c. 26) and amended by section 55 of, and paragraphs 14 and 18 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22).

(ii) how the proposed detention meets the conditions prescribed by section 47M of the 2002 Act;

(c) attach any material on which the applicant relies; and

(d) propose the terms of the order.

(4) The court—

(a) must determine the application—

(i) at a hearing, which must be in private unless the court otherwise directs, and

(ii) in the applicant's presence; but

(b) may—

(i) consider an application made orally instead of in writing,

(ii) require service of the application on the court officer after it has been heard, instead of before.

(5) If the court extends the period for which the property may be detained, the applicant must—

(a) notify any person affected by the order who was absent when it was made; and

(b) serve on the court officer a list of those so notified.

[Note. Under section 47M of the Proceeds of Crime Act 2002, one of the officers listed in that section, or the prosecutor, may apply to a magistrates' court for an order extending the period of 48 hours for which, under section 47J of the Act(**a**)*, property seized under section 47C may be detained.*

On an application to which this rule applies, hearsay evidence within the meaning of section 1(2) of the Civil Evidence Act 1995 is admissible: see section 47Q of the 2002 Act(**b**)*.]*

Application to vary or discharge order for extended detention

33.28.—(1) This rule applies where an officer who is entitled to apply, the prosecutor, or a person affected by an order to which rule 33.27 applies, wants a magistrates' court to vary or discharge that order, under section 47N of the Proceeds of Crime Act 2002(**c**).

(2) Such a person must—

(a) apply in writing; and

(b) serve the application on—

(i) the court officer, and

(ii) as appropriate, the applicant for the order, or any person affected by the order.

(3) The application must—

(a) specify the order and the property detained;

(b) explain—

(i) the applicant's entitlement to apply,

(ii) why it is appropriate for the order to be varied or discharged,

(iii) if applicable, on what grounds the court must discharge the order;

(c) attach any material on which the applicant relies;

(d) if applicable, propose the terms of any variation; and

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

(4) A person who wants to make representations about the application must—

(**a**) 2002 c. 29; section 47J was inserted by section 55 of the Policing and Crime Act 2009 (c. 26).
(**b**) 2002 c. 29; section 47Q was inserted by section 55 of the Policing and Crime Act 2009 (c. 26).
(**c**) 2002 c. 29; section 47N was inserted by section 55 of the Policing and Crime Act 2009 (c. 26).

(a) serve the representations on—

(i) the court officer, and

(ii) the applicant;

(b) do so as soon as reasonably practicable after service of the application;

(c) attach any material on which that person relies; and

(d) ask for a hearing, if that person wants one, and explain why it is needed.

(5) The court—

(a) must not determine the application unless the applicant and each person on whom it was served—

(i) is present, or

(ii) has had an opportunity to attend or to make representations; but

(b) subject to that, may determine the application—

(i) at a hearing (which must be in private unless the court otherwise directs), or without a hearing,

(ii) in the absence of any party to the application.

[Note. Under section 47N of the Proceeds of Crime Act 2002, one of the officers listed in section 47M of the Act, the prosecutor, or a person affected by an order under section 47M, may apply to a magistrates' court for the order to be varied or discharged. Section 47N(3) lists the circumstances in which the court must discharge such an order.

On an application to which this rule applies, hearsay evidence within the meaning of section 1(2) of the Civil Evidence Act 1995 is admissible: see section 47Q of the 2002 Act.]

Appeal about property detention decision

33.29.—(1) This rule applies where—

(a) on an application under rule 33.27 for an order extending the period for which property may be detained—

(i) a magistrates' court decides not to make such an order, and

(ii) an officer who is entitled to apply for such an order, or the prosecutor, wants to appeal against that decision to the Crown Court under section 47O(1) of the Proceeds of Crime Act 2002(**a**); or

(b) on an application under rule 33.28 to vary or discharge an order under rule 33.27—

(i) a magistrates' court determines the application, and

(ii) a person who is entitled to apply under that rule wants to appeal against that decision to the Crown Court under section 47O(2) of the 2002 Act.

(2) The appellant must serve an appeal notice—

(a) on the Crown Court officer and on any other party; and

(b) not more than 15 business days after the magistrates' court's decision, or, if applicable, service of notice under rule 33.27(5).

(3) The appeal notice must—

(a) specify the decision under appeal;

(b) where paragraph (1)(a) applies, explain why the detention period should be extended; and

(c) where paragraph (1)(b) applies, propose the order that the appellant wants the court to make, and explain why.

(**a**) 2002 c. 29; section 47O was inserted by section 55 of the Policing and Crime Act 2009 (c. 26).

(4) Rule 34.11 (Constitution of the Crown Court) applies on such an appeal.

[Note. Under section 47O of the Proceeds of Crime Act 2002, one of those entitled to apply for an order under section 47M of that Act (extension of detention of property) may appeal against a refusal to make an order, and one of those entitled to apply for the variation or discharge of such an order, under section 47N of that Act, may appeal against the decision on such an application.

On an appeal to which this rule applies, hearsay evidence within the meaning of section 1(2) of the Civil Evidence Act 1995 is admissible: see section 47Q of the 2002 Act.]

RESTRAINT AND RECEIVERSHIP PROCEEDINGS: RULES THAT APPLY GENERALLY

Taking control of goods and forfeiture

33.30.—(1) This rule applies to applications under sections 58(2) and (3) and 59(2) and (3) of the Proceeds of Crime Act 2002(**a**) for leave of the Crown Court to take control of goods or levy distress against property, or to exercise a right of forfeiture by peaceable re-entry in relation to a tenancy, in circumstances where the property or tenancy is the subject of a restraint order or a receiver has been appointed in respect of the property or tenancy.

(2) The application must be made in writing to the Crown Court.

(3) The application must be served on—

(a) the person who applied for the restraint order or the order appointing the receiver; and

(b) any receiver appointed in respect of the property or tenancy,

at least 5 business days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

Joining of applications

33.31. An application for the appointment of a management receiver or enforcement receiver under rule 33.50 may be joined with—

(a) an application for a restraint order under rule 33.45; and

(b) an application for the conferral of powers on the receiver under rule 33.51.

Applications to be dealt with in writing

33.32. Applications in restraint proceedings and receivership proceedings are to be dealt with without a hearing, unless the Crown Court orders otherwise.

Business in chambers

33.33. Restraint proceedings and receivership proceedings may be heard in chambers.

Power of court to control evidence

33.34.—(1) When hearing restraint proceedings and receivership proceedings, the Crown Court may control the evidence by giving directions as to—

(a) the issues on which it requires evidence;

(b) the nature of the evidence which it requires to decide those issues; and

(c) the way in which the evidence is to be placed before the court.

(**a**) 2002 c. 29; section 58(2) was amended by section 62(3) of, and paragraphs 142 and 143 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(2) The court may use its power under this rule to exclude evidence that would otherwise be admissible.

(3) The court may limit cross-examination in restraint proceedings and receivership proceedings.

Evidence of witnesses

33.35.—(1) The general rule is that, unless the Crown Court orders otherwise, any fact which needs to be proved in restraint proceedings or receivership proceedings by the evidence of a witness is to be proved by their evidence in writing.

(2) Where evidence is to be given in writing under this rule, any party may apply to the Crown Court for permission to cross-examine the person giving the evidence.

(3) If the Crown Court gives permission under paragraph (2) but the person in question does not attend as required by the order, his evidence may not be used unless the court gives permission.

Witness summons

33.36.—(1) Any party to restraint proceedings or receivership proceedings may apply to the Crown Court to issue a witness summons requiring a witness to—

(a) attend court to give evidence; or

(b) produce documents to the court.

(2) Rule 17.3 (Application for summons, warrant or order: general rules) applies to an application under this rule as it applies to an application under section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965(**a**).

Hearsay evidence

33.37. Section 2(1) of the Civil Evidence Act 1995(**b**) (duty to give notice of intention to rely on hearsay evidence) does not apply to evidence in restraint proceedings and receivership proceedings.

Disclosure and inspection of documents

33.38.—(1) This rule applies where, in the course of restraint proceedings or receivership proceedings, an issue arises as to whether property is realisable property.

(2) The Crown Court may make an order for disclosure of documents.

(3) Part 31 of the Civil Procedure Rules 1998(**c**) as amended from time to time shall have effect as if the proceedings were proceedings in the High Court.

Court documents

33.39.—(1) Any order which the Crown Court issues in restraint proceedings or receivership proceedings must—

(a) state the name and judicial title of the person who made it;

(b) bear the date on which it is made; and

(c) be sealed by the Crown Court.

(**a**) 1965 c. 69; section 2 was substituted, together with sections 2A to 2E, by section 66 of the Criminal Procedure and Investigations Act 1996 (c. 25) and amended by section 119 of, and paragraph 8 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 109 of, and paragraph 126 of Schedule 8 to, the Courts Act 2003 (c. 39), paragraph 42 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), section 169 of the Serious Organised Crime and Police Act 2005 (c. 15) and paragraph 33 of Schedule 17 to the Crime and Courts Act 2013 (c. 22).

(**b**) 1995 c. 38.

(**c**) S.I. 1998/3132; amending instruments relevant to this Part are S.I. 2000/221 and 2001/4015.

(2) The Crown Court may place the seal on the order—

(a) by hand; or

(b) by printing a facsimile of the seal on the order whether electronically or otherwise.

(3) A document purporting to bear the court's seal shall be admissible in evidence without further proof.

Consent orders

33.40.—(1) This rule applies where all the parties to restraint proceedings or receivership proceedings agree the terms in which an order should be made.

(2) Any party may apply for a judgment or order in the terms agreed.

(3) The Crown Court may deal with an application under paragraph (2) without a hearing.

(4) Where this rule applies—

(a) the order which is agreed by the parties must be drawn up in the terms agreed;

(b) it must be expressed as being 'By Consent'; and

(c) it must be signed by the legal representative acting for each of the parties to whom the order relates or by the party if he is a litigant in person.

(5) Where an application is made under this rule, then the requirements of any other rule as to the procedure for making an application do not apply.

Slips and omissions

33.41.—(1) The Crown Court may at any time correct an accidental slip or omission in an order made in restraint proceedings or receivership proceedings.

(2) A party may apply for a correction without notice.

Supply of documents from court records

33.42.—(1) No document relating to restraint proceedings or receivership proceedings may be supplied from the records of the Crown Court for any person to inspect or copy unless the Crown Court grants permission.

(2) An application for permission under paragraph (1) must be made on notice to the parties to the proceedings.

Disclosure of documents in criminal proceedings

33.43.—(1) This rule applies where—

(a) proceedings for an offence have been started in the Crown Court and the defendant has not been either convicted or acquitted on all counts; and

(b) an application for a restraint order under section 42(1) of the Proceeds of Crime Act 2002 has been made.

(2) The judge presiding at the proceedings for the offence may be supplied from the records of the Crown Court with documents relating to restraint proceedings and any receivership proceedings.

(3) Such documents must not otherwise be disclosed in the proceedings for the offence.

Preparation of documents

33.44.—(1) Every order in restraint proceedings or receivership proceedings must be drawn up by the Crown Court unless—

(a) the Crown Court orders a party to draw it up;

(b) a party, with the permission of the Crown Court, agrees to draw it up; or

(c) the order is made by consent under rule 33.40.

(2) The Crown Court may direct that—

(a) an order drawn up by a party must be checked by the Crown Court before it is sealed; or

(b) before an order is drawn up by the Crown Court, the parties must lodge an agreed statement of its terms.

(3) Where an order is to be drawn up by a party—

(a) he must lodge it with the Crown Court no later than 5 business days after the date on which the court ordered or permitted him to draw it up so that it can be sealed by the Crown Court; and

(b) if he fails to lodge it within that period, any other party may draw it up and lodge it.

(4) Nothing in this rule shall require the Crown Court to accept a document which is illegible, has not been duly authorised, or is unsatisfactory for some other similar reason.

RESTRAINT PROCEEDINGS

Application for restraint order or ancillary order

33.45.—(1) This rule applies where the prosecutor, or an accredited financial investigator, makes an application under section 42 of the Proceeds of Crime Act 2002(**a**) for—

(a) a restraint order, under section 41(1) of the 2002 Act; or

(b) an ancillary order, under section 41(7) of that Act, for the purpose of ensuring that a restraint order is effective.

(2) The application may be made without notice if the application is urgent or if there are reasonable grounds for believing that giving notice would cause the dissipation of realisable property which is the subject of the application.

(3) An application for a restraint order must be in writing and supported by a witness statement which must—

(a) give the grounds for the application;

(b) to the best of the witness' ability, give full details of the realisable property in respect of which the applicant is seeking the order and specify the person holding that realisable property;

(c) include the proposed terms of the order.

(4) An application for an ancillary order must be in writing and supported by a witness statement which must—

(a) give the grounds for, and full details of, the application;

(b) include, if appropriate—

(i) any request for an order for disclosure of documents to which rule 33.38 applies (Disclosure and inspection of documents),

(ii) the identity of any person whom the applicant wants the court to examine about the extent or whereabouts of realisable property,

(iii) a list of the main questions that the applicant wants to ask any such person, and

(iv) a list of any documents to which the applicant wants to refer such a person; and

(c) include the proposed terms of the order.

(**a**) 2002 c. 29; section 42 was amended by sections 74(2) and 92 of, and paragraphs 1 and 23 of Schedule 8, and Schedule 14 to, the Serious Crime Act 2007 (c. 27) and section 12 of the Serious Crime Act 2015 (c. 9).

(5) An application for a restraint order and an application for an ancillary order may (but need not) be made at the same time and contained in the same documents.

(6) An application by an accredited financial investigator must include a statement that, under section 68 of the 2002 Act(**a**), the applicant has authority to apply.

Restraint and ancillary orders

33.46.—(1) The Crown Court may make a restraint order subject to exceptions, including, but not limited to, exceptions for reasonable living expenses and reasonable legal expenses, and for the purpose of enabling any person to carry on any trade, business or occupation.

(2) But the Crown Court must not make an exception for legal expenses where this is prohibited by section 41(4) of the Proceeds of Crime Act 2002.

(3) An exception to a restraint order may be made subject to conditions.

(4) The Crown Court must not require the applicant for a restraint order to give any undertaking relating to damages sustained as a result of the restraint order by a person who is prohibited from dealing with realisable property by the restraint order.

(5) The Crown Court may require the applicant for a restraint order to give an undertaking to pay the reasonable expenses of any person, other than a person who is prohibited from dealing with realisable property by the restraint order, which are incurred in complying with the restraint order.

(6) An order must include a statement that disobedience of the order, either by a person to whom the order is addressed, or by another person, may be contempt of court and the order must include details of the possible consequences of being held in contempt of court.

(7) Unless the Crown Court otherwise directs, an order made without notice has effect until the court makes an order varying or discharging it.

(8) The applicant for an order must—

(a) serve copies of the order and of the witness statement made in support of the application on the defendant and any person who is prohibited by the order from dealing with realisable property; and

(b) notify any person whom the applicant knows to be affected by the order of its terms.

Application for discharge or variation of restraint or ancillary order by a person affected by the order

33.47.—(1) This rule applies where a person affected by a restraint order makes an application to the Crown Court under section 42(3) of the Proceeds of Crime Act 2002 to discharge or vary the restraint order or any ancillary order made under section 41(7) of the Act.

(2) The application must be in writing and may be supported by a witness statement.

(3) The application and any witness statement must be lodged with the Crown Court.

(4) The application and any witness statement must be served on the person who applied for the restraint order and any person who is prohibited from dealing with realisable property by the restraint order (if he is not the person making the application) at least 2 business days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(5) Where the application is for the Crown Court to make or vary an exception for the applicant's reasonable living expenses it must include—

(a) details of the applicant's current income and expenditure, with evidence of each item; and

(b) representations about proposed expenditure that include—

(i) the applicant's previous standard of living and usual expenditure;

(**a**) 2002 c. 29; section 68 was amended by section 50 of the Commissioners for Revenue and Customs Act 2005 (c. 11).

(ii) the possibility that the expenditure might maintain or improve the value of assets available to meet a confiscation order,

(iii) the possibility that the expenditure might reduce the value of such assets to less than the likely value of a confiscation order,

(iv) the likely duration of the restraint order, and

(v) the overall total of proposed expenditure.

Application for variation of restraint or ancillary order by the person who applied for the order

33.48.—(1) This rule applies where the applicant for a restraint order makes an application under section 42(3) of the Proceeds of Crime Act 2002 to the Crown Court to vary the restraint order or any ancillary order made under section 41(7) of the 2002 Act (including where the court has already made a restraint order and the applicant is seeking to vary the order in order to restrain further realisable property).

(2) The application may be made without notice if the application is urgent or if there are reasonable grounds for believing that giving notice would cause the dissipation of realisable property which is the subject of the application.

(3) The application must be in writing and must be supported by a witness statement which must—

(a) give the grounds for the application;

(b) where the application is for the inclusion of further realisable property in a restraint order give full details, to the best of the witness' ability, of the realisable property in respect of which the applicant is seeking the order and specify the person holding that realisable property;

(c) where the application is to vary an ancillary order, include, if appropriate—

(i) any request for an order for disclosure of documents to which rule 33.38 applies (Disclosure and inspection of documents),

(ii) the identity of any person whom the applicant wants the court to examine about the extent or whereabouts of realisable property,

(iii) a list of the main questions that the applicant wants to ask any such person, and

(iv) a list of any documents to which the applicant wants to refer such a person; and

(d) include the proposed terms of the variation.

(4) An application by an accredited financial investigator must include a statement that, under section 68 of the 2002 Act, the applicant has authority to apply.

(5) The application and witness statement must be lodged with the Crown Court.

(6) Except where, under paragraph (2), notice of the application is not required to be served, the application and witness statement must be served on any person who is prohibited from dealing with realisable property by the restraint order at least 2 business days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(7) If the court makes an order for the variation of a restraint or ancillary order, the applicant must serve copies of the order and of the witness statement made in support of the application on—

(a) the defendant;

(b) any person who is prohibited from dealing with realisable property by the restraint order (whether before or after the variation); and

(c) any other person whom the applicant knows to be affected by the order.

Application for discharge of restraint or ancillary order by the person who applied for the order

33.49.—(1) This rule applies where the applicant for a restraint order makes an application under section 42(3) of the Proceeds of Crime Act 2002 to discharge the order or any ancillary order made under section 41(7) of the 2002 Act.

(2) The application may be made without notice.

(3) The application must be in writing and must state the grounds for the application.

(4) If the court makes an order for the discharge of a restraint or ancillary order, the applicant must serve copies of the order on—

(a) the defendant;

(b) any person who is prohibited from dealing with realisable property by the restraint order (whether before or after the discharge); and

(c) any other person whom the applicant knows to be affected by the order.

RECEIVERSHIP PROCEEDINGS

Application for appointment of a management or an enforcement receiver

33.50.—(1) This rule applies to an application for the appointment of a management receiver under section 48(1) of the Proceeds of Crime Act 2002(**a**) and an application for the appointment of an enforcement receiver under section 50(1) of the 2002 Act.

(2) The application may be made without notice if—

(a) the application is joined with an application for a restraint order under rule 33.45 (Application for restraint order or ancillary order);

(b) the application is urgent; or

(c) there are reasonable grounds for believing that giving notice would cause the dissipation of realisable property which is the subject of the application.

(3) The application must be in writing and must be supported by a witness statement which must—

(a) give the grounds for the application;

(b) give full details of the proposed receiver;

(c) to the best of the witness' ability, give full details of the realisable property in respect of which the applicant is seeking the order and specify the person holding that realisable property;

(d) where the application is made by an accredited financial investigator, include a statement that, under section 68 of the 2002 Act, the applicant has authority to apply; and

(e) if the proposed receiver is not a person falling within section 55(8) of the 2002 Act(**b**) and the applicant is asking the court to allow the receiver to act—

(i) without giving security, or

(ii) before he has given security or satisfied the court that he has security in place,

explain the reasons why that is necessary.

(4) Where the application is for the appointment of an enforcement receiver, the applicant must provide the Crown Court with a copy of the confiscation order made against the defendant.

(5) The application and witness statement must be lodged with the Crown Court.

(**a**) 2002 c. 29.
(**b**) 2002 c. 29; section 55(8) was amended by section 51(1) and (2) of the Policing and Crime Act 2009 (c. 26).

(6) Except where, under paragraph (2), notice of the application is not required to be served, the application and witness statement must be lodged with the Crown Court and served on—

(a) the defendant;

(b) any person who holds realisable property to which the application relates; and

(c) any other person whom the applicant knows to be affected by the application,

at least 5 business days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(7) If the court makes an order for the appointment of a receiver, the applicant must serve copies of the order and of the witness statement made in support of the application on—

(a) the defendant;

(b) any person who holds realisable property to which the order applies; and

(c) any other person whom the applicant knows to be affected by the order.

Application for conferral of powers on a management receiver or an enforcement receiver

33.51.—(1) This rule applies to an application for the conferral of powers on a management receiver under section 49(1) of the Proceeds of Crime Act 2002 or an enforcement receiver under section 51(1) of the 2002 Act.

(2) The application may be made without notice if the application is to give the receiver power to take possession of property and—

(a) the application is joined with an application for a restraint order under rule 33.45 (Application for restraint order or ancillary order);

(b) the application is urgent; or

(c) there are reasonable grounds for believing that giving notice would cause the dissipation of the property which is the subject of the application.

(3) The application must be made in writing and supported by a witness statement which must—

(a) give the grounds for the application;

(b) give full details of the realisable property in respect of which the applicant is seeking the order and specify the person holding that realisable property;

(c) where the application is made by an accredited financial investigator, include a statement that, under section 68 of the 2002 Act, the applicant has authority to apply; and

(d) where the application is for power to start, carry on or defend legal proceedings in respect of the property, explain—

(i) what proceedings are concerned, in what court, and

(ii) what powers the receiver will ask that court to exercise.

(4) Where the application is for the conferral of powers on an enforcement receiver, the applicant must provide the Crown Court with a copy of the confiscation order made against the defendant.

(5) The application and witness statement must be lodged with the Crown Court.

(6) Except where, under paragraph (2), notice of the application is not required to be served, the application and witness statement must be served on—

(a) the defendant;

(b) any person who holds realisable property in respect of which a receiver has been appointed or in respect of which an application for a receiver has been made;

(c) any other person whom the applicant knows to be affected by the application; and

(d) the receiver (if one has already been appointed),

at least 5 business days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(7) If the court makes an order for the conferral of powers on a receiver, the applicant must serve copies of the order on—

(a) the defendant;

(b) any person who holds realisable property in respect of which the receiver has been appointed; and

(c) any other person whom the applicant knows to be affected by the order.

Applications for discharge or variation of receivership orders, and applications for other orders

33.52.—(1) This rule applies to applications under section 62(3) of the Proceeds of Crime Act 2002 for orders (by persons affected by the action of receivers) and applications under section 63(1) of the 2002 Act(**a**) for the discharge or variation of orders relating to receivers.

(2) The application must be made in writing and lodged with the Crown Court.

(3) The application must be served on the following persons (except where they are the person making the application)—

(a) the person who applied for appointment of the receiver;

(b) the defendant;

(c) any person who holds realisable property in respect of which the receiver has been appointed;

(d) the receiver; and

(e) any other person whom the applicant knows to be affected by the application,

at least 5 business days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(4) If the court makes an order for the discharge or variation of an order relating to a receiver under section 63(2) of the 2002 Act, the applicant must serve copies of the order on any persons whom he knows to be affected by the order.

Sums in the hands of receivers

33.53.—(1) This rule applies where the amount payable under a confiscation order has been fully paid and any sums remain in the hands of an enforcement receiver.

(2) The receiver must make an application to the Crown Court for directions as to the distribution of the sums in his hands.

(3) The application and any evidence which the receiver intends to rely on in support of the application must be served on—

(a) the defendant; and

(b) any other person who held (or holds) interests in any property realised by the receiver,

at least 5 business days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period.

(4) If any of the provisions listed in paragraph (5) (provisions as to the vesting of funds in a trustee in bankruptcy) apply, then the Crown Court must make a declaration to that effect.

(5) These are the provisions—

(a) section 82 of the Bankruptcy (Scotland) Act 2016(**b**);

(**a**) 2002 c. 29; section 63(1) was amended by section 74(2) of, and paragraphs 1 and 30 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(**b**) 2016 asp 21.

(b) section 306B of the Insolvency Act 1986(**a**); and

(c) article 279B of the Insolvency (Northern Ireland) Order 1989(**b**).

Security

33.54.—(1) This rule applies where the Crown Court appoints a receiver under section 48 or 50 of the Proceeds of Crime Act 2002 and the receiver is not a person falling within section 55(8) of the 2002 Act(**c**) (and it is immaterial whether the receiver is a permanent or temporary member of staff or on secondment from elsewhere).

(2) The Crown Court may direct that before the receiver begins to act, or within a specified time, he must either—

(a) give such security as the Crown Court may determine; or

(b) file with the Crown Court and serve on all parties to any receivership proceedings evidence that he already has in force sufficient security,

to cover his liability for his acts and omissions as a receiver.

(3) The Crown Court may terminate the appointment of a receiver if he fails to—

(a) give the security; or

(b) satisfy the court as to the security he has in force,

by the date specified.

Remuneration

33.55.—(1) This rule applies where the Crown Court appoints a receiver under section 48 or 50 of the Proceeds of Crime Act 2002 and the receiver is not a person falling within section 55(8) of the 2002 Act (and it is immaterial whether the receiver is a permanent or temporary member of staff or on secondment from elsewhere).

(2) The receiver may only charge for his services if the Crown Court—

(a) so directs; and

(b) specifies the basis on which the receiver is to be remunerated.

(3) Unless the Crown Court orders otherwise, in determining the remuneration of the receiver, the Crown Court shall award such sum as is reasonable and proportionate in all the circumstances and which takes into account—

(a) the time properly given by him and his staff to the receivership;

(b) the complexity of the receivership;

(c) any responsibility of an exceptional kind or degree which falls on the receiver in consequence of the receivership;

(d) the effectiveness with which the receiver appears to be carrying out, or to have carried out, his duties; and

(e) the value and nature of the subject matter of the receivership.

(4) The Crown Court may refer the determination of a receiver's remuneration to be ascertained by the taxing authority of the Crown Court and rules 45.11 (Assessment and re-assessment) to 45.14 (Application for an extension of time) shall have effect as if the taxing authority was ascertaining costs.

(**a**) 1986 c. 45; section 306B was inserted by section 456 of, and paragraphs 1 and 16 of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29).

(**b**) S.I. 1989/2405 (N.I. 19); article 279B was inserted by section 456 of, and paragraph 20(3) of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29).

(**c**) 2002 c. 29; section 55(8) was amended by section 51(1) and (2) of the Policing and Crime Act 2009 (c. 26).

(5) A receiver appointed under section 48 of the 2002 Act is to receive his remuneration by realising property in respect of which he is appointed, in accordance with section 49(2)(d) of the 2002 Act.

(6) A receiver appointed under section 50 of the 2002 Act is to receive his remuneration by applying to the magistrates' court officer for payment under section 55(4)(b) of the 2002 Act(**a**).

Accounts

33.56.—(1) The Crown Court may order a receiver appointed under section 48 or 50 of the Proceeds of Crime Act 2002 to prepare and serve accounts.

(2) A party to receivership proceedings served with such accounts may apply for an order permitting him to inspect any document in the possession of the receiver relevant to those accounts.

(3) Any party to receivership proceedings may, within 10 business days of being served with the accounts, serve notice on the receiver—

(a) specifying any item in the accounts to which he objects;

(b) giving the reason for such objection; and

(c) requiring the receiver within 10 business days of receipt of the notice, either—

(i) to notify all the parties who were served with the accounts that he accepts the objection, or

(ii) if he does not accept the objection, to apply for an examination of the accounts in relation to the contested item.

(4) When the receiver applies for the examination of the accounts he must at the same time lodge with the Crown Court—

(a) the accounts; and

(b) a copy of the notice served on him under this section of the rule.

(5) If the receiver fails to comply with paragraph (3)(c) of this rule, any party to receivership proceedings may apply to the Crown Court for an examination of the accounts in relation to the contested item.

(6) At the conclusion of its examination of the accounts the court must certify the result.

Non-compliance by receiver

33.57.—(1) If a receiver appointed under section 48 or 50 of the Proceeds of Crime Act 2002 fails to comply with any rule, practice direction or direction of the Crown Court, the Crown Court may order him to attend a hearing to explain his non-compliance.

(2) At the hearing, the Crown Court may make any order it considers appropriate, including—

(a) terminating the appointment of the receiver;

(b) reducing the receiver's remuneration or disallowing it altogether; and

(c) ordering the receiver to pay the costs of any party.

PROCEEDINGS UNDER THE CRIMINAL JUSTICE ACT 1988 AND THE DRUG TRAFFICKING ACT 1994

[Note. The relevant provisions of the 1988 and 1994 Acts were repealed on 24th March 2003, but they continue to have effect in respect of proceedings for offences committed before that date.]

(**a**) 2002 c. 29; section 55(4)(b) was amended by paragraph 408 of Schedule 8 to the Courts Act 2003 (c. 39).

Statements, etc. relevant to making confiscation orders

33.58.—(1) Where a prosecutor or defendant—

(a) serves on the magistrates' court officer any statement or other document under section 73 of the Criminal Justice Act 1988(**a**) in any proceedings in respect of an offence listed in Schedule 4 to that Act; or

(b) serves on the Crown Court officer any statement or other document under section 11 of the Drug Trafficking Act 1994(**b**) or section 73 of the 1988 Act in any proceedings in respect of a drug trafficking offence or in respect of an offence to which Part VI of the 1988 Act applies,

that party must serve a copy as soon as practicable on the defendant or the prosecutor, as the case may be.

(2) Any statement tendered by the prosecutor to the magistrates' court under section 73 of the 1988 Act or to the Crown Court under section 11(1) of the 1994 Act or section 73(1A) of the 1988 Act must include the following particulars—

(a) the name of the defendant;

(b) the name of the person by whom the statement is made and the date on which it was made;

(c) where the statement is not tendered immediately after the defendant has been convicted, the date on which and the place where the relevant conviction occurred; and

(d) such information known to the prosecutor as is relevant to the determination as to whether or not the defendant has benefited from drug trafficking or relevant criminal conduct and to the assessment of the value of any proceeds of drug trafficking or, as the case may be, benefit from relevant criminal conduct.

(3) Where, in accordance with section 11(7) of the 1994 Act or section 73(1C) of the 1988 Act, the defendant indicates in writing the extent to which he or she accepts any allegation contained within the prosecutor's statement, the defendant must serve a copy of that reply on the court officer.

(4) Expressions used in this rule have the same meanings as in the 1994 Act or, where appropriate, the 1988 Act.

Postponed determinations

33.59.—(1) Where an application is made by the defendant or the prosecutor –

(a) to a magistrates' court under section 72A(5)(a) of the Criminal Justice Act 1988(**c**) asking the court to exercise its powers under section 72A(4) of that Act; or

(b) to the Crown Court under section 3(5)(a) of the Drug Trafficking Act 1994(**d**) asking the court to exercise its powers under section 3(4) of that Act, or under section 72A(5)(a) of the 1988 Act asking the court to exercise its powers under section 72A(4) of the 1988 Act,

the application must be in writing and the applicant must serve a copy on the prosecutor or the defendant, as the case may be.

(**a**) 1988 c. 33; section 73 and Schedule 4 were repealed, with savings, by paragraphs 1 and 17 of Schedule 11 and Schedule 12 to the Proceeds of Crime Act 2002 (c. 29).

(**b**) 1994 c. 37; section 11 was repealed, with savings, by paragraphs 1 and 25 of Schedule 11 and Schedule 12 to the Proceeds of Crime Act 2002 (c. 29).

(**c**) 1988 c. 33; section 72A was inserted by section 28 of the Criminal Justice Act 1993 (c. 36) and repealed, with savings, by sections 456 and 457 of, and paragraphs 1 and 17 of Schedule 11 and Schedule 12 to the Proceeds of Crime Act 2002 (c. 29).

(**d**) 1994 c. 37; section 3 was repealed, with savings, by paragraphs 1 and 25 of Schedule 11 and Schedule 12 to the Proceeds of Crime Act 2002 (c. 29).

(2) A party served with a copy of an application under paragraph (1) must, within 20 business days of the date of service, notify the applicant and the court officer, in writing, whether or not that party opposes the application, giving reasons for any opposition.

(3) After the expiry of the period referred to in paragraph (2), the court may determine an application under paragraph (1)—

(a) without a hearing; or

(b) at a hearing at which the parties may be represented.

Confiscation orders - revised assessments

33.60.—(1) Where the prosecutor or a receiver makes an application under section 13, 14, 15, 16 or 17 of the Drug Trafficking Act 1994(**a**) or section 74A, 74B, 74C or 83 of the Criminal Justice Act 1988(**b**), the application must be in writing and a copy must be served on the defendant.

(2) The application must include the following particulars—

(a) the name of the defendant;

(b) the date on which and the place where any relevant conviction occurred;

(c) the date on which and the place where any relevant confiscation order was made or, as the case may be, varied;

(d) the grounds on which the application is made;

(e) an indication of the evidence available to support the application; and

(f) a copy of any certificate issued by the High Court.

Application to the Crown Court to discharge or vary order to make material available

33.61.—(1) Where an order under section 93H of the Criminal Justice Act 1988(**c**) (order to make material available) or section 55 of the Drug Trafficking Act 1994(**d**) (order to make material available) has been made by the Crown Court, any person affected by it may apply in writing to the court officer for the order to be discharged or varied, and on hearing such an application the court may discharge the order or make such variations to it as the court thinks fit.

(2) Subject to paragraph (3), where a person proposes to make an application under paragraph (1) for the discharge or variation of an order, that person must give a copy of the application, not later than 48 hours before the making of the application—

(a) to a constable at the police station specified in the order; or

(b) to the office of the appropriate officer who made the application, as specified in the order,

in either case together with a notice indicating the time and place at which the application for discharge or variation is to be made.

(3) The court may direct that paragraph (2) need not be complied with if satisfied that the person making the application has good reason to seek a discharge or variation of the order as soon as possible and it is not practicable to comply with that paragraph.

(4) In this rule:

'constable' includes a person commissioned by the Commissioners for Her Majesty's Revenue and Customs;

(**a**) 1994 c. 37; sections 13, 14 and 15 were repealed, with savings, by paragraphs 1 and 25 of Schedule 11 and Schedule 12 to the Proceeds of Crime Act 2002 (c. 29).

(**b**) 1988 c. 33; sections 74A, 74B and 74C were inserted by the Proceeds of Crime Act 1995 (c. 11), sections 5, 6 and 7 respectively, and repealed, with savings by paragraphs 1 and 17 of Schedule 11 and Schedule 12 to the Proceeds of Crime Act 2002 (c. 29).

(**c**) 1988 c. 33; section 93H was inserted by section 11 of the Proceeds of Crime Act 1995 (c. 11) and repealed, with savings, by paragraphs 1 and 17 of Schedule 11 and Schedule 12 to the Proceeds of Crime Act 2002 (c. 29).

(**d**) 1994 c. 37; section 55 was amended by paragraphs 1 and 25 of Schedule 11 and Schedule 12 to the Proceeds of Crime Act 2002 (c. 29) and by paragraph 364 of Schedule 8 to the Courts Act 2003 (c. 39).

'police station' includes a place for the time being occupied by Her Majesty's Revenue and Customs.

Application to the Crown Court for increase in term of imprisonment in default of payment

33.62.—(1) This rule applies to applications made, or that have effect as made, to the Crown Court under section 10 of the Drug Trafficking Act 1994(**a**) and section 75A of the Criminal Justice Act 1988(**b**) (interest on sums unpaid under confiscation orders).

(2) Notice of an application to which this rule applies to increase the term of imprisonment or detention fixed in default of payment of a confiscation order by a person ('the defendant') must be made by the prosecutor in writing to the court officer.

(3) A notice under paragraph (2) shall—

(a) state the name and address of the defendant;

(b) specify the grounds for the application;

(c) give details of the enforcement measures taken, if any; and

(d) include a copy of the confiscation order.

(4) On receiving a notice under paragraph (2), the court officer must—

(a) forthwith send to the defendant and the magistrates' court required to enforce payment of the confiscation order under section 140(1) of the Powers of Criminal Courts (Sentencing) Act 2000(**c**), a copy of the said notice; and

(b) notify in writing the applicant and the defendant of the date, time and place appointed for the hearing of the application.

(5) Where the Crown Court makes an order pursuant to an application mentioned in paragraph (1) above, the court officer must send forthwith a copy of the order—

(a) to the applicant;

(b) to the defendant;

(c) where the defendant is at the time of the making of the order in custody, to the person having custody of him or her; and

(d) to the magistrates' court mentioned in paragraph (4)(a).

Drug trafficking – compensation on acquittal in the Crown Court

33.63. Where the Crown Court cancels a confiscation order under section 22(2) of the Drug Trafficking Act 1994(**d**), the Crown Court officer must serve notice to that effect on the High Court officer and on the court officer of the magistrates' court which has responsibility for enforcing the order.

CONTEMPT PROCEEDINGS

Application to punish for contempt of court

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

(a) a compliance order made for the purpose of ensuring that a confiscation order is effective;

(b) a restraint order; or

(**a**) 1994 c. 37; section 10 was repealed, with savings, by paragraphs 1 and 25 of Schedule 11 and Schedule 12 to the Proceeds of Crime Act 2002 (c. 29).

(**b**) 1988 c. 33; section 75A was inserted by section 9 of the Proceeds of Crime Act 1995 (c. 11) and repealed, with savings, by paragraphs 1 and 17 of Schedule 11 and Schedule 12 to the Proceeds of Crime Act 2002 (c. 29).

(**c**) 2000 c. 6; section 140(1) was amended by paragraph 74 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 416 of, and paragraph 166(3) of Schedule 24 to, the Sentencing Act 2020 (c. 17).

(**d**) 1994 c. 37; section 22 was repealed, with savings, by paragraphs 1 and 25 of Schedule 11 and Schedule 12 to the Proceeds of Crime Act 2002 (c. 29).

(c) an ancillary order made for the purpose of ensuring that a restraint order is effective.

(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 48 (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**)*.]*

PART 34

APPEAL TO THE CROWN COURT

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When this Part applies

34.1.—(1) This Part applies where—

(a) a defendant wants to appeal under—

(i) section 108 of the Magistrates' Courts Act 1980(**b**),

(ii) section 45 of the Mental Health Act 1983(**c**),

(iii) section 42 of the Counter Terrorism Act 2008(**d**), or

(iv) paragraph 10 of Schedule 5, paragraph 6(11) or 21(6) of Schedule 7, or paragraph 10(11), 14(8) or 23(6) of Schedule 10 to the Sentencing Act 2020(**e**);

(b) the Criminal Cases Review Commission refers a defendant's case to the Crown Court under section 11 of the Criminal Appeal Act 1995(**f**);

(c) a prosecutor wants to appeal under—

(i) section 14A(5A) of the Football Spectators Act 1989(**g**), or

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(**a**) 1981 c. 54. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**b**) 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).

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

(**d**) 2008 c. 28.

(**e**) 2020 c. 17.

(**f**) 1995 c. 35.

(**g**) 1989 c. 37; section 14A(5A) was inserted by section 52 of, and paragraphs 1 and 3 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38).

(ii) section 147(3) of the Customs and Excise Management Act 1979(**a**); or

(d) a person wants to appeal under—

(i) section 1 of the Magistrates' Courts (Appeals from Binding Over Orders) Act 1956(**b**),

(ii) section 12(5) of the Contempt of Court Act 1981(**c**),

(iii) regulation 3C or 3H of the Costs in Criminal Cases (General) Regulations 1986(**d**),

(iv) section 22 of the Football Spectators Act 1989(**e**),

(v) section 10 of the Crime and Disorder Act 1998(**f**),

(vi) section 28(5)(b) of the Offensive Weapons Act 2019(**g**),

(vii) section 366(9) of the Sentencing Act 2020,

(viii) section 342I(2) of the 2020 Act(**h**), or

(ix) section 46(5) of the Domestic Abuse Act 2021(**i**).

(2) A reference to an 'appellant' in this Part is a reference to such a party or person.

[Note. An appeal to the Crown Court is by way of re-hearing: see section 79(3) of the Senior Courts Act 1981(**j**)*. For the powers of the Crown Court on an appeal, see section 48 of that Act.*

A defendant may appeal from a magistrates' court to the Crown Court—

(a) under section 108 of the Magistrates' Courts Act 1980, against sentence after a guilty plea and after a not guilty plea against conviction, against a finding of guilt or against sentence;

(b) under section 45 of the Mental Health Act 1983, where the magistrates' court makes a hospital order or guardianship order without convicting the defendant;

(c) under paragraph 10 of Schedule 5, paragraph 6(11) or 21(6) of Schedule 7, or paragraph 10(11), 14(8) or 23(6) of Schedule 10 to the Sentencing Act 2020, where the magistrates' court—

(i) deals with the defendant for breach of a reparation order, a youth rehabilitation order or a community order,

(ii) except in some circumstances, amends a reparation order, or

(iii) except in some circumstances, deals with an application to revoke a reparation order or a community order; or

(d) under section 42 of the Counter Terrorism Act 2008, where the magistrates' court decides that an offence has a terrorist connection.

(**a**) 1979 c. 2.

(**b**) 1956 c. 44; section 1 was amended by Part 1 of Schedule 7 to, the Criminal Justice Act 1967 (c. 80), Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and Schedule 9 to, the Magistrates' Courts Act 1980 (c. 43).

(**c**) 1981 c. 49; section 12(5) was amended by section 165(1) of, and paragraph 83 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).

(**d**) S.I. 1986/1335; regulation 3C was inserted by regulation 2 of the Costs in Criminal Cases (General) (Amendment) Regulations 1991 (S.I. 1991/789) and amended by regulation 5 of the Costs in Criminal Cases (General) (Amendment) Regulations 2004 (S.I. 2004/2408). Regulation 3H was inserted by regulation 7 of the Costs in Criminal Cases (General) (Amendment) Regulations 2004 (S.I. 2004/2408).

(**e**) 1989 c. 37; section 22 was amended by section 5 of the Football (Offences and Disorder) Act 1999 (c. 21), section 1 of, and paragraphs 9 to 11 and 17 of Schedule 2 to, the Football (Disorder) Act 2000 (c. 25) and section 109(1) and (3) of, and paragraph 335 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c. 39).

(**f**) 1998 c. 37; section 10 was amended by section 15 of, and paragraphs 276 and 277 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4), section 41 of the Crime and Security Act 2010 (c. 17) and section 17 of, and paragraph 52 of Schedule 9 to, the Crime and Courts Act 2013 (c. 22).

(**g**) 2019 c. 17; section 28 is in force in relation to the metropolitan police district, for remaining purposes it has effect from a date to be appointed.

(**h**) 2020 c. 17; section 342I was inserted by section 165 of the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

(**i**) 2021 c. 17; section 46 is in force in relation to specified areas, for remaining purposes it has effect from a date to be appointed.

(**j**) 1981 c. 54. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

See section 13 of the Criminal Appeal Act 1995(**a**) *for the circumstances in which the Criminal Cases Review Commission may refer a conviction or sentence to the Crown Court.*

Under section 14A(5A) of the Football Spectators Act 1989, a prosecutor may appeal to the Crown Court against a failure by a magistrates' court to make a football banning order.

Under section 147(3) of the Customs and Excise Management Act 1979, a prosecutor may appeal to the Crown Court against any decision of a magistrates' court in proceedings for an offence under any Act relating to customs or excise.

Under section 1 of the Magistrates' Courts (Appeals from Binding Over Orders) Act 1956, a person bound over to keep the peace or be of good behaviour by a magistrates' court may appeal to the Crown Court.

Under section 12(5) of the Contempt of Court Act 1981, a person detained, committed to custody or fined by a magistrates' court for insulting a member of the court or another participant in the case, or for interrupting the proceedings, may appeal to the Crown Court.

Under regulation 3C of the Costs in Criminal Cases (General) Regulations 1986, a legal representative against whom a magistrates' court makes a wasted costs order under section 19A of the Prosecution of Offences Act 1985 and regulation 3B may appeal against that order to the Crown Court.

Under regulation 3H of the Costs in Criminal Cases (General) Regulations 1986, a third party against whom a magistrates' court makes a costs order under section 19B of the Prosecution of Offences Act 1985 and regulation 3F may appeal against that order to the Crown Court.

Under section 22 of the Football Spectators Act 1989, any person aggrieved by the decision of a magistrates' court making a football banning order may appeal to the Crown Court.

Under section 10 of the Crime and Disorder Act 1998 or under section 366(9) of the Sentencing Act 2020, a person in respect of whom a magistrates' court makes a parenting order may appeal against that order to the Crown Court.

Under section 28(5)(b) of the Offensive Weapons Act 2019 an applicant to a magistrates' court for the variation, renewal or discharge of a knife crime prevention order made by that court, or a respondent to such an application, may appeal to the Crown Court against the decision of the magistrates' court.

Under section 342I(2) of the Sentencing Act 2020 an applicant to a magistrates' court for the variation, renewal or discharge of a serious violence reduction order made by that court, or a respondent to such an application, may appeal to the Crown Court against the decision of the magistrates' court.

Under section 46(5), (7) of the Domestic Abuse Act 2021 an applicant to a magistrates' court for the variation or discharge of a domestic abuse prevention order made by that court, or a respondent to such an application, may appeal to the Crown Court against the decision of the magistrates' court.]

Service of appeal and respondent's notices

34.2.—(1) An appellant must serve an appeal notice—

(a) in every case, on the magistrates' court officer;

(b) on the prosecutor, where the defendant is the appellant; and

(c) on the defendant, where the prosecutor is the appellant.

(2) The appellant must serve the appeal notice—

(**a**) 1995 c. 35; section 13 was amended by section 321 of, and paragraph 3 of Schedule 11 to, the Armed Forces Act 2006 (c. 52).

(a) as soon after the decision appealed against as the appellant wants; but

(b) not more than 15 business days after—

(i) sentence, the date sentence is deferred or the date of committal for sentence, whichever is earlier, if the appeal is against conviction or against a finding of guilt,

(ii) sentence, if the appeal is against sentence, or

(iii) the order or failure to make an order about which the appellant wants to appeal, in any other case.

(3) The appellant must serve with the appeal notice any application for the following, with reasons—

(a) an extension of the time limit under this rule, if the appeal notice is late;

(b) bail pending appeal, if the appellant is in custody; or

(c) the suspension of any disqualification imposed or order made in the case, where the magistrates' court or the Crown Court can order such a suspension pending appeal.

(4) Where both the magistrates' court and the Crown Court can grant bail or suspend a disqualification or order pending appeal, an application must indicate by which court the appellant wants the application determined.

(5) Where the appeal is against conviction or against a finding of guilt, unless the respondent agrees that the court should allow the appeal—

(a) the respondent must serve a respondent's notice on—

(i) the Crown Court officer; and

(ii) the appellant; and

(b) the respondent must serve that notice not more than 15 business days after service of the appeal notice.

(6) Where the appeal is about the variation or discharge of a domestic abuse protection order, the magistrates' court officer must serve the appeal notice on—

(a) the defendant, unless the defendant is the appellant;

(b) each relevant Chief Officer of Police who is not the appellant; and

(c) any other person if the court so directs.

[Note. Under sections 4 and 5 of the Sentencing Act 2020(**a**)*, a magistrates' court may defer passing sentence for up to 6 months.*

Under section 113 of the Magistrates' Courts Act 1980(**b**)*, the magistrates' court may grant an appellant bail pending appeal. Under section 81(1)(b) of the Senior Courts Act 1981*(**c**)*, the Crown Court also may do so. See also rule 14.7.*

Under section 39 of the Road Traffic Offenders Act 1988(**d**)*, a court which has made an order disqualifying a person from driving may suspend the disqualification pending appeal. Under section 40 of the 1988 Act*(**e**)*, the appeal court may do so. See also rule 29.2.*

(**a**) 2020 c. 17.

(**b**) 1980 c. 43; section 113 was amended by section 168 of, and paragraph 44 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33) and section 165 of, and paragraph 72 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).

(**c**) 1981 c. 54.

(**d**) 1988 c. 53.

(**e**) 1988 c. 53; section 40 was amended by sections 40 and 59 of, and paragraph 50 of Schedule 9 and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

Under section 129 of the Licensing Act 2003(**a**)*, a court which has made an order to forfeit or suspend a personal licence issued under that Act may suspend the order pending appeal. Under section 130 of the 2003 Act*(**b**)*, the appeal court may do so.*

Section 47 of the Domestic Abuse Act 2021(**c**) *lists those who are relevant Chief Officers of Police for the purposes of an appeal under section 46 of that Act.]*

Form of appeal and respondent's notices

34.3.—(1) The appeal notice must—

(a) specify—

(i) the conviction or finding of guilt,

(ii) the sentence, or

(iii) the order, or the failure to make an order

about which the appellant wants to appeal;

(b) summarise the issues;

(c) in an appeal against conviction or against a finding of guilt, to the best of the appellant's ability and to assist the court in fulfilling its duty under rule 3.2 (the court's duty of case management)—

(i) identify the witnesses who gave oral evidence in the magistrates' court,

(ii) identify the witnesses who gave written evidence in the magistrates' court,

(iii) identify the prosecution witnesses whom the appellant will want to question if they are called to give oral evidence in the Crown Court,

(iv) identify the likely defence witnesses,

(v) give notice of any special arrangements or other measures that the appellant thinks are needed for witnesses,

(vi) explain whether the issues in the Crown Court differ from the issues in the magistrates' court, and if so how, and

(vii) say how long the trial lasted in the magistrates' court and how long the appeal is likely to last in the Crown Court;

(d) in an appeal against a sentence, order or failure to make an order—

(i) identify any circumstances, report or other information of which the appellant wants the court to take account, and

(ii) explain the significance of those circumstances or that information to what is in issue;

(e) in an appeal against a finding that the appellant insulted someone or interrupted proceedings in the magistrates' court, attach—

(i) the magistrates' court's written findings of fact, and

(ii) the appellant's response to those findings;

(f) say whether the appellant has asked the magistrates' court to reconsider the case; and

(g) include a list of those on whom the appellant has served the appeal notice.

(2) A respondent's notice must—

(a) give the date on which the respondent was served with the appeal notice; and

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(**a**) 2003 c. 17.

(**b**) 2003 c. 17; section 130 was amended by sections 40 and 59 of, and paragraph 78 of Schedule 9 and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**c**) 2021 c. 17; section 47 is in force in relation to specified areas, for remaining purposes it has effect from a date to be appointed.

(b) to assist the court in fulfilling its duty under rule 3.2—

(i) identify the witnesses who gave oral evidence in the magistrates' court,

(ii) identify the witnesses who gave written evidence in the magistrates' court,

(iii) identify the prosecution witnesses whom the respondent intends to call to give oral evidence in the Crown Court,

(iv) give notice of any special arrangements or other measures that the respondent thinks are needed for witnesses,

(v) explain whether the issues in the Crown Court differ from the issues in the magistrates' court, and if so how, and

(vi) say how long the trial lasted in the magistrates' court and how long the appeal is likely to last in the Crown Court.

(3) Paragraph (4) applies in an appeal against conviction or against a finding of guilt where in the magistrates' court a party to the appeal—

(a) introduced in evidence material to which applies—

(i) Part 16 (Written witness statements),

(ii) Part 19 (Expert evidence),

(iii) Part 20 (Hearsay evidence),

(iv) Part 21 (Evidence of bad character), or

(v) Part 22 (Evidence of a complainant's previous sexual behaviour); or

(b) made an application to which applies—

(i) Part 17 (Witness summonses, warrants and orders),

(ii) Part 18 (Measures to assist a witness or defendant to give evidence), or

(iii) Part 23 (Restriction on cross-examination by a defendant).

(4) If such a party wants to reintroduce that material or to renew that application in the Crown Court that party must include a notice to that effect in the appeal or respondent's notice, as the case may be.

[Note. In some cases, a magistrates' court can reconsider a conviction, sentence or other order and make a fresh decision. See section 142 of the Magistrates' Courts Act 1980(**a**)*.*

See also rule 3.13 (Conduct of a trial or an appeal).]

Duty of magistrates' court officer

34.4.—(1) The magistrates' court officer must—

(a) arrange for the magistrates' court to hear as soon as practicable any application to that court under rule 34.2(3)(c) (suspension of disqualification or order pending appeal); and

(b) as soon as practicable notify the Crown Court officer of the service of the appeal notice and make available to that officer—

(i) the appeal notice and any accompanying application served by the appellant,

(ii) details of the parties including their addresses, and

(iii) a copy of each magistrates' court register entry relating to the decision under appeal and to any application for bail or for the suspension of a disqualification or order pending appeal.

(2) Where the appeal is against conviction or against a finding of guilt, the magistrates' court officer must make available to the Crown Court officer as soon as practicable—

(a) all material served on the magistrate's court officer to which applies—

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

(i) Part 8 (Initial details of the prosecution case),

(ii) Part 16 (Written witness statements),

(iii) Part 17 (Witness summonses, warrants and orders),

(iv) Part 18 (Measures to assist a witness or defendant to give evidence),

(v) Part 19 (Expert evidence),

(vi) Part 20 (Hearsay evidence),

(vii) Part 21 (Evidence of bad character),

(viii) Part 22 (Evidence of a complainant's previous sexual behaviour), or

(ix) Part 23 (Restriction on cross-examination by a defendant);

(b) any case management questionnaire prepared for the purposes of the trial;

(c) all case management directions given by the magistrates' court for the purposes of the trial; and

(d) any other document, object or information for which the Crown Court officer asks.

(3) Where the appeal is against sentence, the magistrates' court officer must make available to the Crown Court officer as soon as practicable any report received for the purposes of sentencing.

(4) Unless the magistrates' court otherwise directs, the magistrates' court officer—

(a) must keep any document or object exhibited in the proceedings in the magistrates' court, or arrange for it to be kept by some other appropriate person, until at least—

(i) 6 weeks after the conclusion of those proceedings, or

(ii) the conclusion of any proceedings in the Crown Court that begin within that 6 week period; but

(b) need not keep such a document if—

(i) the document that was exhibited is a copy of a document retained by the party who produced it, and

(ii) what was in evidence in the magistrates' court was the content of that document.

[Note. See also section 133 of the Criminal Justice Act 2003(**a**) *(Proof of statements in documents).]*

Duty of person keeping exhibit

34.5. A person who, under arrangements made by the magistrates' court officer, keeps a document or object exhibited in the proceedings in the magistrates' court must—

(a) keep that exhibit until—

(i) 6 weeks after the conclusion of those proceedings, or

(ii) the conclusion of any proceedings in the Crown Court that begin within that 6 weeks,

unless the magistrates' court or the Crown Court otherwise directs; and

(b) provide the Crown Court with any such document or object for which the Crown Court officer asks, within such period as the Crown Court officer may require.

Reference by the Criminal Cases Review Commission

34.6.—(1) The Crown Court officer must, as soon as practicable, serve a reference by the Criminal Cases Review Commission on—

(a) the appellant;

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

(b) every other party; and

(c) the magistrates' court officer.

(2) The appellant may serve an appeal notice on—

(a) the Crown Court officer; and

(b) every other party,

not more than 15 business days later.

(3) The Crown Court must treat the reference as the appeal notice if the appellant does not serve an appeal notice.

Preparation for appeal

34.7.—(1) The Crown Court may conduct a preparation for appeal hearing (and if necessary more than one such hearing) where—

(a) it is necessary to conduct such a hearing in order to give directions for the effective determination of the appeal; or

(b) such a hearing is required to set ground rules for the conduct of the questioning of a witness or appellant.

(2) Where under rule 34.3(4) a party gives notice to reintroduce material or to renew an application first introduced or made in the magistrates' court—

(a) no other notice or application to the same effect otherwise required by these Rules need be served; and

(b) any objection served by the other party in the magistrates' court is treated as renewed unless within 15 business days that party serves notice withdrawing it.

(3) Paragraphs (4) and (5) apply where—

(a) the appeal is against conviction or against a finding of guilt;

(b) a party wants to introduce material or make an application under a Part of these Rules listed in rule 34.3(3); and

(c) that party gives no notice of reintroduction or renewal under rule 34.3(4) (whether because the conditions for giving such a notice are not met or for any other reason).

(4) Such a party must serve the material, notice or application required by that Part not more than 15 business days after service of the appeal notice.

(5) Subject to paragraph (4), the requirements of that Part apply (for example, as to the form in which a notice must be given or an application made and as to the time and form in which such a notice or application may be opposed).

Hearings and decisions

34.8.—(1) The Crown Court as a general rule must hear in public an appeal or reference to which this Part applies, but—

(a) may order any hearing to be in private; and

(b) where a hearing is about a public interest ruling, must hold that hearing in private.

(2) The Crown Court officer must give as much notice as reasonably practicable of every hearing to—

(a) the parties;

(b) any party's custodian; and

(c) any other person whom the Crown Court requires to be notified.

(3) The Crown Court officer must serve every decision on—

(a) the parties;

(b) any other person whom the Crown Court requires to be served; and

(c) the magistrates' court officer and any party's custodian, where the decision determines an appeal.

(4) But where a hearing or decision is about a public interest ruling, the Crown Court officer must not—

(a) give notice of that hearing to; or

(b) serve that decision on,

anyone other than the prosecutor who applied for that ruling, unless the court otherwise directs.

[Note. See also Part 15 (Disclosure).]

Abandoning an appeal

34.9.—(1) The appellant—

(a) may abandon an appeal without the Crown Court's permission, by serving a notice of abandonment on—

(i) the magistrates' court officer,

(ii) the Crown Court officer, and

(iii) every other party

before the hearing of the appeal begins; but

(b) after the hearing of the appeal begins, may only abandon the appeal with the Crown Court's permission.

(2) A notice of abandonment must be signed by or on behalf of the appellant.

(3) Where an appellant who is on bail pending appeal abandons an appeal—

(a) the appellant must surrender to custody as directed by the magistrates' court officer; and

(b) any conditions of bail apply until then.

[Note. Where an appellant abandons an appeal to the Crown Court, both the Crown Court and the magistrates' court have power to make a costs order against that appellant in favour of the respondent: see section 52 of the Senior Courts Act 1981(**a**) *and section 109 of the Magistrates' Courts Act 1980*(**b**)*. Part 45 contains rules about costs on abandoning an appeal.]*

Court's power to vary requirements under this Part

34.10. The Crown Court may—

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

(b) allow an appellant to vary an appeal notice that that appellant has served;

(c) direct that an appeal notice be served on any person; and

(d) allow an appeal notice or a notice of abandonment to be in a different form to one issued under the Practice Direction, or to be presented orally.

Constitution of the Crown Court

34.11.—(1) On the hearing of an appeal the general rule is that—

(a) the Crown Court must comprise—

(**a**) 1981 c. 54; section 52 was amended by section 31(5) of, and Part II of Schedule 1 to, the Prosecution of Offences Act 1985 (c. 23), section 4 of the Courts and Legal Services Act 1990 (c. 41), article 3 of, and paragraphs 11 and 12(a) of the Schedule to, S.I. 2004/2035, and section 59(5) of, and paragraph 26(1) and (2) of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4). The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**b**) 1980 c. 43; section 109(2) was amended by section 109(1) of, and paragraph 234 of Schedule 8 to, the Courts Act 2003 (c. 39).

(i) a judge of the High Court, a Circuit judge, a Recorder or a qualifying judge advocate, and

(ii) no less than two and no more than four justices of the peace, none of whom took part in the decision under appeal; and

(b) if the appeal is from a youth court, each justice of the peace must be qualified to sit as a member of a youth court.

(2) Despite the general rule—

(a) the Crown Court may include only one justice of the peace if—

(i) the presiding judge decides that otherwise the start of the appeal hearing will be delayed unreasonably, or

(ii) one or more of the justices of the peace who started hearing the appeal is absent; and

(b) the Crown Court may comprise only a judge of the High Court, a Circuit judge, a Recorder or a qualifying judge advocate if—

(i) the appeal is against conviction, under section 108 of the Magistrates' Courts Act 1980(**a**), and

(ii) the respondent agrees that the court should allow the appeal, under section 48(2) of the Senior Courts Act 1981(**b**).

(3) Before the hearing of an appeal begins and after that hearing ends—

(a) the Crown Court may comprise only a judge of the High Court, a Circuit judge, a Recorder or a qualifying judge advocate; and

(b) so constituted, the court may, among other things, exercise the powers to which apply—

(i) the rules in this Part and in Part 3 (Case management), and

(ii) rule 35.2 (stating a case for the opinion of the High Court, or refusing to do so).

[Note. See sections 73 and 74 of the Senior Courts Act 1981(**c**) *(which allow rules of court to provide for the constitution of the Crown Court in proceedings on appeal), section 45 of the Children and Young Persons Act 1933*(**d**) *and section 9 of the Courts Act 2003*(**e**)*. Under section 8(1A) of the Senior Courts Act 1981*(**f**)*, a qualifying judge advocate may not exercise the jurisdiction of the Crown Court on an appeal from a youth court.]*

PART 35

APPEAL TO THE HIGH COURT BY CASE STATED

Contents of this Part

(**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), section 64 of, and paragraph 10 of Schedule 3 to, the Animal Welfare Act 2006 (c. 45) and section 54 of, and paragraphs 2 and 4 of Schedule 12 to, the Criminal Justice and Courts Act 2015 (c. 2).

(**b**) 1981 c. 54; section 48(2) was amended by section 156 of the Criminal Justice Act 1988 (c. 33).

(**c**) 1981 c. 54; section 73 was amended by article 3 of, and paragraphs 11 and 12 of the Schedule to, S.I. 2004/2035 and section 26 of, and paragraph 2 of Schedule 2 to, the Armed Forces Act 2011 (c. 18). Section 74 was amended by sections 79 and 106 of, and Table (4) of Part V of Schedule 15 to, the Access to Justice Act 1999 (c. 22), article 3 of, and paragraphs 11 and 12 of the Schedule to, S.I. 2004/2035, section 15 of, and paragraphs 114 and 133 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4) and section 26 of, and paragraph 3 of Schedule 2 to, the Armed Forces Act 2011 (c. 18). The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**d**) 1933 c. 12; section 45 was substituted by section 50 of the Courts Act 2003 (c. 39) and amended by section 15 of, and paragraph 20 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).

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

(**f**) 1981 c. 54; section 8(1A) was inserted by paragraph 1 of Schedule 2 to the Armed Forces Act 2011 (c. 18).

When this Part applies rule 35.1
Application to state a case rule 35.2
Preparation of case stated rule 35.3
Duty of justices' legal adviser rule 35.4
Court's power to vary requirements under this Part rule 35.5

When this Part applies

35.1. This Part applies where a person wants to appeal to the High Court by case stated—

(a) under section 111 of the Magistrates' Courts Act 1980(**a**), against a decision of a magistrates' court; or

(b) under section 28 of the Senior Courts Act 1981(**b**), against a decision of the Crown Court.

[Note. Under section 111 of the Magistrates' Courts Act 1980, 'any person who was a party to any proceeding before a magistrates' court or is aggrieved by the conviction, order, determination or other proceeding of the court may question the proceeding on the ground that it is wrong in law or is in excess of jurisdiction by applying to the justices composing the court to state a case for the opinion of the High Court on the question of law or jurisdiction involved'.

Under section 28 of the Senior Courts Act 1981, 'any order, judgment or other decision of the Crown Court may be questioned by any party to the proceedings, on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the Crown Court to have a case stated by that court for the opinion of the High Court.'

Under section 28A of the 1981 Act(**c**)*, the High Court may 'reverse, affirm or amend the determination in respect of which the case has been stated; or remit the matter to the magistrates' court, or the Crown Court, with the opinion of the High Court, and may make such other order … as it thinks fit.' Under that section, the High Court also may send the case back for amendment, if it thinks fit.]*

Application to state a case

35.2.—(1) A party who wants the court to state a case for the opinion of the High Court must—

(a) apply in writing, not more than 21 days after the decision against which the applicant wants to appeal; and

(b) serve the application on—

(i) the court officer, and

(ii) each other party.

(2) The application must—

(a) specify the decision in issue;

(b) specify the proposed question or questions of law or jurisdiction on which the opinion of the High Court will be asked;

(c) indicate the proposed grounds of appeal; and

(d) include or attach any application for the following, with reasons—

(**a**) 1980 c. 43.

(**b**) 1981 c. 54; section 28 was amended by section 2 of, and paragraph 27 of Schedule 3 to, the Local Government (Miscellaneous Provisions) Act 1982 (c. 30), section 24 of, and paragraphs 21 and 22 of Schedule 4 to, the Access to Justice Act 1999 (c. 22), section 199 of, and Schedule 7 to, the Licensing Act 2003 (c. 17) and section 356 of, and Schedule 17 to, the Gambling Act 2005 (c. 19). The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**c**) 1981 c. 54; section 28A was inserted by section 1 of, and paragraph 9 of Schedule 2 to, the Statute Law (Repeals) Act 1993 (c. 50), and amended by section 61 of the Access to Justice Act 1999 (c. 22) and section 40 of, and paragraph 36 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(i) if the application is to the Crown Court, an extension of time within which to apply to state a case,

(ii) bail pending appeal, or

(iii) the suspension of any disqualification imposed in the case, where the court can order such a suspension pending appeal.

(3) A party who wants to make representations about the application must—

(a) serve the representations on—

(i) the court officer, and

(ii) each other party; and

(b) do so not more than 10 business days after service of the application.

(4) The court—

(a) may determine the application without a hearing; and

(b) must determine the application not more than 15 business days after the time for service of representations under paragraph (3) has expired.

(5) If the court decides not to state a case, the court officer must serve on each party—

(a) notice of that decision; and

(b) the court's written reasons for that decision.

[Note. The time limit for applying to a magistrates' court to state a case is prescribed by section 111(2) of the Magistrates' Courts Act 1980. It may be neither extended nor shortened.

Under section 113 of the Magistrates' Courts Act 1980(**a**)*, the magistrates' court may grant an appellant bail pending appeal. Under section 81(1)(d) of the Senior Courts Act 1981*(**b**)*, the Crown Court may do so. See also rule 14.7.*

Where Part 34 (Appeal to the Crown Court) applies, an application to which this rule applies may be determined by a judge of the High Court, a Circuit judge, a Recorder or a qualifying judge advocate without justices of the peace: see rule 34.11 (Constitution of the Crown Court).

Under section 39 of the Road Traffic Offenders Act 1988(**c**)*, a court which has made an order disqualifying a person from driving may suspend the disqualification pending appeal. See also rule 29.2.]*

Preparation of case stated

35.3.—(1) This rule applies where the court decides to state a case for the opinion of the High Court.

(2) The court officer must serve on each party notice of—

(a) the decision to state a case, and

(b) any recognizance ordered by the court.

(3) Unless the court otherwise directs, not more than 15 business days after the court's decision to state a case—

(a) in a magistrates' court, the court officer must serve a draft case on each party; or

(b) in the Crown Court, the applicant must serve a draft case on the court officer and each other party.

(4) The draft case must—

(**a**) 1980 c. 43; section 113 was amended by section 168 of, and paragraph 44 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33) and section 165 of, and paragraph 72 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).

(**b**) 1981 c. 54.

(**c**) 1988 c. 53.

(a) specify the decision in issue;

(b) specify the question(s) of law or jurisdiction on which the opinion of the High Court will be asked;

(c) include a succinct summary of—

(i) the nature and history of the proceedings,

(ii) the court's relevant findings of fact, and

(iii) the relevant contentions of the parties; and

(d) if a question is whether there was sufficient evidence on which the court reasonably could reach a finding of fact—

(i) specify that finding, and

(ii) include a summary of the evidence on which the court reached that finding.

(5) Except to the extent that paragraph (4)(d) requires, the draft case must not include an account of the evidence received by the court.

(6) A party who wants to make representations about the content of the draft case, or to propose a revised draft, must—

(a) serve the representations, or revised draft, on—

(i) the court officer, and

(ii) each other party; and

(b) do so not more than 15 business days after service of the draft case.

(7) The court must state the case not more than 15 business days after the time for service of representations under paragraph (6) has expired.

(8) A case stated for the opinion of the High Court must—

(a) comply with paragraphs (4) and (5); and

(b) identify—

(i) the court that stated it, and

(ii) the court office for that court.

(9) The court officer must serve the case stated on each party.

[Note. Under section 114 of the Magistrates' Courts Act 1980(**a**)*, a magistrates' court need not state a case until the person who applied for it has entered into a recognizance to appeal promptly to the High Court. The Crown Court has a corresponding inherent power.*

Under section 121(6) of the 1980 Act, the magistrates' court which states a case need not include all the members of the court which took the decision questioned.

For the procedure on appeal to the High Court, see Part 52 of the Civil Procedure Rules 1998(**b**) *and the associated Practice Direction.]*

Duty of justices' legal adviser

35.4.—(1) This rule applies—

(a) only in a magistrates' court; and

(b) unless the court—

(i) includes a District Judge (Magistrates' Courts), and

(ii) otherwise directs.

(**a**) 1980 c. 43; section 114 was amended by section 90 of, and paragraphs 95 and 113 of Schedule 13 to, the Access to Justice Act 1999 (c. 22) and section 109 of, and paragraph 235 of Schedule 8 to, the Courts Act 2003 (c. 39).

(**b**) S.I. 1998/3132; Part 52 was inserted by S.I. 2000/221 and amended by paragraph 1 of Schedule 11 to the Constitutional Reform Act 2005 (c. 4) and S.I. 2003/2113, 2003/3361, 2006/3435, 2007/2204 and 2009/2092.

(2) A justices' legal adviser must assist the court by—

(a) preparing and amending the draft case; and

(b) completing the case stated.

[Note. For the functions of a justices' legal adviser, see sections 28 and 29 of the Courts Act 2003(**a**)*. See also rule 2.12 (Duties of justices' legal adviser).]*

Court's power to vary requirements under this Part

35.5.—(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 application, representations or draft case for which it is needed; and

(b) explain the delay.

[Note. See also rule 35.2(2)(d)(i) and the note to rule 35.2.]

PART 36

APPEAL TO THE COURT OF APPEAL: GENERAL RULES

Contents of this Part

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When this Part applies

36.1.—(1) This Part applies to all the applications, appeals and references to the Court of Appeal to which Parts 37, 38, 39, 40, 41 and 43 apply.

(2) In this Part and in those, unless the context makes it clear that something different is meant 'court' means the Court of Appeal or any judge of that court.

[Note. See rule 2.2 for the usual meaning of 'court'.

(**a**) 2003 c. 39; section 28 was amended by section 15 of, and paragraphs 308 and 327 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).

Under section 53 of the Senior Courts Act 1981(**a**)*, the criminal division of the Court of Appeal exercises jurisdiction in the appeals and references to which Parts 37, 38, 39, 40 and 41 apply.*

Under section 55 of that Act(**b**)*, the Court of Appeal must include at least two judges, and for some purposes at least three.*

For the powers of the Court of Appeal that may be exercised by one judge of that court or by the Registrar, see sections 31, 31A, 31B, 31C and 44 of the Criminal Appeal Act 1968(**c**)*; section 49 of the Criminal Justice Act 2003*(**d**)*; the Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005*(**e**)*; the Serious Organised Crime and Police Act 2005 (Appeals under section 74) Order 2006*(**f**)*; the Serious Crime Act 2007 (Appeals under Section 24) Order 2008*(**g**)*; and the power conferred by section 53(4) of the 1981 Act.]*

Case management in the Court of Appeal

36.2.—(1) The court and the parties have the same duties and powers as under Part 3 (Case management).

(2) The Registrar—

(a) must fulfil the duty of active case management under rule 3.2; and

(b) in fulfilling that duty may exercise any of the powers of case management under—

(i) rule 3.5 (the court's general powers of case management),

(ii) rule 3.12(3) (requiring a certificate of readiness), and

(iii) rule 3.13 (requiring a party to identify intentions and anticipated requirements)

subject to the directions of the court.

(3) The Registrar must nominate a case progression officer under rule 3.4.

Power to vary requirements

36.3. The court or the Registrar may—

(a) shorten a time limit or extend it (even after it has expired) unless that is inconsistent with other legislation;

(**a**) 1981 c. 54. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**b**) 1981 c. 54; section 55 was amended by section 170 of, and paragraph 80 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 52 of the Criminal Justice and Public Order Act 1994 (c. 33) and section 58 of the Domestic Violence, Crime and Victims Act 2004 (c. 28). It is further amended by section 40 of, and paragraph 36 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(**c**) 1968 c. 19; section 31 was amended by section 21 of, and Schedule 2 to, the Costs in Criminal Cases Act 1973 (c. 14), section 24 of, and paragraph 10 of Schedule 6 to, the Road Traffic Act 1974 (c. 50), section 29 of the Criminal Justice Act 1982 (c. 48), section 170 of, and paragraphs 20, 29 and 30 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 4 of, and paragraph 4 of Schedule 3 to, the Road Traffic (Consequential Provisions) Act 1988 (c. 54), section 198 of, and paragraphs 38 and 40 of Schedule 6 to, the Licensing Act 2003 (c. 17), section 87 of the Courts Act 2003 (c. 39), paragraphs 86, 87 and 88 of Schedule 36 to the Criminal Justice Act 2003 (c. 44), section 48 of the Police and Justice Act 2006 (c. 48), section 47 of, and paragraphs 1, 9 and 11 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4) and section 177 of, and paragraph 69 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25). It is further amended by section 67 of, and paragraph 4 of Schedule 4 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), with effect from a date to be appointed. Section 31A was inserted by section 6 of the Criminal Appeal Act 1995 (c. 35) and amended by sections 87 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39) and section 331 of, and paragraphs 86 and 88 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44). Section 31B was inserted by section 87 of the Courts Act 2003 (c. 39). Section 31C was inserted by section 87 of the Courts Act 2003 (c. 39) and amended by sections 47 and 149 of, and paragraphs 1 and 12 of Schedule 8 and part 3 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4). Section 44 was amended by section 24(2) of, and paragraph 11 of Schedule 6 to, the Road Traffic Act 1974 (c. 50), section 170(1) of, and paragraphs 20 and 31 of the Criminal Justice Act 1988 (c. 33), section 4 of, and paragraph 4 of Schedule 3 to, the Road Traffic (Consequential Provisions) Act 1988 (c. 54) and section 198(1), and paragraphs 38 and 41 of Schedule 6 to, the Licensing Act 2003 (c. 17).

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

(**e**) S.I. 2005/2798.

(**f**) S.I. 2006/2135.

(**g**) S.I. 2008/1863.

(b) allow a party to vary any notice that that party has served;

(c) direct that a notice or application be served on any person; and

(d) allow a notice or application to be in a different form, or presented orally.

[Note. The time limit for serving an appeal notice—

(a) under section 18 of the Criminal Appeal Act 1968(**a**) *on an appeal against conviction or sentence, and*

(b) under section 18A of that Act(**b**) *on an appeal against a finding of contempt of court*

may be extended but not shortened: see rule 39.2.

The time limit for serving an application for permission to refer a sentencing case under section 36 of the Criminal Justice Act 1988(**c**) *may be neither extended nor shortened: see rule 41.2(4).*

The time limits in rule 43.2 for applying to the Court of Appeal for permission to appeal or refer a case to the Supreme Court may be extended or shortened only as explained in the note to that rule.]

Application for extension of time

36.4. A person who wants an extension of time within which to serve a notice or make an application must—

(a) apply for that extension of time when serving that notice or making that application; and

(b) give the reasons for the application for an extension of time.

Renewing an application refused by a judge or the Registrar

36.5.—(1) This rule applies where a party with the right to do so wants to renew—

(a) to a judge of the Court of Appeal an application refused by the Registrar; or

(b) to the Court of Appeal an application refused by a judge of that court.

(2) That party must—

(a) renew the application in the form issued under the Practice Direction, signed by or on behalf of the applicant; and

(b) serve the renewed application on the Registrar not more than 10 business days after—

(i) the refusal of the application that the applicant wants to renew; or

(ii) the Registrar serves that refusal on the applicant, if the applicant was not present in person or by live link when the original application was refused.

[Note. The time limit of 10 business days under this rule is reduced to 5 business days where Parts 37, 38 or 40 apply: see rules 37.7, 38.10 and 40.7.

For the right to renew an application to a judge or to the Court of Appeal, see sections 31(3), 31C and 44 of the Criminal Appeal Act 1968, the Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005(**d**)*, the Serious Organised Crime and Police Act 2005 (Appeals under section 74) Order 2006*(**e**) *and the Serious Crime Act 2007 (Appeals under Section 24) Order 2008.*

(**a**) 1968 c. 19.

(**b**) 1968 c. 19; section 18A was inserted by section 170 of, and paragraphs 20 and 25 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33).

(**c**) 1988 c. 33; section 36 was amended by sections 272, 304, 331 and 336 of, and paragraph 46 of Schedule 32 and paragraph 96 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), sections 40 and 148 of, and paragraph 48 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), section 46 of the Criminal Justice and Immigration Act 2008 (c. 4) and section 416 of, and paragraph 89 of Schedule 24 to, the Sentencing Act 2020 (c. 17).

(**d**) S.I. 2005/2798.

(**e**) S.I. 2006/2135.

A party has no right under section 31C of the 1968 Act to renew to the Court of Appeal an application for procedural directions refused by a judge, but in some circumstances a case management direction might be varied: see rule 3.6.

If an applicant does not renew an application that a judge has refused, including an application for permission to appeal, the Registrar will treat it as if it had been refused by the Court of Appeal.

Under section 22 of the Criminal Appeal Act 1968(**a**)*, the Court of Appeal may direct that an appellant who is in custody is to attend a hearing by live link.]*

Hearings

36.6.—(1) The general rule is that the Court of Appeal must hear in public—

(a) an application, including an application for permission to appeal; and

(b) an appeal or reference,

but it may order any hearing to be in private.

(2) Where a hearing is about a public interest ruling, that hearing must be in private unless the court otherwise directs.

(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.

(4) Where the appellant wants to appeal or to refer a case to the Supreme Court, the court—

(a) may decide without a hearing an application—

(i) for permission to appeal or to refer a sentencing case, or

(ii) to refer a point of law; but

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

(5) Where a party wants the court to reopen the determination of an appeal—

(a) the court—

(i) must decide the application without a hearing, as a general rule, but

(ii) may decide the application at a hearing; and

(b) need not announce its decision on such an application at a hearing in public.

(6) A judge of the Court of Appeal and the Registrar may exercise any of their powers—

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

(b) without a hearing.

[Note. For the procedure on an appeal against an order restricting public access to a trial, see Part 40.

For the procedure on an application to reopen the determination of an appeal, see rule 36.15.]

Notice of hearings and decisions

36.7.—(1) The Registrar must give as much notice as reasonably practicable of every hearing to—

(**a**) 1968 c. 19; section 22 was amended by section 48 of the Police and Justice Act 2006 (c. 48).

(a) the parties;

(b) any party's custodian;

(c) any other person whom the court requires to be notified; and

(d) the Crown Court officer, where Parts 37, 38 or 40 apply.

(2) The Registrar must serve every decision on—

(a) the parties;

(b) any other person whom the court requires to be served; and

(c) the Crown Court officer and any party's custodian, where the decision determines an appeal or application for permission to appeal.

(3) But where a hearing or decision is about a public interest ruling, the Registrar must not—

(a) give notice of that hearing to; or

(b) serve that decision on,

anyone other than the prosecutor who applied for that ruling, unless the court otherwise directs.

Duty of Crown Court officer

36.8.—(1) The Crown Court officer must—

(a) where electronic arrangements have been made to receive and store information and documents for the Crown Court, as soon as practicable ensure that all such material is available to the Registrar in accordance with those arrangements; and

(b) provide the Registrar with any document, object or information for which the Registrar asks, within such period as the Registrar may require.

(2) Where someone may appeal to the Court of Appeal, the Crown Court officer must keep any document or object exhibited in the proceedings in the Crown Court, or arrange for it to be kept by some other appropriate person, until—

(a) 6 weeks after the conclusion of those proceedings; or

(b) the conclusion of any appeal proceedings that begin within that 6 week period,

unless the court, the Registrar or the Crown Court otherwise directs.

(3) Where Part 37 applies (Appeal to the Court of Appeal against ruling at preparatory hearing or in response to jury tampering), the Crown Court officer must as soon as practicable serve on the appellant a transcript or note of—

(a) each order or ruling against which the appellant wants to appeal; and

(b) the decision by the Crown Court judge on any application for permission to appeal.

(4) Where Part 38 applies (Appeal to the Court of Appeal against ruling adverse to prosecution), the Crown Court officer must as soon as practicable serve on the appellant a transcript or note of—

(a) each ruling against which the appellant wants to appeal;

(b) the decision by the Crown Court judge on any application for permission to appeal; and

(c) the decision by the Crown Court judge on any request to expedite the appeal.

(5) Where Part 39 applies (Appeal to the Court of Appeal about conviction or sentence), the Crown Court officer must as soon as practicable serve on or make available to the Registrar—

(a) any Crown Court judge's certificate that the case is fit for appeal;

(b) the decision on any application at the Crown Court centre for bail pending appeal;

(c) such of the Crown Court case papers as the Registrar requires; and

(d) such transcript of the Crown Court proceedings as the Registrar requires.

(6) Where Part 40 applies (Appeal to the Court of Appeal about reporting or public access) and an order is made restricting public access to a trial, the Crown Court officer must—

(a) immediately notify the Registrar of that order, if the appellant has given advance notice of intention to appeal; and

(b) as soon as practicable provide the applicant for that order with a transcript or note of the application.

[Note. See also section 87(4) of the Senior Courts Act 1981(**a**) *and rules 5.5 (Recording and transcription of proceedings in the Crown Court), 36.9 (duty of person transcribing record of proceedings in the Crown Court) and 36.10 (Duty of person keeping exhibit).]*

Duty of person transcribing proceedings in the Crown Court

36.9. A person who transcribes a recording of proceedings in the Crown Court under arrangements made by the Crown Court officer must provide the Registrar with any transcript for which the Registrar asks, within such period as the Registrar may require.

[Note. See also section 32 of the Criminal Appeal Act 1968(**b**) *and rule 5.5 (Recording and transcription of proceedings in the Crown Court).]*

Duty of person keeping exhibit

36.10. A person who under arrangements made by the Crown Court officer keeps a document or object exhibited in the proceedings in the Crown Court must—

(a) keep that exhibit until—

(i) 6 weeks after the conclusion of the Crown Court proceedings, or

(ii) the conclusion of any appeal proceedings that begin within that 6 weeks,

unless the court, the Registrar or the Crown Court otherwise directs; and

(b) provide the Registrar with any such document or object for which the Registrar asks, within such period as the Registrar may require.

[Note. See also rule 36.8(2) (Duty of Crown Court officer).]

Registrar's duty to provide copy documents for appeal or reference

36.11. Unless the court otherwise directs, for the purposes of an appeal or reference—

(a) the Registrar must—

(i) provide a party with a copy of any document or transcript held by the Registrar for such purposes, or

(ii) allow a party to inspect such a document or transcript,

on payment by that party of any charge fixed by the Treasury; but

(b) the Registrar must not provide a copy or allow the inspection of—

(i) a document provided only for the court and the Registrar, or

(ii) a transcript of a public interest ruling or of an application for such a ruling.

[Note. Section 21 of the Criminal Appeal Act 1968 requires the Registrar to collect, prepare and provide documents needed by the court.]

Declaration of incompatibility with a Convention right

36.12.—(1) This rule applies where a party—

(**a**) 1981 c. 54; section 87(4) was amended by articles 2 and 3 of, and paragraphs 11 and 17 of the Schedule to, S.I. 2004/2035.
(**b**) 1968 c. 19.

(a) wants the court to make a declaration of incompatibility with a Convention right under section 4 of the Human Rights Act 1998(**a**); or

(b) raises an issue that the Registrar thinks may lead the court to make such a declaration.

(2) The Registrar must serve notice on—

(a) the relevant person named in the list published under section 17(1) of the Crown Proceedings Act 1947(**b**); or

(b) the Treasury Solicitor, if it is not clear who is the relevant person.

(3) That notice must include or attach details of—

(a) the legislation affected and the Convention right concerned;

(b) the parties to the appeal; and

(c) any other information or document that the Registrar thinks relevant.

(4) A person who has a right under the 1998 Act to become a party to the appeal must—

(a) serve notice on—

(i) the Registrar, and

(ii) the other parties,

if that person wants to exercise that right; and

(b) in that notice—

(i) indicate the conclusion that that person invites the court to reach on the question of incompatibility, and

(ii) identify each ground for that invitation, concisely outlining the arguments in support.

(5) The court must not make a declaration of incompatibility—

(a) less than 15 business days after the Registrar serves notice under paragraph (2); and

(b) without giving any person who serves a notice under paragraph (4) an opportunity to make representations at a hearing.

Abandoning an appeal

36.13.—(1) This rule applies where an appellant wants to—

(a) abandon—

(i) an application to the court for permission to appeal, or

(ii) an appeal; or

(b) reinstate such an application or appeal after abandoning it.

(2) The appellant—

(a) may abandon such an application or appeal without the court's permission by serving a notice of abandonment on—

(i) the Registrar, and

(ii) any respondent

before any hearing of the application or appeal; but

(b) at any such hearing, may only abandon that application or appeal with the court's permission.

(3) A notice of abandonment must be in the form issued under the Practice Direction, signed by or on behalf of the appellant.

(4) On receiving a notice of abandonment the Registrar must—

(**a**) 1998 c. 42; section 4 was amended by section 40 of, and paragraph 66 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and section 67 of, and paragraph 43 of Schedule 6 to, the Mental Capacity Act 2005 (c. 9).

(**b**) 1947 c. 44; section 17 was amended by article 3(2) of S.I. 1968/1656.

(a) date it;

(b) serve a dated copy on—

(i) the appellant,

(ii) the appellant's custodian, if any,

(iii) the Crown Court officer, and

(iv) any other person on whom the appellant or the Registrar served the appeal notice; and

(c) treat the application or appeal as if it had been refused or dismissed by the Court of Appeal.

(5) An appellant who wants to reinstate an application or appeal after abandoning it must—

(a) apply in writing, with reasons; and

(b) serve the application on the Registrar.

[Note. The Court of Appeal has power only in exceptional circumstances to allow an appellant to reinstate an application or appeal that has been abandoned.]

Grounds of appeal and opposition

36.14.—(1) If the court gives permission to appeal then unless the court otherwise directs the decision indicates that—

(a) the appellant has permission to appeal on every ground identified by the appeal notice; and

(b) the court finds reasonably arguable each ground on which the appellant has permission to appeal.

(2) If the court gives permission to appeal but not on every ground identified by the appeal notice the decision indicates that—

(a) at the hearing of the appeal the court will not consider representations that address any ground thus excluded from argument; and

(b) an appellant who wants to rely on such an excluded ground needs the court's permission to do so.

(3) An appellant who wants to rely at the hearing of an appeal on a ground of appeal excluded from argument by a judge of the Court of Appeal when giving permission to appeal must—

(a) apply for permission to do so, with reasons, and identify each such ground;

(b) serve the application on—

(i) the Registrar, and

(ii) any respondent; and

(c) serve the application not more than 10 business days after—

(i) the giving of permission to appeal, or

(ii) the Registrar serves notice of that decision on the applicant, if the applicant was not present in person or by live link when permission to appeal was given.

(4) Paragraph (5) applies where one of the following Parts applies—

(a) Part 37 (Appeal to the Court of Appeal against ruling at preparatory hearing or in response to jury tampering);

(b) Part 38 (Appeal to the Court of Appeal against ruling adverse to prosecution);

(c) Part 39 (Appeal to the Court of Appeal about conviction or sentence); or

(d) Part 40 (Appeal to the Court of Appeal about reporting or public access restriction).

(5) An appellant who wants to rely on a ground of appeal not identified by the appeal notice must—

(a) apply for permission to do so and identify each such ground;

(b) in respect of each such ground—

(i) explain why it was not included in the appeal notice, and

(ii) where Part 39 applies, comply with rule 39.3(2);

(c) serve the application on—

(i) the Registrar, and

(ii) any respondent; and

(d) serve the application—

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

(ii) at the same time as serving any renewed application for permission to appeal which relies on that ground.

(6) Paragraph (7) applies where a party wants to abandon—

(a) a ground of appeal on which that party has permission to appeal; or

(b) a ground of opposition identified in a respondent's notice.

(7) Such a party must serve notice on—

(a) the Registrar; and

(b) each other party,

before any hearing at which that ground will be considered by the court.

[Note. In some legislation, including the Criminal Appeal Act 1968, permission to appeal is described as 'leave to appeal'.

Under rule 36.5 (Renewing an application refused by a judge or the Registrar), if permission to appeal is refused the application for such permission may be renewed within the time limit (10 business days) set by that rule.]

Reopening the determination of an appeal

36.15.—(1) This rule applies where—

(a) a party wants the court to reopen a decision which determines an appeal or reference to which this Part applies (including a decision on an application for permission to appeal or refer); or

(b) the Registrar refers such a decision to the court for the court to consider reopening it.

(2) Such a party must—

(a) apply in writing for permission to reopen that decision, as soon as practicable after becoming aware of the grounds for doing so; and

(b) serve the application on the Registrar.

(3) The application must—

(a) specify the decision which the applicant wants the court to reopen; and

(b) explain—

(i) why it is necessary for the court to reopen that decision in order to avoid real injustice,

(ii) how the circumstances are exceptional and make it appropriate to reopen the decision notwithstanding the rights and interests of other participants and the importance of finality,

(iii) why there is no alternative effective remedy among any potentially available, and

(iv) any delay in making the application.

(4) The Registrar—

(a) may invite a party's representations on—

(i) an application to reopen a decision, or

(ii) a decision that the Registrar has referred, or intends to refer, to the court; and

(b) must do so if the court so directs.

(5) A party invited to make representations must serve them on the Registrar within such period as the Registrar directs.

(6) The court must not reopen a decision to which this rule applies unless each other party has had an opportunity to make representations.

[Note. The Court of Appeal has power only in exceptional circumstances to reopen a decision to which this rule applies.]

PART 37

APPEAL TO THE COURT OF APPEAL AGAINST RULING AT PREPARATORY HEARING OR IN RESPONSE TO JURY TAMPERING

Contents of this Part

When this Part applies	rule 37.1
Service of appeal notice	rule 37.2
Form of appeal notice	rule 37.3
Crown Court judge's permission to appeal	rule 37.4
Respondent's notice	rule 37.5
Powers of Court of Appeal judge	rule 37.6
Renewing applications	rule 37.7
Right to attend hearing	rule 37.8

When this Part applies

37.1.—(1) This Part applies where a party wants to appeal under—

(a) section 9(11) of the Criminal Justice Act 1987(**a**) or section 35(1) of the Criminal Procedure and Investigations Act 1996(**b**); or

(b) section 47(1) of the Criminal Justice Act 2003(**c**).

(2) A reference to an 'appellant' in this Part is a reference to such a party.

[Note. Under section 9(11) of the Criminal Justice Act 1987 (which applies to serious or complex fraud cases) and under section 35(1) of the Criminal Procedure and Investigations Act 1996 (which applies to other complex, serious or long cases) a party may appeal to the Court of Appeal against an order made at a preparatory hearing in the Crown Court.

(**a**) 1987 c. 38; section 9 was amended by section 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 6 of the Criminal Justice Act 1993 (c. 36), sections 72, 74 and 80 of, and paragraph 3 of Schedule 3 and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25), sections 45 and 310 of, and paragraphs 18, 52 and 54 of Schedule 36 and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), article 3 of, and paragraphs 21 and 23 of the Schedule to, S.I. 2004/2035, section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9).

(**b**) 1996 c. 25; section 35(1) was amended by section 45 of the Criminal Justice Act 2003 (c. 44). Section 35 was also amended by paragraphs 65 and 69 of Schedule 36 to the Criminal Justice Act 2003 (c. 44) and section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9).

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

Under section 47(1) of the Criminal Justice Act 2003 a party may appeal to the Court of Appeal against an order in the Crown Court that because of jury tampering a trial will continue without a jury or that there will be a new trial without a jury.

Part 3 contains rules about preparatory hearings.

The rules in Part 36 (Appeal to the Court of Appeal: general rules) also apply where this Part applies.]

Service of appeal notice

37.2.—(1) An appellant must serve an appeal notice on—

(a) the Crown Court officer;

(b) the Registrar; and

(c) every party directly affected by the order or ruling against which the appellant wants to appeal.

(2) The appellant must serve the appeal notice not more than 5 business days after—

(a) the order or ruling against which the appellant wants to appeal; or

(b) the Crown Court judge gives or refuses permission to appeal.

Form of appeal notice

37.3.—(1) An appeal notice must be in the form issued under the Practice Direction.

(2) The appeal notice must—

(a) specify each order or ruling against which the appellant wants to appeal;

(b) identify each ground of appeal on which the appellant relies, numbering them consecutively (if there is more than one) and concisely outlining each argument in support;

(c) summarise the relevant facts;

(d) identify any relevant authorities;

(e) include or attach any application for the following, with reasons—

(i) permission to appeal, if the appellant needs the court's permission,

(ii) an extension of time within which to serve the appeal notice, or

(iii) a direction to attend in person a hearing that the appellant could attend by live link, if the appellant is in custody;

(f) include a list of those on whom the appellant has served the appeal notice;

(g) attach—

(i) a transcript or note of each order or ruling against which the appellant wants to appeal,

(ii) all relevant skeleton arguments considered by the Crown Court judge,

(iii) any written application for permission to appeal that the appellant made to the Crown Court judge,

(iv) a transcript or note of the decision by the Crown Court judge on any application for permission to appeal, and

(v) any other document or thing that the appellant thinks the court will need to decide the appeal and include or attach an electronic link to each such document that has been made available to the Registrar under rule 36.8(1)(a) (Duty of Crown Court officer); and

(h) unless an authority identified by the grounds of appeal (see paragraph (2)(d)) is published by the Registrar as one frequently cited, include or attach—

(i) an electronic copy of each authority so identified, or

(ii) if two or more such authorities not so published are identified, electronic copies of each together in a single electronic document.

[Note. An appellant needs the court's permission to appeal in every case to which this Part applies unless the Crown Court judge gives permission.]

Crown Court judge's permission to appeal

37.4.—(1) An appellant who wants the Crown Court judge to give permission to appeal must—

(a) apply orally, with reasons, immediately after the order or ruling against which the appellant wants to appeal; or

(b) apply in writing and serve the application on—

(i) the Crown Court officer, and

(ii) every party directly affected by the order or ruling

not more than 2 business days after that order or ruling.

(2) A written application must include the same information (with the necessary adaptations) as an appeal notice.

[Note. For the Crown Court judge's power to give permission to appeal, see section 9(11) of the Criminal Justice Act 1987, section 35(1) of the Criminal Procedure and Investigations Act 1996 and section 47(2) of the Criminal Justice Act 2003.]

Respondent's notice

37.5.—(1) A party on whom an appellant serves an appeal notice may serve a respondent's notice, and must do so if—

(a) that party wants to make representations to the court; or

(b) the court so directs.

(2) Such a party must serve the respondent's notice on—

(a) the appellant;

(b) the Crown Court officer;

(c) the Registrar; and

(d) any other party on whom the appellant served the appeal notice.

(3) Such a party must serve the respondent's notice not more than 5 business days after—

(a) the appellant serves the appeal notice; or

(b) a direction to do so.

(4) The respondent's notice must be in the form issued under the Practice Direction.

(5) The respondent's notice must—

(a) give the date on which the respondent was served with the appeal notice;

(b) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates;

(c) summarise any relevant facts not already summarised in the appeal notice;

(d) identify any relevant authorities;

(e) include or attach any application for the following, with reasons—

(i) an extension of time within which to serve the respondent's notice, or

(ii) a direction to attend in person any hearing that the respondent could attend by live link, if the respondent is in custody;

(f) identify any other document or thing that the respondent thinks the court will need to decide the appeal and include or attach an electronic link to each such document that has been made available to the Registrar under rule 36.8(1)(a) (Duty of Crown Court officer); and

(g) unless an authority identified under paragraph (5)(d) is published by the Registrar as one frequently cited, include or attach—

(i) an electronic copy of each authority so identified, or

(ii) if two or more such authorities not so published are identified, electronic copies of each together in a single electronic document.

Powers of Court of Appeal judge

37.6. A judge of the Court of Appeal may give permission to appeal as well as exercising the powers given by other legislation (including these Rules).

[Note. See section 31 of the Criminal Appeal Act 1968(**a**) *and section 49 of the Criminal Justice Act 2003*(**b**)*.]*

Renewing applications

37.7. Rule 36.5 (Renewing an application refused by a judge or the Registrar) applies with a time limit of 5 business days.

Right to attend hearing

37.8.—(1) A party who is in custody has a right to attend a hearing in public.

(2) The court or the Registrar may direct that such a party is to attend a hearing by live link.

[Note. See rule 36.6 (Hearings).]

PART 38

APPEAL TO THE COURT OF APPEAL AGAINST RULING ADVERSE TO PROSECUTION

Contents of this Part

When this Part applies	rule 38.1
Decision to appeal	rule 38.2
Service of appeal notice	rule 38.3
Form of appeal notice	rule 38.4
Crown Court judge's permission to appeal	rule 38.5
Expediting an appeal	rule 38.6
Respondent's notice	rule 38.7

(**a**) 1968 c. 19; section 31 was amended by section 21 of, and Schedule 2 to, the Costs in Criminal Cases Act 1973 (c. 14), section 24 of, and paragraph 10 of Schedule 6 to, the Road Traffic Act 1974 (c. 50), section 29 of the Criminal Justice Act 1982 (c. 48), section 170 of, and paragraphs 20, 29 and 30 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 4 of, and paragraph 4 of Schedule 3 to, the Road Traffic (Consequential Provisions) Act 1988 (c. 54), section 198 of, and paragraphs 38 and 40 of Schedule 6 to, the Licensing Act 2003 (c. 17), section 87 of the Courts Act 2003 (c. 39), paragraphs 86, 87 and 88 of Schedule 36 to the Criminal Justice Act 2003 (c. 44), section 48 of the Police and Justice Act 2006 (c. 48), section 47 of, and paragraphs 1, 9 and 11 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4) and section 177 of, and paragraph 69 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25). It is further amended by section 67 of, and paragraph 4 of Schedule 4 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), with effect from a date to be appointed.

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

Public interest ruling rule 38.8
Powers of Court of Appeal judge rule 38.9
Renewing applications rule 38.10
Right to attend hearing rule 38.11

When this Part applies

38.1.—(1) This Part applies where a prosecutor wants to appeal under section 58(2) of the Criminal Justice Act 2003(**a**).

(2) A reference to an 'appellant' in this Part is a reference to such a prosecutor.

[Note. Under section 58(2) of the Criminal Justice Act 2003 a prosecutor may appeal to the Court of Appeal against a ruling in the Crown Court. See also sections 57 and 59 to 61 of the 2003 Act.

The rules in Part 36 (Appeal to the Court of Appeal: general rules) also apply where this Part applies.]

Decision to appeal

38.2.—(1) An appellant must tell the Crown Court judge of any decision to appeal—

(a) immediately after becoming aware of the ruling against which the appellant wants to appeal; or

(b) on the expiry of the time to decide whether to appeal allowed under paragraph (2).

(2) If an appellant wants time to decide whether to appeal—

(a) the appellant must ask the Crown Court judge immediately after becoming aware of the ruling; and

(b) the judge must not require the appellant to decide there and then but instead must allow until, as a general rule, the next business day.

[Note. If the ruling against which the appellant wants to appeal is a ruling that there is no case to answer, the appellant may appeal against earlier rulings as well: see section 58(7) of the Criminal Justice Act 2003.

Under section 58(8) of the 2003 Act the appellant must agree that a defendant directly affected by the ruling must be acquitted if the appellant (a) does not get permission to appeal or (b) abandons the appeal.

The Crown Court judge may give permission to appeal and may expedite the appeal: see rules 38.5 and 38.6.]

Service of appeal notice

38.3.—(1) An appellant must serve an appeal notice on—

(a) the Crown Court officer;

(b) the Registrar; and

(c) every defendant directly affected by the ruling against which the appellant wants to appeal.

(2) The appellant must serve the appeal notice not later than—

(a) the next business day after telling the Crown Court judge of the decision to appeal, if the judge expedites the appeal; or

(b) 5 business days after telling the Crown Court judge of that decision, if the judge does not expedite the appeal.

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

[Note. If the ruling against which the appellant wants to appeal is a public interest ruling, see rule 38.8.]

Form of appeal notice

38.4.—(1) An appeal notice must be in the form issued under the Practice Direction.

(2) The appeal notice must—

(a) specify each ruling against which the appellant wants to appeal;

(b) identify each ground of appeal on which the appellant relies, numbering them consecutively (if there is more than one) and concisely outlining each argument in support;

(c) summarise the relevant facts;

(d) identify any relevant authorities;

(e) include or attach any application for the following, with reasons—

(i) permission to appeal, if the appellant needs the court's permission,

(ii) an extension of time within which to serve the appeal notice,

(iii) expedition of the appeal, or revocation of a direction expediting the appeal;

(f) include a list of those on whom the appellant has served the appeal notice;

(g) attach—

(i) a transcript or note of each ruling against which the appellant wants to appeal,

(ii) all relevant skeleton arguments considered by the Crown Court judge,

(iii) any written application for permission to appeal that the appellant made to the Crown Court judge,

(iv) a transcript or note of the decision by the Crown Court judge on any application for permission to appeal,

(v) a transcript or note of the decision by the Crown Court judge on any request to expedite the appeal, and

(vi) any other document or thing that the appellant thinks the court will need to decide the appeal and include or attach an electronic link to each such document that has been made available to the Registrar under rule 36.8(1)(a) (Duty of Crown Court officer);

(h) unless an authority identified by the grounds of appeal (see paragraph (2)(d)) is published by the Registrar as one frequently cited, include or attach—

(i) an electronic copy of each authority so identified, or

(ii) if two or more such authorities not so published are identified, electronic copies of each together in a single electronic document; and

(i) attach a form of respondent's notice for any defendant served with the appeal notice to complete if that defendant wants to do so.

[Note. An appellant needs the court's permission to appeal unless the Crown Court judge gives permission: see section 57(4) of the Criminal Justice Act 2003. For 'respondent's notice' see rule 38.7.]

Crown Court judge's permission to appeal

38.5.—(1) An appellant who wants the Crown Court judge to give permission to appeal must—

(a) apply orally, with reasons, immediately after becoming aware of the ruling against which the appellant wants to appeal; or

(b) apply in writing and serve the application on—

(i) the Crown Court officer, and

(ii) every defendant directly affected by the ruling

on the expiry of the time allowed under rule 38.2 to decide whether to appeal.

(2) A written application must include the same information (with the necessary adaptations) as an appeal notice.

(3) The Crown Court judge must allow every defendant directly affected by the ruling an opportunity to make representations.

(4) The general rule is that the Crown Court judge must decide whether or not to give permission to appeal on the day that the application for permission is made.

[Note. For the Crown Court judge's power to give permission to appeal, see section 57(4) of the Criminal Justice Act 2003.

Rule 38.5(3) does not apply where the appellant wants to appeal against a public interest ruling: see rule 38.8(5).]

Expediting an appeal

38.6.—(1) An appellant who wants the Crown Court judge to expedite an appeal must ask, giving reasons, on telling the judge of the decision to appeal.

(2) The Crown Court judge must allow every defendant directly affected by the ruling an opportunity to make representations.

(3) The Crown Court judge may revoke a direction expediting the appeal unless the appellant has served the appeal notice.

[Note. For the Crown Court judge's power to expedite the appeal, see section 59 of the Criminal Justice Act 2003.

Rule 38.6(2) does not apply where the appellant wants to appeal against a public interest ruling: see rule 38.8(5).]

Respondent's notice

38.7.—(1) A defendant on whom an appellant serves an appeal notice may serve a respondent's notice, and must do so if—

(a) the defendant wants to make representations to the court; or

(b) the court so directs.

(2) Such a defendant must serve the respondent's notice on—

(a) the appellant;

(b) the Crown Court officer;

(c) the Registrar; and

(d) any other defendant on whom the appellant served the appeal notice.

(3) Such a defendant must serve the respondent's notice—

(a) not later than the next business day after—

(i) the appellant serves the appeal notice, or

(ii) a direction to do so

if the Crown Court judge expedites the appeal; or

(b) not more than 5 business days after—

(i) the appellant serves the appeal notice, or

(ii) a direction to do so

if the Crown Court judge does not expedite the appeal.

(4) The respondent's notice must be in the form issued under the Practice Direction.

(5) The respondent's notice must—

(a) give the date on which the respondent was served with the appeal notice;

(b) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates;

(c) summarise any relevant facts not already summarised in the appeal notice;

(d) identify any relevant authorities;

(e) include or attach any application for the following, with reasons—

(i) an extension of time within which to serve the respondent's notice, or

(ii) a direction to attend in person any hearing that the respondent could attend by live link, if the respondent is in custody;

(f) identify any other document or thing that the respondent thinks the court will need to decide the appeal and include or attach an electronic link to each such document that has been made available to the Registrar under rule 36.8(1)(a) (Duty of Crown Court officer); and

(g) unless an authority identified under paragraph (5)(d) is published by the Registrar as one frequently cited, include or attach—

(i) an electronic copy of each authority so identified, or

(ii) if two or more such authorities not so published are identified, electronic copies of each together in a single electronic document.

Public interest ruling

38.8.—(1) This rule applies where the appellant wants to appeal against a public interest ruling.

(2) The appellant must not serve on any defendant directly affected by the ruling—

(a) any written application to the Crown Court judge for permission to appeal; or

(b) an appeal notice,

if the appellant thinks that to do so in effect would reveal something that the appellant thinks ought not be disclosed.

(3) The appellant must not include in an appeal notice—

(a) the material that was the subject of the ruling; or

(b) any indication of what sort of material it is,

if the appellant thinks that to do so in effect would reveal something that the appellant thinks ought not be disclosed.

(4) The appellant must serve on the Registrar with the appeal notice an annex—

(a) marked to show that its contents are only for the court and the Registrar;

(b) containing whatever the appellant has omitted from the appeal notice, with reasons; and

(c) if relevant, explaining why the appellant has not served the appeal notice.

(5) Rules 38.5(3) and 38.6(2) do not apply.

[Note. Rules 38.5(3) and 38.6(2) require the Crown Court judge to allow a defendant to make representations about (i) giving permission to appeal and (ii) expediting an appeal.]

Powers of Court of Appeal judge

38.9. A judge of the Court of Appeal may—

(a) give permission to appeal;

(b) revoke a Crown Court judge's direction expediting an appeal; and

(c) where an appellant abandons an appeal, order a defendant's acquittal, his release from custody and the payment of his costs,

as well as exercising the powers given by other legislation (including these Rules).

[Note. See section 73 of the Criminal Justice Act 2003.]

Renewing applications

38.10. Rule 36.5 (Renewing an application refused by a judge or the Registrar) applies with a time limit of 5 business days.

Right to attend hearing

38.11.—(1) A respondent who is in custody has a right to attend a hearing in public.

(2) The court or the Registrar may direct that such a respondent is to attend a hearing by live link.

[Note. See rule 36.6 (Hearings).]

PART 39

APPEAL TO THE COURT OF APPEAL ABOUT CONVICTION OR SENTENCE

Contents of this Part

When this Part applies	rule 39.1
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Form of appeal notice	rule 39.3
Crown Court judge's certificate that case is fit for appeal	rule 39.4
Reference by Criminal Cases Review Commission	rule 39.5
Respondent's notice	rule 39.6
Introducing evidence	rule 39.7
Application for bail, or to suspend a disqualification or order, pending appeal or retrial	rule 39.8
Conditions of bail pending appeal or retrial	rule 39.9
Forfeiture of a recognizance given as a condition of bail	rule 39.10
Right to attend hearing	rule 39.11
Power to vary determination of appeal against sentence	rule 39.12
Directions about re-admission to hospital on dismissal of appeal	rule 39.13
Renewal or setting aside of order for retrial	rule 39.14

When this Part applies

39.1.—(1) This Part applies where—

(a) a defendant wants to appeal under—

(i) Part 1 of the Criminal Appeal Act 1968(**a**),

(ii) section 274(3) of the Criminal Justice Act 2003(**b**),

(**a**) 1968 c. 19.

(**b**) 2003 c. 44; section 274 was amended by section 40 of, and paragraph 82 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(iii) paragraph 14 of Schedule 22 to the Criminal Justice Act 2003(**a**), or

(iv) section 42 of the Counter Terrorism Act 2008(**b**);

(b) the Criminal Cases Review Commission refers a case to the Court of Appeal under section 9 of the Criminal Appeal Act 1995(**c**);

(c) a prosecutor wants to appeal to the Court of Appeal under section 14A(5A) of the Football Spectators Act 1989(**d**);

(d) a party wants to appeal under section 389 of the Sentencing Act 2020(**e**);

(e) a person found in contempt of court wants to appeal under section 13 of the Administration of Justice Act 1960(**f**) and section 18A of the Criminal Appeal Act 1968(**g**); or

(f) a person wants to appeal to the Court of Appeal under—

(i) section 24 of the Serious Crime Act 2007(**h**),

(ii) section 28(5)(a) of the Offensive Weapons Act 2019(**i**),

(iii) section 342I(2) of the 2020 Act(**j**),

(iv) section 46(5) of the Domestic Abuse Act 2021(**k**); or

(v) regulation 3C or 3H of the Costs in Criminal Cases (General) Regulations 1986(**l**).

(2) A reference to an 'appellant' in this Part is a reference to such a party or person.

[Note. Under Part 1 (sections 1 to 32) of the Criminal Appeal Act 1968, a defendant may appeal against—

(a) a conviction (section 1 of the 1968 Act(**m**)*);*

(b) a sentence (sections 9 and 10 of the 1968 Act(**n**)*);*

(**a**) 2003 c. 44; paragraph 14 of Schedule 22 was amended by section 40 of, and paragraph 82 of Schedule 9 and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**b**) 2008 c. 28.

(**c**) 1995 c. 35; section 9 was amended by section 58 of, and paragraph 31 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(**d**) 1989 c. 37; section 14A(5A) was inserted by section 52 of, and paragraphs 1 and 3 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38).

(**e**) 2020 c. 17.

(**f**) 1960 c. 65; section 13 was amended by paragraph 40 of Schedule 8 to the Courts Act 1971 (c. 23), Schedule 5 to the Criminal Appeal Act 1968 (c. 19), paragraph 36 of Schedule 7 to the Magistrates' Courts Act 1980 (c. 43), Schedule 7 to the Senior Courts Act 1981 (c. 54), paragraph 25 of Schedule 2 to the County Courts Act 1984 (c. 28), Schedule 15 to the Access to Justice Act 1999 (c. 22), paragraph 13 of Schedule 9 to the Constitutional Reform Act 2005 (c. 4) and paragraph 45 of Schedule 16 to the Armed Forces Act 2006 (c. 52).

(**g**) 1968 c. 19; section 18A was inserted by section 170 of, and paragraphs 20 and 25 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33).

(**h**) 2007 c. 27.

(**i**) 2019 c. 17; section 28 is in force in relation to the metropolitan police district, for remaining purposes it has effect from a date to be appointed.

(**j**) 2020 c. 17; section 342I was inserted by section 165 of the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

(**k**) 2021 c. 17; section 46 is in force in relation to specified areas, for remaining purposes it has effect from a date to be appointed.

(**l**) S.I. 1986/1335; regulation 3C was inserted by regulation 2 of the Costs in Criminal Cases (General) (Amendment) Regulations 1991 (S.I. 1991/789) and amended by regulation 5 of the Costs in Criminal Cases (General) (Amendment) Regulations 2004 (S.I. 2004/2408). Regulation 3H was inserted by regulation 7 of the Costs in Criminal Cases (General) (Amendment) Regulations 2004 (S.I. 2004/2408).

(**m**) 1968 c. 19; section 1 was amended by section 154 of, and paragraph 71 of Schedule 7 to, the Magistrates' Courts Act 1980 (c. 43), paragraph 44 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), section 1 of the Criminal Appeal Act 1995 (c. 35) and section 47 of, and paragraphs 1 and 2 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(**n**) 1968 c. 19; section 9 was amended by section 170 of, and paragraph 21 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 119 of, and paragraph 12 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 58 of the Access to Justice Act 1999 (c. 22) and section 271 of, and paragraph 44 of Schedule 3 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44). Section 10 was amended by section 56 of, and paragraph 57 of Schedule 8 to, the Courts Act 1971 (c. 23), section 77 of, and paragraph 23 of Schedule 14 to, the Criminal Justice Act 1982 (c. 48), section 170 of, and paragraphs 20 and 22 of Schedule 15 and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 100 of, and paragraph 3 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53), sections 119 and 120 of, and paragraph 13 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 58 of the Access to Justice Act 1999 (c. 22), section 67 of, and paragraph 4 of Schedule 4 and Schedule 6 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), sections

(c) a verdict of not guilty by reason of insanity (section 12 of the 1968 Act);

(d) a finding of disability or a finding that the defendant did the act or made the omission charged as an offence (section 15 of the 1968 Act(**a**)*);*

(e) a hospital order, interim hospital order or supervision order under section 5 or 5A of the Criminal Procedure (Insanity) Act 1964(**b**) *(section 16A of the 1968 Act*(**c**)*).*

See section 50 of the 1968 Act(**d**) *for the meaning of 'sentence'.*

Under section 274(3) of the Criminal Justice Act 2003, a defendant sentenced to life imprisonment outside the United Kingdom, and transferred to serve the sentence in England and Wales, may appeal against the minimum term fixed by a High Court judge under section 321 of the Sentencing Act 2020.

Under paragraph 14 of Schedule 22 to the Criminal Justice Act 2003 a defendant sentenced to life imprisonment may appeal against the minimum term fixed on review by a High Court judge in certain cases.

Under section 42 of the Counter Terrorism Act 2008 a defendant may appeal against a decision of the Crown Court that an offence has a terrorist connection.

See section 13 of the Criminal Appeal Act 1995(**e**) *for the circumstances in which the Criminal Cases Review Commission may refer a conviction, sentence, verdict or finding to the Court of Appeal.*

Under section 14A(5A) of the Football Spectators Act 1989 a prosecutor may appeal against a failure by the Crown Court to make a football banning order.

Under section 389 of the Sentencing Act 2020 a prosecutor or defendant may appeal against a review by a Crown Court judge of a sentence that was reduced because the defendant assisted the investigator or prosecutor.

Under section 13 of the Administration of Justice Act 1960 a person in respect of whom an order or decision is made by the Crown Court in the exercise of its jurisdiction to punish for contempt of court may appeal to the Court of Appeal.

Under section 24 of the Serious Crime Act 2007 a person who is the subject of a serious crime prevention order, or the relevant applicant authority, may appeal to the Court of Appeal against a decision of the Crown Court in relation to that order. In addition, any person who was given an opportunity to make representations in the proceedings by virtue of section 9(4) of the Act may appeal to the Court of Appeal against a decision of the Crown Court to make, vary or not vary a serious crime prevention order.

304, 319 and 322 of, and paragraphs 7 and 8 of Schedule 32 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and section 6(2) of, and paragraph 4 of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(**a**) 1968 c. 19; section 15 was amended by section 7 of, and paragraph 2 of Schedule 3 to, the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), section 1 of the Criminal Appeal Act 1995 (c. 35) and section 58 of, and paragraph 4 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28) and section 47 of, and paragraphs 1 and 5 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(**b**) 1964 c. 84; section 5 was substituted, and section 5A inserted, by section 24 of the Domestic Violence, Crime and Victims Act 2004 (c. 28). Section 5A was amended by section 15 of the Mental Health Act 2007 (c. 12).

(**c**) 1968 c. 19; section 16A was inserted by section 25 of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(**d**) 1968 c. 19; section 50 was amended by section 66 of the Criminal Justice Act 1982 (c. 48), sections 100 and 101 of, and paragraph 4 of Schedule 11 and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), section 79 of, and Schedule 5 to, the Criminal Justice Act 1993 (c. 36), section 65 of, and Schedule 1 to, the Drug Trafficking Act 1994 (c. 37), section 7 of the Football (Offences and Disorder) Act 1999 (c. 21), section 24 of, and paragraph 3 of Schedule 4 to, the Access to Justice Act 1999 (c. 22), section 165 of, and paragraph 30 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 456 of, and paragraphs 1 and 4 of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 43), section 198 of, and paragraphs 38 and 42 of Schedule 6 to, the Licensing Act 2003 (c. 17), section 52 of, and paragraph 14 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38), paragraph 3 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and section 85 of, and paragraph 3 of Schedule 4 to, the Serious Crime Act 2015 (c. 9). It is further amended by section 55 of, and paragraph 6 of Schedule 4 to, the Crime (Sentences) Act 1997 (c. 43), with effect from a date to be appointed.

(**e**) 1995 c. 35; section 13 was amended by section 321 of, and paragraph 3 of Schedule 11 to, the Armed Forces Act 2006 (c. 52).

Under section 28(5)(a) of the Offensive Weapons Act 2019 an applicant to the Crown Court for the variation, renewal or discharge of a knife crime prevention order made by that court, or a respondent to such an application, may appeal to the Court of Appeal against the decision of the Crown Court.

Under section 342I(2) of the Sentencing Act 2020 an applicant to the Crown Court for the variation, renewal or discharge of a serious violence reduction order made by that court, or a respondent to such an application, may appeal to the Court of Appeal against the decision of the Crown Court.

Under section 46(5), (7) of the Domestic Abuse Act 2021 an applicant to the Crown Court for the variation or discharge of a domestic abuse prevention order made by that court, or a respondent to such an application, may appeal to the Court of Appeal against the decision of the Crown Court.

Under regulation 3C of the Costs in Criminal Cases (General) Regulations 1986, a legal representative against whom the Crown Court makes a wasted costs order under section 19A of the Prosecution of Offences Act 1985(**a**) *and regulation 3B may appeal against that order to the Court of Appeal.*

Under regulation 3H of the Costs in Criminal Cases (General) Regulations 1986, a third party against whom the Crown Court makes a costs order under section 19B of the Prosecution of Offences Act 1985(**b**) *and regulation 3F may appeal against that order to the Court of Appeal.*

The rules in Part 36 (Appeal to the Court of Appeal: general rules) also apply where this Part applies.]

Service of appeal notice

39.2.—(1) The appellant must serve an appeal notice on the Registrar—

(a) not more than 28 days after—

(i) the conviction, verdict, or finding,

(ii) the sentence,

(iii) the order (subject to paragraph (b)), or the failure to make an order, or

(iv) the minimum term review decision under section 274(3) of, or paragraph 14 of Schedule 22 to, the Criminal Justice Act 2003

about which the appellant wants to appeal;

(b) not more than 15 business days after the order in a case in which the appellant appeals against a wasted or third party costs order; and

(c) not more than 20 business days after the Registrar serves notice that the Criminal Cases Review Commission has referred a conviction to the court.

(2) Unless the appeal notice includes grounds of appeal prepared by the person who was appointed to put the case for the defence under rule 25.10 (Defendant unfit to plead), paragraphs (3), (4) and (5) of this rule apply where the appeal is about—

(a) a finding of disability under section 4 of the Criminal Procedure (Insanity) Act 1964(**c**);

(b) a finding under section 4A of the 1964 Act(**d**) that the defendant did the act or made the omission charged as an offence; or

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(**a**) 1985 c. 23; section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).
(**b**) 1985 c. 23; section 19B was inserted by section 93 of the Courts Act 2003 (c. 39).
(**c**) 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).
(**d**) See the immediately preceding footnote.

(c) a hospital order, interim hospital order or supervision order made under section 5 or 5A of the 1964 Act(**a**).

(3) The Registrar must refer the appeal notice to a judge of the Court of Appeal for the judge to give or refuse to give procedural directions under section 31B of the Criminal Appeal Act 1968(**b**).

(4) The judge may—

(a) give such procedural directions as the case requires where the appeal notice includes grounds of appeal that the judge considers reasonably arguable; or

(b) refuse to give such directions, in any other case.

(5) Such procedural directions may include—

(a) a direction for the appointment of a person to put the case for the appellant on appeal;

(b) a direction to commission medical evidence; and

(c) a direction for the reference of the case to the judge again to give, or to refuse to give, further directions.

[Note. The time limit for serving an appeal notice (a) on an appeal under Part 1 of the Criminal Appeal Act 1968 and (b) on an appeal against a finding of contempt of court is prescribed by sections 18 and 18A of the Criminal Appeal Act 1968. It may be extended, but not shortened.

For service of a reference by the Criminal Cases Review Commission, see rule 39.5.

Under section 31C of the 1968 Act(**c**) *a party has no right to renew to the Court of Appeal an application for procedural directions refused by a judge.]*

Form of appeal notice

39.3.—(1) An appeal notice must be in the form issued under the Practice Direction and must—

(a) specify—

(i) the conviction, verdict, or finding,

(ii) the sentence, or

(iii) the order, or the failure to make an order

about which the appellant wants to appeal;

(b) identify each ground of appeal on which the appellant relies (and see paragraph (2));

(c) identify the transcript that the appellant thinks the court will need, if the appellant wants to appeal against a conviction;

(d) identify the relevant sentencing powers of the Crown Court, if sentence is in issue;

(e) include or attach any application for the following, with reasons—

(i) permission to appeal, if the appellant needs the court's permission,

(ii) an extension of time within which to serve the appeal notice,

(iii) bail pending appeal,

(iv) a direction to attend in person a hearing that the appellant could attend by live link, if the appellant is in custody,

(v) the introduction of evidence, including hearsay evidence and evidence of bad character,

(vi) an order requiring a witness to attend court,

(**a**) 1964 c. 84; section 5 was substituted, and section 5A inserted, by section 24 of the Domestic Violence, Crime and Victims Act 2004 (c. 28). Section 5A was amended by section 15 of the Mental Health Act 2007 (c. 12).

(**b**) 1968 c. 19; section 31B was inserted by section 87 of the Courts Act 2003 (c. 39).

(**c**) 1968 c. 19; section 31C was inserted by section 87 of the Courts Act 2003 (c. 39) and amended by sections 47 and 149 of, and paragraphs 1 and 12 of Schedule 8 and Part 3 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(vii) a direction for special measures for a witness,

(viii) a direction for special measures for the giving of evidence by the appellant, or

(ix) the suspension of any disqualification imposed, or order made, in the case, where the Court of Appeal can order such a suspension pending appeal;

(f) identify any other document or thing that the appellant thinks the court will need to decide the appeal and include or attach an electronic link to each such document that has been made available to the Registrar under rule 36.8(1)(a) (Duty of Crown Court officer); and

(g) unless an authority identified by the grounds of appeal (see paragraph (2)(f)) is published by the Registrar as one frequently cited, include or attach—

(i) an electronic copy of each authority so identified, or

(ii) if two or more such authorities not so published are identified, electronic copies of each together in a single electronic document.

(2) The grounds of appeal must—

(a) include in no more than the first two pages a summary of the grounds that makes what then follows easy to understand;

(b) in each ground of appeal identify the event or decision to which that ground relates;

(c) in each ground of appeal summarise the facts relevant to that ground, but only to the extent necessary to make clear what is in issue;

(d) concisely outline each argument in support of each ground;

(e) number each ground consecutively, if there is more than one;

(f) identify any relevant authority and—

(i) state the proposition of law that the authority demonstrates, and

(ii) identify the parts of the authority that support that proposition; and

(g) where the Criminal Cases Review Commission refers a case to the court, explain how each ground of appeal relates (if it does) to the reasons for the reference.

[Note. In some legislation, including the Criminal Appeal Act 1968, permission to appeal is described as 'leave to appeal'.

An appellant needs the court's permission to appeal in every case to which this Part applies, except where—

(a) the Criminal Cases Review Commission refers the case;

(b) the appellant appeals against—

(i) an order or decision made in the exercise of jurisdiction to punish for contempt of court, or

(ii) a wasted or third party costs order; or

(c) the Crown Court judge certifies under sections 1(2)(a), 11(1A), 12(b), 15(2)(b) or 16A(2)(b) of the Criminal Appeal Act 1968(**a**)*, under section 81(1B) of the Senior Courts Act 1981*(**b**)*, under section 14A(5B) of the Football Spectators Act 1989*(**c**)*, or under section 24(4) of the Serious Crime Act 2007, that a case is fit for appeal.*

(**a**) 1968 c. 19; section 11(1A) was inserted by section 29 of the Criminal Justice Act 1982 (c. 48) and amended by section 47 of, and paragraphs 1 and 3 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(**b**) 1981 c. 54; section 81(1B) was inserted by sections 29 and 60 of the Criminal Justice Act 1982 (c. 48). The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**c**) 1989 c. 37; section 14A(5B) was inserted by section 52 of, and paragraphs 1 and 3 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38).

A judge of the Court of Appeal may give permission to appeal under section 31 of the Criminal Appeal Act 1968(**a**)*.*

See also rules 39.7 (Introducing evidence) and 39.8 (Application for bail, or to suspend a disqualification or order, pending appeal or retrial).]

Crown Court judge's certificate that case is fit for appeal

39.4.—(1) An appellant who wants the Crown Court judge to certify that a case is fit for appeal must either—

(a) apply orally, with reasons, immediately after there occurs—

(i) the conviction, verdict, or finding,

(ii) the sentence, or

(iii) the order, or the failure to make an order

about which the appellant wants to appeal; or

(b) apply in writing and serve the application on the Crown Court officer not more than 10 business days after that occurred.

(2) A written application must include the same information (with the necessary adaptations) as an appeal notice.

[Note. The Crown Court judge may certify that a case is fit for appeal under sections 1(2)(b), 11(1A), 12(b), 15(2)(b) or 16A(2)(b) of the Criminal Appeal Act 1968, under section 81(1B) of the Senior Courts Act 1981, under section 14A(5B) of the Football Spectators Act 1989 or under section 24(4) of the Serious Crime Act 2007.

See also rule 39.2 (service of appeal notice required in all cases).]

Reference by Criminal Cases Review Commission

39.5.—(1) The Registrar must serve on the appellant a reference by the Criminal Cases Review Commission.

(2) The court must treat that reference as the appeal notice if the appellant does not serve such a notice under rule 39.2.

Respondent's notice

39.6.—(1) The Registrar—

(a) may serve an appeal notice on any party directly affected by the appeal; and

(b) must do so if the Criminal Cases Review Commission refers a conviction, verdict, finding or sentence to the court.

(2) Such a party may serve a respondent's notice, and must do so if—

(a) that party wants to make representations to the court; or

(b) the court or the Registrar so directs.

(3) Such a party must serve the respondent's notice on—

(**a**) 1968 c. 19; section 31 was amended by section 21 of, and Schedule 2 to, the Costs in Criminal Cases Act 1973 (c. 14), section 24 of, and paragraph 10 of Schedule 6 to, the Road Traffic Act 1974 (c. 50), section 29 of the Criminal Justice Act 1982 (c. 48), section 170 of, and paragraphs 20, 29 and 30 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 4 of, and paragraph 4 of Schedule 3 to, the Road Traffic (Consequential Provisions) Act 1988 (c. 54), section 198 of, and paragraphs 38 and 40 of Schedule 6 to, the Licensing Act 2003 (c. 17), section 87 of the Courts Act 2003 (c. 39), paragraphs 86, 87 and 88 of Schedule 36 to the Criminal Justice Act 2003 (c. 44), section 48 of the Police and Justice Act 2006 (c. 48), section 47 of, and paragraphs 1, 9 and 11 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4) and section 177 of, and paragraph 69 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25). It is further amended by section 67 of, and paragraph 4 of Schedule 4 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), with effect from a date to be appointed.

(a) the appellant;

(b) the Registrar; and

(c) any other party on whom the Registrar served the appeal notice.

(4) Such a party must serve the respondent's notice—

(a) not more than 10 business days after the Registrar serves—

(i) the appeal notice, or

(ii) a direction to do so; or

(b) not more than 20 business days after the Registrar serves notice that the Commission has referred a conviction.

(5) The respondent's notice must be in the form issued under the Practice Direction.

(6) The respondent's notice must—

(a) give the date on which the respondent was served with the appeal notice;

(b) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates;

(c) identify the relevant sentencing powers of the Crown Court, if sentence is in issue;

(d) summarise any relevant facts not already summarised in the appeal notice;

(e) identify any relevant authorities;

(f) include or attach any application for the following, with reasons—

(i) an extension of time within which to serve the respondent's notice,

(ii) bail pending appeal,

(iii) a direction to attend in person a hearing that the respondent could attend by live link, if the respondent is in custody,

(iv) the introduction of evidence, including hearsay evidence and evidence of bad character,

(v) an order requiring a witness to attend court, or

(vi) a direction for special measures for a witness;

(g) identify any other document or thing that the respondent thinks the court will need to decide the appeal and include or attach an electronic link to each such document that has been made available to the Registrar under rule 36.8(1)(a) (Duty of Crown Court officer); and

(h) unless an authority identified under paragraph (6)(e) is published by the Registrar as one frequently cited, include or attach—

(i) an electronic copy of each authority so identified, or

(ii) if two or more such authorities not so published are identified, electronic copies of each together in a single electronic document.

[Note. The Practice Direction sets out the circumstances in which the Registrar usually will serve a defendant's appeal notice on the prosecutor.

See also rule 39.7 (Introducing evidence).]

Introducing evidence

39.7.—(1) The following Parts apply with such adaptations as the court or the Registrar may direct—

(a) Part 16 (Written witness statements);

(b) Part 18 (Measures to assist a witness or defendant to give evidence);

(c) Part 19 (Expert evidence);

(d) Part 20 (Hearsay evidence);

(e) Part 21 (Evidence of bad character); and

(f) Part 22 (Evidence of a complainant's previous sexual behaviour).

(2) But the general rule is that—

(a) a respondent who opposes an appellant's application or notice to which one of those Parts applies must do so in the respondent's notice, with reasons;

(b) an appellant who opposes a respondent's application or notice to which one of those Parts applies must serve notice, with reasons, on—

(i) the Registrar, and

(ii) the respondent

not more than 10 business days after service of the respondent's notice; and

(c) the court or the Registrar may give directions with or without a hearing.

(3) A party who wants the court to order the production of a document, exhibit or other thing connected with the proceedings must—

(a) identify that item; and

(b) explain—

(i) how it is connected with the proceedings,

(ii) why its production is necessary for the determination of the case, and

(iii) to whom it should be produced (the court, appellant or respondent, or any two or more of them).

(4) A party who wants the court to order a witness to attend to be questioned must—

(a) identify the proposed witness;

(b) explain—

(i) what evidence the proposed witness can give,

(ii) why that evidence is capable of belief,

(iii) if applicable, why that evidence may provide a ground for allowing the appeal,

(iv) on what basis that evidence would have been admissible in the case which is the subject of the application for permission to appeal or appeal, and

(v) why that evidence was not introduced in that case; and

(c) where the court can exercise a power to which Part 18 (Measures to assist a witness or defendant to give evidence) applies, provide any information that the court may need to assess—

(i) the measure or measures likely to maximise so far as practicable the quality of the witness' evidence, and

(ii) the witness' own views.

(5) Where the court orders a witness to attend to be questioned, the witness must attend the hearing of the application for permission to appeal or of the appeal, as applicable, unless the court otherwise directs.

(6) Where the court orders a witness to attend to be questioned before an examiner on the court's behalf, the court must identify the examiner and may give directions about—

(a) the time and place, or times and places, at which that questioning must be carried out;

(b) the manner in which that questioning must be carried out, in particular as to—

(i) the service of any report, statement or questionnaire in preparation for the questioning,

(ii) the sequence in which the parties may ask questions, and

(iii) if more than one witness is to be questioned, the sequence in which those witnesses may be questioned; and

(c) the manner in which, and when, a record of the questioning must be submitted to the court.

(7) Where the court orders the questioning of a witness before an examiner, the court may delegate to that examiner the giving of directions under paragraph (6)(a), (b) and (c).

[Note. An application to introduce evidence or for directions about evidence must be included in, or attached to, an appeal notice or a respondent's notice: see rules 39.3(1)(e)(v), (vi) and 39.6(6)(f)(iv), (v).

Under section 23 of the Criminal Appeal Act 1968(**a**)*, the Court of Appeal may order the production of a document, exhibit or other thing, may order a witness to attend to be examined before the court and may allow the introduction of evidence that was not introduced at trial. Under section 23(4), if it thinks it necessary or expedient in the interests of justice the court may order the examination of a witness to be conducted before any judge, court officer or other person, and allow the admission of a record of that examination as evidence before the court.]*

Application for bail, or to suspend a disqualification or order, pending appeal or retrial

39.8.—(1) This rule applies where—

(a) a party wants to make an application to the court about bail pending appeal or retrial; or

(b) an appellant wants to apply to the court to suspend a disqualification or order pending appeal.

(2) That party must serve an application in the form issued under the Practice Direction on—

(a) the Registrar, unless the application is with the appeal notice; and

(b) the other party.

(3) The court must not decide such an application without giving the other party an opportunity to make representations, including, in the case of a bail application, representations about any condition or surety proposed by the applicant.

[Note. See section 19 of the Criminal Appeal Act 1968(**b**)*, section 3(8) of the Bail Act 1976*(**c**) *and regulations 77 to 84 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014*(**d**)*. An application about bail or about the conditions of bail may be made either by an appellant or respondent.*

Under section 81(1) of the Senior Courts Act 1981(**e**)*, a Crown Court judge may grant bail pending appeal only (a) if that judge gives a certificate that the case is fit for appeal (see rule 39.4) and (b) not more than 28 days after the conviction or sentence against which the appellant wants to appeal.*

(**a**) 1968 c. 19; section 23 was amended by sections 4 and 29 of, and paragraph 4 of Schedule 2 to, the Criminal Appeal Act 1995 (c. 35), section 48 of the Police and Justice Act 2006 (c. 48) and section 47 of, and paragraphs 1 and 10 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(**b**) 1968 c. 19; section 19 was substituted by section 29 of the Criminal Justice Act 1982 (c. 48) and was amended by section 170 of, and paragraphs 20 and 26 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 168 of, and paragraph 22 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33) and section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**c**) 1976 c. 63; section 3(8) was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45) and paragraph 48 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**d**) S.I. 2014/3141.

(**e**) 1981 c. 54; section 81(1) was amended by sections 29 and 60 of the Criminal Justice Act 1982 (c. 48), section 15 of, and paragraph 2 of Schedule 12 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 19 of Schedule 9 and paragraph 48 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 48 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 165 of, and paragraph 87 of Schedule 9 and Schedule 12 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraph 54 of Schedule 3, paragraph 4 of Schedule 36 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), articles 2 and 6 of S.I. 2004/1033 and section 177(1) of, and paragraph 76 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25).

Under section 39 of the Road Traffic Offenders Act 1988(**a**)*, a court which has made an order disqualifying a person from driving may suspend the disqualification pending appeal. Under section 40 of the 1988 Act*(**b**)*, the appeal court may do so. See also rule 29.2.*

Under section 129 of the Licensing Act 2003(**c**)*, a court which has made an order to forfeit or suspend a personal licence issued under that Act may suspend the order pending appeal. Under section 130 of the 2003 Act*(**d**)*, the appeal court may do so.]*

Conditions of bail pending appeal or retrial

39.9.—(1) This rule applies where the court grants a party bail pending appeal or retrial subject to any condition that must be met before that party is released.

(2) The court may direct how such a condition must be met.

(3) The Registrar must serve a certificate in the form issued under the Practice Direction recording any such condition and direction on—

(a) that party;

(b) that party's custodian; and

(c) any other person directly affected by any such direction.

(4) A person directly affected by any such direction need not comply with it until the Registrar serves that person with that certificate.

(5) Unless the court otherwise directs, if any such condition or direction requires someone to enter into a recognizance it must be—

(a) in the form issued under the Practice Direction and signed before—

(i) the Registrar,

(ii) the custodian, or

(iii) someone acting with the authority of the Registrar or custodian;

(b) copied immediately to the person who enters into it; and

(c) served immediately by the Registrar on the appellant's custodian or vice versa, as appropriate.

(6) Unless the court otherwise directs, if any such condition or direction requires someone to make a payment, surrender a document or take some other step—

(a) that payment, document or step must be made, surrendered or taken to or before—

(i) the Registrar,

(ii) the custodian, or

(iii) someone acting with the authority of the Registrar or custodian; and

(b) the Registrar or the custodian, as appropriate, must serve immediately on the other a statement that the payment, document or step has been made, surrendered or taken, as appropriate.

(7) The custodian must release the appellant where it appears that any condition ordered by the court has been met.

(8) For the purposes of section 5 of the Bail Act 1976(**e**) (record of decision about bail), the Registrar must keep a copy of—

(**a**) 1988 c. 53.

(**b**) 1988 c. 53; section 40 was amended by sections 40 and 59 of, and paragraph 50 of Schedule 9 and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**c**) 2003 c. 17.

(**d**) 2003 c. 17; section 130 was amended by sections 40 and 59 of, and paragraph 78 of Schedule 9 and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**e**) 1976 c. 63; section 5 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 60 of the Criminal Justice Act 1982 (c. 48), paragraph 1 of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 53 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 129(1) of the Criminal

(a) any certificate served under paragraph (3);

(b) a notice of hearing given under rule 36.7(1); and

(c) a notice of the court's decision served under rule 36.7(2).

(9) Where the court grants bail pending retrial the Registrar must serve on the Crown Court officer copies of the documents kept under paragraph (8).

Forfeiture of a recognizance given as a condition of bail

39.10.—(1) This rule applies where—

(a) the court grants a party bail pending appeal or retrial; and

(b) the bail is subject to a condition that that party provides a surety to guarantee that he will surrender to custody as required; but

(c) that party does not surrender to custody as required.

(2) The Registrar must serve notice on—

(a) the surety; and

(b) the prosecutor,

of the hearing at which the court may order the forfeiture of the recognizance given by that surety.

(3) The court must not forfeit a surety's recognizance—

(a) less than 5 business days after the Registrar serves notice under paragraph (2); and

(b) without giving the surety an opportunity to make representations at a hearing.

[Note. If the purpose for which a recognizance is entered is not fulfilled, that recognizance may be forfeited by the court. If the court forfeits a surety's recognizance, the sum promised by that person is then payable to the Crown.]

Right to attend hearing

39.11. A party who is in custody has a right to attend a hearing in public unless—

(a) it is a hearing preliminary or incidental to an appeal, including the hearing of an application for permission to appeal;

(b) it is the hearing of an appeal and the court directs that—

(i) the appeal involves a question of law alone, and

(ii) for that reason the appellant has no permission to attend; or

(c) that party is in custody in consequence of—

(i) a verdict of not guilty by reason of insanity, or

(ii) a finding of disability.

[Note. See rule 36.6 (Hearings) and section 22 of the Criminal Appeal Act 1968(**a**)*. There are corresponding provisions in the Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005*(**b**)*, the Serious Organised Crime and Police Act 2005 (Appeals under section 74) Order 2006*(**c**)* and the Serious Crime Act 2007 (Appeals under Section 24) Order 2008*(**d**)*. Under section 22 of the 1968 Act and corresponding provisions in those Orders, the court may direct that an appellant who is in custody is to attend a hearing by live link.]*

Justice and Police Act 2001 (c. 16), paragraph 182 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36, and Parts 2, 4 and 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27).

(**a**) 1968 c. 19; section 22 was amended by section 48 of the Police and Justice Act 2006 (c. 48).

(**b**) S.I. 2005/2798.

(**c**) S.I. 2006/2135.

(**d**) S.I. 2008/1863.

Power to vary determination of appeal against sentence

39.12.—(1) This rule applies where the court decides an appeal affecting sentence in a party's absence.

(2) The court may vary such a decision if it did not take account of something relevant because that party was absent.

(3) A party who wants the court to vary such a decision must—

(a) apply in writing, with reasons; and

(b) serve the application on the Registrar not more than 5 business days after—

(i) the decision, if that party was represented at the appeal hearing, or

(ii) the Registrar serves the decision, if that party was not represented at that hearing.

[Note. Section 22(3) of the Criminal Appeal Act 1968 allows the court to sentence in an appellant's absence. There are corresponding provisions in the Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005 and in the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006.]

Directions about re-admission to hospital on dismissal of appeal

39.13.—(1) This rule applies where—

(a) an appellant subject to—

(i) an order under section 37(1) of the Mental Health Act 1983(**a**) (detention in hospital on conviction), or

(ii) an order under section 5(2) of the Criminal Procedure (Insanity) Act 1964(**b**) (detention in hospital on finding of insanity or disability)

has been released on bail pending appeal; and

(b) the court—

(i) refuses permission to appeal,

(ii) dismisses the appeal, or

(iii) affirms the order under appeal.

(2) The court must give appropriate directions for the appellant's—

(a) re-admission to hospital; and

(b) if necessary, temporary detention pending re-admission.

Renewal or setting aside of order for retrial

39.14.—(1) This rule applies where—

(a) a prosecutor wants a defendant to be arraigned more than 2 months after the court ordered a retrial under section 7 of the Criminal Appeal Act 1968(**c**); or

(b) a defendant wants such an order set aside after 2 months have passed since it was made.

(2) That party must apply in writing, with reasons, and serve the application on—

(a) the Registrar; and

(b) the other party.

(**a**) 1983 c. 20; section 37(1) was amended by section 55 of, and paragraph 12 of Schedule 4 to, the Crime (Sentences) Act 1997 (c. 43) and section 304 of, and paragraphs 37 and 38 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44).

(**b**) 1964 c. 84.

(**c**) 1968 c. 19; section 7 was amended by sections 43 and 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33) and section 331 of, and paragraph 44 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

[Note. Section 8(1) and (1A) of the Criminal Appeal Act 1968(**a**) *set out the criteria for making an order on an application to which this rule applies.]*

PART 40

APPEAL TO THE COURT OF APPEAL ABOUT REPORTING OR PUBLIC ACCESS RESTRICTION

Contents of this Part

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Respondent's notice on appeal against reporting restriction	rule 40.6
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When this Part applies

40.1.—(1) This Part applies where a person directly affected by an order to which section 159(1) of the Criminal Justice Act 1988(**b**) applies wants to appeal against that order.

(2) A reference to an 'appellant' in this Part is a reference to such a party.

[Note. Section 159(1) of the Criminal Justice Act 1988 gives a 'person aggrieved' (in this Part described as a person directly affected) a right of appeal to the Court of Appeal against a Crown Court judge's order—

(a) under section 4 or 11 of the Contempt of Court Act 1981(**c**)*;*

(b) under section 58(7) of the Criminal Procedure and Investigations Act 1996(**d**)*;*

(c) restricting public access to any part of a trial for reasons of national security or for the protection of a witness or other person; or

(d) restricting the reporting of any part of a trial.

See also Part 6 (Reporting, etc. restrictions) and Part 18 (Measures to assist a witness or defendant to give evidence).

The rules in Part 36 (Appeal to the Court of Appeal: general rules) also apply where this Part applies.]

Service of appeal notice

40.2.—(1) An appellant must serve an appeal notice on—

(a) the Crown Court officer;

(**a**) 1968 c.19; section 8(1) was amended by section 56 of, and Part IV of Schedule 11 to, the Courts Act 1971 (c. 23) and section 43 of the Criminal Justice Act 1988 (c. 33). Section 8(1A) was inserted by section 43(4) of the Criminal Justice Act 1988 (c. 33).

(**b**) 1988 c. 33; section 159(1) was amended by section 61 of the Criminal Procedure and Investigations Act 1996 (c. 25).

(**c**) 1981 c. 49; section 4 was amended by section 57 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 16 of, and Schedule 2 to, the Defamation Act 1996 (c. 31), paragraph 53 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and the Statute Law (Repeals) Act 2004 (c. 14).

(**d**) 1996 c. 25.

(b) the Registrar;

(c) the parties; and

(d) any other person directly affected by the order against which the appellant wants to appeal.

(2) The appellant must serve the appeal notice not later than—

(a) the next business day after an order restricting public access to the trial; or

(b) 10 business days after an order restricting reporting of the trial.

Form of appeal notice

40.3.—(1) An appeal notice must be in the form issued under the Practice Direction.

(2) The appeal notice must—

(a) specify the order against which the appellant wants to appeal;

(b) identify each ground of appeal on which the appellant relies, numbering them consecutively (if there is more than one) and concisely outlining each argument in support;

(c) summarise the relevant facts;

(d) identify any relevant authorities;

(e) include or attach, with reasons—

(i) an application for permission to appeal,

(ii) any application for an extension of time within which to serve the appeal notice,

(iii) any application for a direction to attend in person a hearing that the appellant could attend by live link, if the appellant is in custody,

(iv) any application for permission to introduce evidence, and

(v) a list of those on whom the appellant has served the appeal notice;

(f) attach any document or thing that the appellant thinks the court will need to decide the appeal and include or attach an electronic link to each such document that has been made available to the Registrar under rule 36.8(1)(a) (Duty of Crown Court officer); and

(g) unless an authority cited by the grounds of appeal (see paragraph (2)(d)) is published by the Registrar as one frequently cited, include or attach—

(i) an electronic copy of each authority so identified, or

(ii) if two or more such authorities not so published are identified, electronic copies of each together in a single electronic document.

[Note. An appellant needs the court's permission to appeal in every case to which this Part applies.

A Court of Appeal judge may give permission to appeal under section 31(2B) of the Criminal Appeal Act 1968(**a**)*.]*

Advance notice of appeal against order restricting public access

40.4.—(1) This rule applies where the appellant wants to appeal against an order restricting public access to a trial.

(2) The appellant may serve advance written notice of intention to appeal against any such order that may be made.

(3) The appellant must serve any such advance notice—

(**a**) 1968 c. 19; section 31(2B) was inserted by section 170 of, and paragraphs 20 and 30 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33).

(a) on—

(i) the Crown Court officer,

(ii) the Registrar,

(iii) the parties, and

(iv) any other person who will be directly affected by the order against which the appellant intends to appeal, if it is made; and

(b) not more than 5 business days after the Crown Court officer displays notice of the application for the order.

(4) The advance notice must include the same information (with the necessary adaptations) as an appeal notice.

(5) The court must treat that advance notice as the appeal notice if the order is made.

Duty of applicant for order restricting public access

40.5.—(1) This rule applies where the appellant wants to appeal against an order restricting public access to a trial.

(2) The party who applied for the order must serve on the Registrar—

(a) a transcript or note of the application for the order; and

(b) any other document or thing that that party thinks the court will need to decide the appeal.

(3) That party must serve that transcript or note and any such other document or thing as soon as practicable after—

(a) the appellant serves the appeal notice; or

(b) the order, where the appellant served advance notice of intention to appeal.

Respondent's notice on appeal against reporting restriction

40.6.—(1) This rule applies where the appellant wants to appeal against an order restricting the reporting of a trial.

(2) A person on whom an appellant serves an appeal notice may serve a respondent's notice, and must do so if—

(a) that person wants to make representations to the court; or

(b) the court so directs.

(3) Such a person must serve the respondent's notice on—

(a) the appellant;

(b) the Crown Court officer;

(c) the Registrar;

(d) the parties; and

(e) any other person on whom the appellant served the appeal notice.

(4) Such a person must serve the respondent's notice not more than 3 business days after—

(a) the appellant serves the appeal notice; or

(b) a direction to do so.

(5) The respondent's notice must be in the form issued under the Practice Direction.

(6) The respondent's notice must—

(a) give the date on which the respondent was served with the appeal notice;

(b) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates;

(c) summarise any relevant facts not already summarised in the appeal notice;

(d) identify any relevant authorities;

(e) include or attach any application for the following, with reasons—

(i) an extension of time within which to serve the respondent's notice,

(ii) a direction to attend in person any hearing that the respondent could attend by live link, if the respondent is in custody,

(iii) permission to introduce evidence;

(f) identify any other document or thing that the respondent thinks the court will need to decide the appeal and include or attach an electronic link to each such document that has been made available to the Registrar under rule 36.8(1)(a) (Duty of Crown Court officer); and

(g) unless an authority cited under paragraph (6)(d) is published by the Registrar as one frequently cited, include or attach—

(i) an electronic copy of each authority so identified, or

(ii) if two or more such authorities not so published are identified, electronic copies of each together in a single electronic document.

Renewing applications

40.7. Rule 36.5 (Renewing an application refused by a judge or the Registrar) applies with a time limit of 5 business days.

Right to introduce evidence

40.8. No person may introduce evidence without the court's permission.

[Note. Section 159(4) of the Criminal Justice Act 1988 entitles the parties to give evidence, subject to procedure rules.]

Right to attend hearing

40.9.—(1) A party who is in custody has a right to attend a hearing in public of an appeal against an order restricting the reporting of a trial.

(2) The court or the Registrar may direct that such a party is to attend a hearing by live link.

[Note. See rule 36.6 (Hearings). The court may decide an application and an appeal without a hearing where the appellant wants to appeal against an order restricting public access to a trial: rule 36.6(3).]

PART 41

REFERENCE TO THE COURT OF APPEAL OF POINT OF LAW OR UNDULY LENIENT SENTENCING

Contents of this Part

When this Part applies	rule 41.1
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Form of notice of reference and application for permission	rule 41.3
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Variation or withdrawal of notice of reference or application for permission	rule 41.5
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When this Part applies

41.1. This Part applies where the Attorney General wants to—

(a) refer a point of law to the Court of Appeal under section 36 of the Criminal Justice Act 1972(**a**); or

(b) refer a sentencing case to the Court of Appeal under section 36 of the Criminal Justice Act 1988(**b**).

[Note. Under section 36 of the Criminal Justice Act 1972, where a defendant is acquitted in the Crown Court the Attorney General may refer to the Court of Appeal a point of law in the case.

Under section 36 of the Criminal Justice Act 1988, if the Attorney General thinks the sentencing of a defendant in the Crown Court is unduly lenient he may refer the case to the Court of Appeal: but only if the sentence is one to which Part IV of the 1988 Act applies, and only if the Court of Appeal gives permission. See also section 35 of the 1988 Act(**c**) *and the Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006*(**d**)*.*

The rules in Part 36 (Appeal to the Court of Appeal: general rules) also apply where this Part applies.]

Service of notice of reference and application for permission

41.2.—(1) The Attorney General must serve any notice of reference and any application for permission to refer a sentencing case on—

(a) the Registrar; and

(b) the defendant.

(2) Where the Attorney General refers a point of law—

(a) the Attorney must give the Registrar details of—

(i) the defendant affected,

(ii) the date and place of the relevant Crown Court decision, and

(iii) the relevant verdict and sentencing; and

(b) the Attorney must give the defendant notice that—

(i) the outcome of the reference will not make any difference to the outcome of the trial, and

(ii) the defendant may serve a respondent's notice.

(3) Where the Attorney General applies for permission to refer a sentencing case, the Attorney must give the defendant notice that—

(a) the outcome of the reference may make a difference to that sentencing, and in particular may result in a more severe sentence; and

(b) the defendant may serve a respondent's notice.

(4) The Attorney General must serve an application for permission to refer a sentencing case on the Registrar not more than 28 days after the last of the sentences in that case.

(**a**) 1972 c. 71; section 36 was amended by section 31 of, and paragraph 8 of Schedule 1 to, the Prosecution of Offences Act 1985 (c. 23) and section 40 of, and paragraph 23 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(**b**) 1988 c. 33; section 36 was amended by sections 272, 304, 331 and 336 of, and paragraph 46 of Schedule 32 and paragraph 96 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), sections 40 and 148 of, and paragraph 48 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), section 46 of the Criminal Justice and Immigration Act 2008 (c. 4) and section 416 of, and paragraph 89 of Schedule 24 to, the Sentencing Act 2020 (c. 17).

(**c**) 1988 c. 33; section 35(3) was amended by section 168 of, and paragraph 34 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33).

(**d**) S.I. 2006/1116.

[Note. The time limit for serving an application for permission to refer a sentencing case is prescribed by paragraph 1 of Schedule 3 to the Criminal Justice Act 1988(**a**)*. It may be neither extended nor shortened.]*

Form of notice of reference and application for permission

41.3.—(1) A notice of reference and an application for permission to refer a sentencing case must give the year and number of that reference or that case.

(2) A notice of reference of a point of law must—

(a) specify the point of law in issue and indicate the opinion that the Attorney General invites the court to give;

(b) identify each ground for that invitation, numbering them consecutively (if there is more than one) and concisely outlining each argument in support;

(c) exclude any reference to the defendant's name and any other reference that may identify the defendant;

(d) summarise the relevant facts; and

(e) identify any relevant authorities.

(3) An application for permission to refer a sentencing case must—

(a) give details of—

(i) the defendant affected,

(ii) the date and place of the relevant Crown Court decision, and

(iii) the relevant verdict and sentencing;

(b) explain why that sentencing appears to the Attorney General unduly lenient, concisely outlining each argument in support; and

(c) include the application for permission to refer the case to the court.

(4) A notice of reference of a sentencing case must—

(a) include the same details and explanation as the application for permission to refer the case;

(b) summarise the relevant facts; and

(c) identify any relevant authorities.

(5) Where the court gives the Attorney General permission to refer a sentencing case, it may treat the application for permission as the notice of reference.

(6) A notice of reference must include or attach—

(a) an electronic link to each material document that has been made available to the Registrar under rule 36.8(1)(a) (Duty of Crown Court officer); and

(b) unless an authority identified under paragraph (2)(e) or 4(c) is published by the Registrar as one frequently cited—

(i) an electronic copy of each authority so identified, or

(ii) if two or more such authorities not so published are identified then electronic copies of each together in a single electronic document.

Respondent's notice

41.4.—(1) A defendant on whom the Attorney General serves a notice of reference or an application for permission to refer a sentencing case may serve a respondent's notice, and must do so if—

(**a**) 1988 c. 33.

(a) the defendant wants to make representations to the court; or

(b) the court so directs.

(2) Such a defendant must serve the respondent's notice on—

(a) the Attorney General; and

(b) the Registrar.

(3) Such a defendant must serve the respondent's notice—

(a) where the Attorney General refers a point of law, not more than 20 business days after—

(i) the Attorney serves the reference, or

(ii) a direction to do so; or

(b) where the Attorney General applies for permission to refer a sentencing case, not more than 10 business days after—

(i) the Attorney serves the application, or

(ii) a direction to do so.

(4) Where the Attorney General refers a point of law, the respondent's notice must—

(a) give the date on which the respondent was served with the notice of reference;

(b) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the Attorney General's ground or reason to which each relates;

(c) summarise any relevant facts not already summarised in the reference;

(d) identify any relevant authorities; and

(e) include or attach any application for the following, with reasons—

(i) an extension of time within which to serve the respondent's notice,

(ii) permission to attend a hearing that the respondent does not have a right to attend, or

(iii) a direction to attend in person a hearing that the respondent could attend by live link, if the respondent is in custody.

(5) Where the Attorney General applies for permission to refer a sentencing case, the respondent's notice must—

(a) give the date on which the respondent was served with the application;

(b) say if the respondent wants to make representations at the hearing of the application or reference; and

(c) include or attach any application for the following, with reasons—

(i) an extension of time within which to serve the respondent's notice,

(ii) permission to attend a hearing that the respondent does not have a right to attend, or

(iii) a direction to attend in person a hearing that the respondent could attend by live link, if the respondent is in custody.

(6) A respondent's notice must include or attach—

(a) an electronic link to each material document that has been made available to the Registrar under rule 36.8(1)(a) (Duty of Crown Court officer); and

(b) unless an authority identified under paragraph 4(d) is published by the Registrar as one frequently cited—

(i) an electronic copy of each authority so identified, or

(ii) if two or more such authorities not so published are identified then electronic copies of each together in a single electronic document.

Variation or withdrawal of notice of reference or application for permission

41.5.—(1) This rule applies where the Attorney General wants to vary or withdraw—

(a) a notice of reference; or

(b) an application for permission to refer a sentencing case.

(2) The Attorney General—

(a) may vary or withdraw the notice or application without the court's permission by serving notice on—

(i) the Registrar, and

(ii) the defendant

before any hearing of the reference or application; but

(b) at any such hearing, may only vary or withdraw that notice or application with the court's permission.

Right to attend hearing

41.6.—(1) A respondent who is in custody has a right to attend a hearing in public unless it is a hearing preliminary or incidental to a reference, including the hearing of an application for permission to refer a sentencing case.

(2) The court or the Registrar may direct that such a respondent is to attend a hearing by live link.

[Note. See rule 36.6 (Hearings) and paragraphs 6 and 7 of Schedule 3 to the Criminal Justice Act 1988. Under paragraph 8 of that Schedule, the Court of Appeal may sentence in the absence of a defendant whose sentencing is referred.]

Anonymity of defendant on reference of point of law

41.7. Where the Attorney General refers a point of law, the court must not allow anyone to identify the defendant during the proceedings unless the defendant gives permission.

PART 42

APPEAL TO THE COURT OF APPEAL IN CONFISCATION AND RELATED PROCEEDINGS

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GENERAL RULES

Extension of time

42.1.—(1) An application to extend the time limit for giving notice of application for permission to appeal under Part 2 of the Proceeds of Crime Act 2002(**a**) must—

(a) be included in the notice of appeal; and

(b) state the grounds for the application.

(2) The parties may not agree to extend any date or time limit set by this Part or by the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003(**b**).

Other applications

42.2. Rule 39.3 (Form of appeal notice) applies in relation to an application—

(a) by a party to an appeal under Part 2 of the Proceeds of Crime Act 2002 that, under article 7 of The Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003, a witness be ordered to attend or that the evidence of a witness be received by the Court of Appeal; or

(b) by the defendant to be given permission by the court to be present at proceedings for which permission is required under article 6 of the 2003 Order,

as it applies in relation to applications under Part I of the Criminal Appeal Act 1968(**c**) and the form in which rule 39.3 requires notice to be given may be modified as necessary.

Examination of witness by court

42.3. Rule 36.7 (Notice of hearings and decisions) applies in relation to an order of the court under article 7 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 to require a person to attend for examination as it applies in relation to such an order of the court under Part I of the Criminal Appeal Act 1968.

Supply of documentary and other exhibits

42.4. Rule 36.11 (Registrar's duty to provide copy documents for appeal or reference) applies in relation to an appellant or respondent under Part 2 of the Proceeds of Crime Act 2002 as it applies in relation to an appellant and respondent under Part I of the Criminal Appeal Act 1968.

(**a**) 2002 c. 29.
(**b**) S.I. 2003/82.
(**c**) 1968 c. 19.

Duty of Crown Court officer

42.5.—(1) To assist the Court of Appeal in the exercise of its jurisdiction under Part 2 of the Proceeds of Crime Act 2002, the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 or this Part the Crown Court officer must—

(a) where electronic arrangements have been made to receive and store information and documents for the Crown Court, as soon as practicable ensure that all such material is available to the Registrar in accordance with those arrangements; and

(b) provide the Registrar with any document, object or information for which the Registrar asks, within such period as the Registrar may require.

(2) Where someone may appeal to the Court of Appeal, the Crown Court officer must keep any document or object exhibited in the proceedings in the Crown Court, or arrange for it to be kept by some other appropriate person, until—

(a) 6 weeks after the conclusion of those proceedings; or

(b) the conclusion of any appeal proceedings that begin within that 6 week period,

unless the court, the Registrar or the Crown Court otherwise directs.

Hearing by single judge

42.6. Rule 36.6(6) (Hearings) applies in relation to a judge exercising any of the powers referred to in article 8 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003(**a**) or the powers in rules 42.12(3) and (4) (Respondent's notice), 42.15(2) (Notice of appeal) and 42.16(6) (Respondent's notice), as it applies in relation to a judge exercising the powers referred to in section 31(2) of the Criminal Appeal Act 1968(**b**).

Determination by full court

42.7. Rule 36.5 (Renewing an application refused by a judge or the Registrar) applies where a single judge has refused an application by a party to exercise in that party's favour any of the powers listed in article 8 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003, or the power in rule 42.12(3) or (4) as it applies where the judge has refused to exercise the powers referred to in section 31(2) of the Criminal Appeal Act 1968.

Notice of determination and renewal of application for permission to appeal

42.8.—(1) Paragraphs (2) and (3) of this rule apply where a single judge or the Court of Appeal has determined an application or appeal under the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 or under Part 2 of the Proceeds of Crime Act 2002.

(2) The Registrar must, as soon as practicable, serve notice of the determination on all of the parties to the proceedings.

(3) Where a single judge or the Court of Appeal has disposed of an application for permission to appeal or an appeal under section 31 of the 2002 Act(**c**), the Registrar must also, as soon as practicable, serve the order on the Crown Court officer and the court officer for the magistrates' court responsible for enforcing any confiscation order which the Crown Court has made (the 'enforcing court').

(4) Paragraphs (5) and (6) of this rule apply where—

(**a**) S.I. 2003/82.

(**b**) 1968 c. 19; section 31(2) was amended by section 21 of, and Schedule 2 to, the Costs in Criminal Cases Act 1973 (c. 14), section 29 of the Criminal Justice Act 1982 (c. 48), section 170 of, and paragraphs 20 and 29 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 87 of the Courts Act 2003 (c. 39) and section 48 of the Police and Justice Act 2006 (c. 48).

(**c**) 2002 c. 29; section 31 was amended by section 74 of, and paragraphs 1 and 16 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(a) a single judge has refused an application for permission to appeal under section 31 of the 2002 Act(**a**), and

(b) the appellant renews that application, in time or with an application to extend the time within which to renew.

(5) The Registrar must, as soon as practicable, notify the court officer for the enforcing court, if any, of the service of that renewed application.

(6) Unless a single judge, the Court of Appeal or the enforcing court otherwise directs, pending disposal of the renewed application the court officer for the enforcing court must withhold the payment of any sum not yet paid—

(a) which under section 13(6) of the 2002 Act(**b**) was directed to be paid out of sums recovered under a confiscation order, and

(b) the payment of which is suspended pending appeal.

[Note. See also rule 42.11 (Notice of appeal) under which (i) the Registrar must notify the court officer for the enforcing court of the service of a notice of appeal, and (ii) that court officer must notify any person whose entitlement to payment of a sum is suspended by that appeal.

Under section 13 of the Proceeds of Crime Act 2002, if the Crown Court makes a confiscation order and one or more priority orders, as defined in that section, against the same defendant in the same proceedings then in some circumstances the court must direct that part or all of the priority order must be paid out of sums recovered under the confiscation order.

A compensation order under section 134 of the Sentencing Act 2020(**c**) *is such a priority order. Under section 141(1) of the 2020 Act, a person in whose favour a compensation order is made is not entitled to receive the amount due until there is no further possibility of the order being varied or set aside on appeal (disregarding any power to grant leave to appeal out of time). Under section 141(2) of the 2020 Act, Criminal Procedure Rules may make provision about the way in which the enforcing court is to deal with money paid in satisfaction of a compensation order where the entitlement of the person in whose favour it was made is suspended.]*

Record of proceedings and transcripts

42.9. Rule 5.5 (Recording and transcription of proceedings in the Crown Court) and rule 36.9 (Duty of person transcribing proceedings in the Crown Court) apply in relation to proceedings in respect of which an appeal lies to the Court of Appeal under Part 2 of the Proceeds of Crime Act 2002 as they apply in relation to proceedings in respect of which an appeal lies to the Court of Appeal under Part I of the Criminal Appeal Act 1968.

Appeal to the Supreme Court

42.10.—(1) An application to the Court of Appeal for permission to appeal to the Supreme Court under Part 2 of the Proceeds of Crime Act 2002 must be made—

(a) orally after the decision of the Court of Appeal from which an appeal lies to the Supreme Court; or

(b) in the form issued under the Practice Direction, in accordance with article 12 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003 and served on the Registrar.

(**a**) 2002 c. 29; section 31 was amended by section 74 of, and paragraphs 1 and 16 of Schedule 8 to, the Serious Crime Act 2007 (c. 27) and sections 3 and 85 of, and paragraph 27 of Schedule 4 to, the Serious Crime Act 2015 (c. 9).

(**b**) 2002 c. 29; section 13 was amended by section 54 of, and paragraph 11 of Schedule 12 to, the Criminal Justice and Courts Act 2015 (c. 2), section 6 of the Serious Crime Act 2015 (c. 9), section 410 of, and paragraph 182 of Schedule 24 to, the Sentencing Act 2020 (c. 17) and section 39 of, and paragraph 7 of Schedule 3 to, the Counter-Terrorism and Sentencing Act 2021 (c. 11).

(**c**) 2020 c. 17.

(2) The application may be abandoned at any time before it is heard by the Court of Appeal by serving notice in writing on the Registrar.

(3) Rule 36.6(6) (Hearings) applies in relation to a single judge exercising any of the powers referred to in article 15 of the 2003 Order, as it applies in relation to a single judge exercising the powers referred to in section 31(2) of the Criminal Appeal Act 1968.

(4) Rule 36.5 (Renewing an application refused by a judge or the Registrar) applies where a single judge has refused an application by a party to exercise in that party's favour any of the powers listed in article 15 of the 2003 Order as they apply where the judge has refused to exercise the powers referred to in section 31(2) of the 1968 Act.

(5) The form in which rule 36.5(2) requires an application to be made may be modified as necessary.

CONFISCATION: APPEAL BY PROSECUTOR OR BY PERSON WITH INTEREST IN PROPERTY

Notice of appeal

42.11.—(1) Where an appellant wishes to apply to the Court of Appeal for permission to appeal under section 31 of the Proceeds of Crime Act 2002(**a**), the appellant must serve a notice of appeal in the form issued under the Practice Direction on—

(a) the Registrar;

(b) the defendant;

(c) the prosecutor, if the prosecutor is not the appellant; and

(d) any person who the appellant thinks is or may be someone—

(i) holding an interest in property in which the Crown Court determined the extent of the defendant's interest under section 10A of the 2002 Act(**b**), and

(ii) who is neither the defendant nor the appellant.

(2) When a notice of appeal is served on a respondent defendant, or other person under paragraph (1)(d), it must be accompanied by a respondent's notice in the form issued under the Practice Direction for the respondent to complete and a notice which—

(a) informs the respondent that the result of an appeal could be that the Court of Appeal would increase a confiscation order already imposed, make a confiscation order itself or direct the Crown Court to hold another confiscation hearing;

(b) informs the respondent of any right under article 6 of the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003(**c**) to be present at the hearing of the appeal, although in custody;

(c) invites the respondent to serve any notice on the Registrar—

(i) to apply to the Court of Appeal for permission to be present at proceedings for which such permission is required under article 6 of the 2003 Order, or

(ii) to present any argument to the Court of Appeal on the hearing of the application or, if permission is given, the appeal, and whether the respondent wishes to present it in person or by means of a legal representative;

(d) draws to the respondent's attention the effect of rule 42.4 (Supply of documentary and other exhibits); and

(e) advises the respondent to consult a solicitor as soon as possible.

(**a**) 2002 c. 29; section 31 was amended by section 74 of, and paragraphs 1 and 16 of Schedule 8 to, the Serious Crime Act 2007 (c. 27) and section 3 of the Serious Crime Act 2015 (c. 9).
(**b**) 2002 c. 29; section 10A was inserted by section 1 of the Serious Crime Act 2015 (c. 9).
(**c**) S.I. 2003/82.

(3) The appellant must provide the Registrar with a certificate of service stating that the appellant has served the notice of appeal on each respondent or explaining why it has not been possible to do so.

(4) The notice of appeal must—

(a) specify each order or ruling against which the appellant wants to appeal;

(b) identify each ground of appeal on which the appellant relies, numbering them consecutively (if there is more than one) and concisely outlining each argument in support;

(c) summarise the relevant facts;

(d) identify any relevant authorities;

(e) include or attach any application, with reasons, for an extension of time within which to serve the notice of appeal;

(f) identify any document or thing that the appellant thinks the court will need to decide the appeal and include or attach an electronic link to each such document that has been made available to the Registrar under rule 42.5(1)(a) (Duty of Crown Court officer); and

(g) unless an authority identified by the grounds of appeal is published by the Registrar as one frequently cited, include or attach—

(i) an electronic copy of each authority so identified, or

(ii) if two or more such authorities not so published are identified, electronic copies of each together in a single electronic document.

(5) The Registrar must, as soon as practicable, notify the court officer for the enforcing court, if any, of the service of the notice of appeal.

(6) Where a person is entitled to receive a sum directed to be paid out of sums recovered under a confiscation order, the court officer for the enforcing court must, as soon as practicable, notify each such person of—

(a) the appeal;

(b) any suspension of that person's entitlement pending appeal; and

(c) any power for the Court of Appeal to vary or set aside that person's entitlement on appeal.

[Note. See section 13 of the Proceeds of Crime Act 2002 and sections 134 and 141 of the Sentencing Act 2020. See also rule 42.8 (Notice of determination and renewal of application for permission to appeal) and the note to that rule.]

Respondent's notice

42.12.—(1) This rule applies where a respondent is served with a notice of appeal under rule 42.11.

(2) If the respondent wishes to oppose the application for permission to appeal, the respondent must, not more than 10 business days after service of the notice of appeal, serve on the Registrar and on the appellant a respondent's notice in the form issued under the Practice Direction which must—

(a) give the date on which the respondent was served with the appeal notice;

(b) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates;

(c) summarise any relevant facts not already summarised in the appeal notice;

(d) identify any relevant authorities;

(e) include or attach any application, with reasons, for—

(i) an extension of time within which to serve the respondent's notice, or

(ii) a direction to attend in person a hearing that the respondent could attend by live link, if the respondent is in custody;

(f) identify any document or thing that the respondent thinks the court will need to decide the appeal and include or attach an electronic link to each such document that has been made available to the Registrar under rule 42.5(1)(a) (Duty of Crown Court officer); and

(g) unless an authority identified by the respondent's notice is published by the Registrar as one frequently cited, include or attach—

(i) an electronic copy of each authority so identified, or

(ii) if two or more such authorities not so published are identified, electronic copies of each together in a single electronic document.

(3) The time for giving notice under this rule may be extended by the Registrar, a single judge or by the Court of Appeal.

(4) Where the Registrar refuses an application under paragraph (3) for the extension of time, the respondent is entitled to have the application determined by a single judge.

(5) Where a single judge refuses an application under paragraph (3) or (4) for the extension of time, the respondent is entitled to have the application determined by the Court of Appeal.

Amendment and abandonment of appeal

42.13.—(1) The appellant may amend a notice of appeal served under rule 42.11 or abandon an appeal under section 31 of the Proceeds of Crime Act 2002—

(a) without the permission of the court at any time before the Court of Appeal has begun hearing the appeal; and

(b) with the permission of the court after the Court of Appeal has begun hearing the appeal,

by serving notice in writing on the Registrar.

(2) Where the appellant serves a notice abandoning an appeal under paragraph (1), the Registrar must, as soon as practicable, notify—

(a) each respondent served with the notice of appeal;

(b) the Crown Court officer; and

(c) the court officer for the magistrates' court responsible for enforcing any confiscation order which the Crown Court has made.

(3) Where the appellant serves a notice amending a notice of appeal under paragraph (1), the appellant must send a copy of it to each respondent served with the notice of appeal.

(4) Where an appeal is abandoned under paragraph (1), the application for permission to appeal or appeal must be treated, for the purposes of section 85 of the 2002 Act (Conclusion of proceedings), as having been refused or dismissed by the Court of Appeal.

APPEAL ABOUT COMPLIANCE, RESTRAINT OR RECEIVERSHIP ORDER

Permission to appeal

42.14.—(1) Permission to appeal to the Court of Appeal under section 13B, section 43 or section 65 of the Proceeds of Crime Act 2002(**a**) may only be given where—

(a) the Court of Appeal considers that the appeal would have a real prospect of success; or

(b) there is some other compelling reason why the appeal should be heard.

(2) An order giving permission to appeal may limit the issues to be heard and be made subject to conditions.

(**a**) 2002 c. 29; section 13B was inserted by section 7 of the Serious Crime Act 2015 (c. 9). Section 65 was amended by section 94 of, and paragraph 32 of Schedule 8 and Schedule 14 to, the Serious Crime Act 2007 (c. 27).

Notice of appeal

42.15.—(1) Where an appellant wishes to apply to the Court of Appeal for permission to appeal under section 13B, 43 or 65 of the Proceeds of Crime Act 2002 Act, the appellant must serve a notice of appeal in the form issued under the Practice Direction on the Registrar.

(2) Unless the Registrar, a single judge or the Court of Appeal directs otherwise, the appellant must serve the notice of appeal, accompanied by a respondent's notice in the form issued under the Practice Direction for the respondent to complete, on—

(a) each respondent; and

(b) any person who holds realisable property to which the appeal relates or who is affected by the appeal (and each such person then becomes a respondent),

as soon as practicable and in any event not later than 5 business days after the notice of appeal is served on the Registrar.

(3) The notice of appeal must—

(a) specify each order or ruling against which the appellant wants to appeal;

(b) identify each ground of appeal on which the appellant relies, numbering them consecutively (if there is more than one) and concisely outlining each argument in support;

(c) summarise the relevant facts;

(d) identify any relevant authorities;

(e) include or attach any application, with reasons, for—

(i) an extension of time within which to serve the notice of appeal, or

(ii) a direction to attend in person a hearing that the appellant could attend by live link, if the appellant is in custody;

(f) identify any document or thing that the appellant thinks the court will need to decide the appeal and include or attach an electronic link to each such document that has been made available to the Registrar under rule 42.5(1)(a) (Duty of Crown Court officer); and

(g) unless an authority identified by the grounds of appeal (see paragraph (3)(d)) is published by the Registrar as one frequently cited, include or attach—

(i) an electronic copy of each authority so identified, or

(ii) if two or more such authorities not so published are identified, electronic copies of each together in a single electronic document.

(4) The appellant must provide the Registrar with a certificate of service stating that the appellant has served the notice of appeal on each respondent or explaining why it has not been possible to do so.

Respondent's notice

42.16.—(1) This rule applies to an appeal under section 13B, 43 or 65 of the Proceeds of Crime Act 2002.

(2) A respondent may serve a respondent's notice on the Registrar.

(3) A respondent who—

(a) is seeking permission to appeal from the Court of Appeal; or

(b) wishes to ask the Court of Appeal to uphold the decision of the Crown Court for reasons different from or additional to those given by the Crown Court,

must serve a respondent's notice on the Registrar.

(4) A respondent's notice must be in the form issued under the Practice Direction and where the respondent seeks permission to appeal to the Court of Appeal it must be requested in the respondent's notice.

(5) A respondent's notice must be served on the Registrar not later than 10 business days after—

(a) the date the respondent is served with notification that the Court of Appeal has given the appellant permission to appeal; or

(b) the date the respondent is served with notification that the application for permission to appeal and the appeal itself are to be heard together.

(6) Unless the Registrar, a single judge or the Court of Appeal directs otherwise, the respondent serving a respondent's notice must serve the notice on the appellant and any other respondent—

(a) as soon as practicable; and

(b) in any event not later than 5 business days,

after it is served on the Registrar.

(7) A respondent's notice must—

(a) give the date on which the respondent was served with the appeal notice;

(b) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates;

(c) summarise any relevant facts not already summarised in the appeal notice;

(d) identify any relevant authorities;

(e) include or attach any application, with reasons, for—

(i) an extension of time within which to serve the respondent's notice, or

(ii) a direction to attend in person a hearing that the respondent could attend by live link, if the respondent is in custody;

(f) identify any document or thing that the respondent thinks the court will need to decide the appeal and include or attach an electronic link to each such document that has been made available to the Registrar under rule 42.5(1)(a) (Duty of Crown Court officer); and

(g) unless an authority cited under paragraph (7)(d) is published by the Registrar as one frequently cited, include or attach—

(i) an electronic copy of each authority so identified, or

(ii) if two or more such authorities not so published are identified, electronic copies of each together in a single electronic document.

Amendment and abandonment of appeal

42.17.—(1) The appellant may amend a notice of appeal served under rule 42.15 or abandon an appeal under section 13B, 43 or 65 of the Proceeds of Crime Act 2002—

(a) without the permission of the court at any time before the Court of Appeal has begun hearing the appeal; and

(b) with the permission of the court after the Court of Appeal has begun hearing the appeal,

by serving notice in writing on the Registrar.

(2) Where the appellant serves a notice under paragraph (1), the appellant must send a copy of it to each respondent.

Stay

42.18. Unless the Court of Appeal or the Crown Court orders otherwise, an appeal under section 13B, 43 or 65 of the Proceeds of Crime Act 2002 does not operate as a stay of any order or decision of the Crown Court.

Striking out appeal notices and setting aside or imposing conditions on permission to appeal

42.19.—(1) The Court of Appeal may—

(a) strike out the whole or part of a notice of appeal served under rule 42.15; or

(b) impose or vary conditions upon which an appeal under section 13B, 43 or 65 of the Proceeds of Crime Act 2002 may be brought.

(2) The Court of Appeal may only exercise its powers under paragraph (1) where there is a compelling reason for doing so.

(3) Where a party is present at the hearing at which permission to appeal was given, that party may not subsequently apply for an order that the Court of Appeal exercise its powers under paragraph (1)(b).

HEARING OF APPEALS

Hearing of appeals

42.20.—(1) This rule applies to an appeal under section 13B, 31, 43 or 65 of the Proceeds of Crime Act 2002(**a**).

(2) The appeal must be limited to a review of the decision of the Crown Court unless the Court of Appeal considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.

(3) The Court of Appeal may draw any inference of fact which it considers justified on the evidence.

(4) Rule 36.14 (Grounds of appeal and opposition) applies in relation to an appeal under section 13B, 31, 43 or 65 of the Proceeds of Crime Act 2002 as it applies in relation to an appeal listed in rule 36.1 (When this Part applies).

[Note. For the powers of the Court of Appeal on an appeal to which this Part applies, see sections 13B, 32, 43, 65 and 89 of the Proceeds of Crime Act 2002(**b**)*. See also section 91 of the 2002 Act*(**c**) *in relation to procedure rules.]*

REOPENING THE DETERMINATION OF AN APPEAL

Reopening the determination of an appeal

42.21. Rule 36.15 (Reopening the determination of an appeal) and the related rule 36.6(5) apply in relation to an appeal under section 13B, 31, 43 or 65 of the Proceeds of Crime Act 2002 as those rules apply in relation to an appeal listed in rule 36.1 (When this Part applies).

PART 43

APPEAL OR REFERENCE TO THE SUPREME COURT

Contents of this Part

When this Part applies	rule 43.1
Application for permission or reference	rule 43.2
Determination of detention pending appeal, etc.	rule 43.3

(**a**) 2002 c. 29; section 13B was inserted by section 7 of the Serious Crime Act 2015 (c. 9). Section 31 was amended by section 94 of, and paragraph 16 of Schedule 8 and Schedule 14 to, the Serious Crime Act 2007 (c. 27) and section 3 of, and paragraph 27 of Schedule 4 to, the Serious Crime Act 2015 (c. 9). Section 65 was amended by section 94 of, and paragraph 32 of Schedule 8 and Schedule 14 to, the Serious Crime Act 2007 (c. 27).

(**b**) 2002 c. 29; section 32 was amended by section 12 of, and paragraph 20 of the Schedule to, the Prevention of Social Housing Fraud Act 2013 (c. 3), section 3 of, and paragraph 28 of Schedule 4 to, the Serious Crime Act 2015 (c. 9), section 61 of, and paragraph 18 of Schedule 5 to, the Modern Slavery Act 2015 (c. 30) and section 416 of, and paragraph 190 of Schedule 24 to, the Sentencing Act 2020 (c. 17). Section 89 was amended by sections 94 and 110 of the Courts Act 2003 (c. 39), section 148 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and paragraph 34 of Schedule 4 to the Serious Crime Act 2015 (c. 9).

(**c**) 2002 c. 29; section 91 was amended by section 110 of, and paragraph 410 of Schedule 8 to, the Courts Act 2003 (c. 39).

When this Part applies

43.1.—(1) This Part applies where—

(a) a party wants to appeal to the Supreme Court after—

(i) an application to the Court of Appeal to which Part 27 applies (Retrial following acquittal), or

(ii) an appeal to the Court of Appeal to which applies Part 37 (Appeal to the Court of Appeal against ruling at preparatory hearing or in response to jury tampering), Part 38 (Appeal to the Court of Appeal against ruling adverse to prosecution), or Part 39 (Appeal to the Court of Appeal about conviction or sentence); or

(b) a party wants to refer a case to the Supreme Court after a reference to the Court of Appeal to which Part 41 applies (Reference to the Court of Appeal of point of law or unduly lenient sentencing).

(2) A reference to an 'appellant' in this Part is a reference to such a party.

[Note. Under section 33 of the Criminal Appeal Act 1968(**a**)*, a party may appeal to the Supreme Court from a decision of the Court of Appeal on—*

(a) an application to the court under section 76 of the Criminal Justice Act 2003(**b**) *(prosecutor's application for retrial after acquittal for serious offence). See also Part 27.*

(b) an appeal to the court under—

(i) section 9 of the Criminal Justice Act 1987(**c**) *or section 35 of the Criminal Procedure and Investigations Act 1996*(**d**) *(appeal against order at preparatory hearing). See also Part 37.*

(ii) section 47 of the Criminal Justice Act 2003(**e**) *(appeal against order for non-jury trial after jury tampering.) See also Part 37.*

(iii) Part 9 of the Criminal Justice Act 2003(**f**) *(prosecutor's appeal against adverse ruling). See also Part 38.*

(iv) Part 1 of the Criminal Appeal Act 1968(**g**) *(defendant's appeal against conviction, sentence, etc.). See also Part 39.*

Under section 13 of the Administration of Justice Act 1960(**h**)*, a person found to be in contempt of court may appeal to the Supreme Court from a decision of the Court of Appeal on an appeal to the court under that section. See also Part 39.*

(**a**) 1968 c. 19; section 33 was amended by section 152 of, and Schedule 5 to, the Senior Courts Act 1981 (c. 54), section 15 of, and paragraph 3 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 36(1)(a) of the Criminal Procedure and Investigations Act 1996 (c. 25), section 456 of, and paragraphs 1 and 4 of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29), sections 47, 68 and 81 of the Criminal Justice Act 2003 (c. 44), by section 40 of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and sections 74 and 92 of, and paragraph 144 of Schedule 8, and Schedule 14 to, the Serious Crime Act 2007 (c. 27).

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

(**c**) 1987 c. 38; section 9 was amended by section 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 6 of the Criminal Justice Act 1993 (c. 36), sections 72, 74 and 80 of, and paragraph 3 of Schedule 3 and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25), sections 45 and 310 of, and paragraphs 18, 52 and 54 of Schedule 36 and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), article 3 of, and paragraphs 21 and 23 of the Schedule to, S.I. 2004/2035, section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9).

(**d**) 1996 c. 25; section 35(1) was amended by section 45 of the Criminal Justice Act 2003 (c. 44). Section 35 was also amended by paragraphs 65 and 69 of Schedule 36 to the Criminal Justice Act 2003 (c. 44) and section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9).

(**e**) 2003 c. 44; section 47 was amended by section 59(5) of, and paragraph 1(2) of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

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

(**g**) 1968 c. 19.

(**h**) 1960 c. 65; section 13 was amended by paragraph 40 of Schedule 8 to the Courts Act 1971 (c. 23), Schedule 5 to the Criminal Appeal Act 1968 (c. 19), paragraph 36 of Schedule 7 to the Magistrates' Courts Act 1980 (c. 43), Schedule 7 to

Under article 12 of the Criminal Justice Act 2003 (Mandatory Life Sentence: Appeals in Transitional Cases) Order 2005(**a**)*, a party may appeal to the Supreme Court from a decision of the Court of Appeal on an appeal to the court under paragraph 14 of Schedule 22 to the Criminal Justice Act 2003*(**b**) *(appeal against minimum term review decision). See also Part 39.*

Under article 15 of the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006(**c**)*, a party may appeal to the Supreme Court from a decision of the Court of Appeal on an appeal to the court under section 74 of the Serious Organised Crime and Police Act 2005*(**d**) *(appeal against sentence review decision). See also Part 39.*

Under section 24 of the Serious Crime Act 2007(**e**)*, a party may appeal to the Supreme Court from a decision of the Court of Appeal on an appeal to that court under that section (appeal about a serious crime prevention order). See also Part 39.*

Under section 36(3) of the Criminal Justice Act 1972(**f**)*, the Court of Appeal may refer to the Supreme Court a point of law referred by the Attorney General to the court. See also Part 41.*

Under section 36(5) of the Criminal Justice Act 1988(**g**)*, a party may refer to the Supreme Court a sentencing decision referred by the Attorney General to the court. See also Part 41.*

Under section 33(3) of the Criminal Appeal Act 1968, there is no appeal to the Supreme Court—

(a) from a decision of the Court of Appeal on an appeal under section 14A(5A) of the Football Spectators Act 1989(**h**) *(prosecutor's appeal against failure to make football banning order). See Part 39.*

(b) from a decision of the Court of Appeal on an appeal under section 159(1) of the Criminal Justice Act 1988(**i**) *(appeal about reporting or public access restriction). See Part 40.*

The rules in Part 36 (Appeal to the Court of Appeal: general rules) also apply where this Part applies.]

Application for permission or reference

43.2.—(1) An appellant must—

(a) apply orally to the Court of Appeal—

(i) for permission to appeal or to refer a sentencing case, or

(ii) to refer a point of law

immediately after the court gives the reasons for its decision; or

(b) apply in writing and serve the application on the Registrar and every other party not more than—

(i) 14 days after the court gives the reasons for its decision if that decision was on a sentencing reference to which Part 41 applies (Attorney General's reference of sentencing case), or

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the Senior Court Acts 1981 (c. 54), paragraph 25 of Schedule 2 to the County Courts Act 1984 (c. 28), Schedule 15 to the Access to Justice Act 1999 (c. 22), paragraph 13 of Schedule 9 to the Constitutional Reform Act 2005 (c. 4) and paragraph 45 of Schedule 16 to the Armed Forces Act 2006 (c. 52).

(**a**) S.I. 2005/2798.

(**b**) 2003 c. 44; paragraph 14 of Schedule 22 was amended by section 40 of, and paragraph 82 of Schedule 9 and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**c**) S.I. 2006/2135.

(**d**) 2005 c. 15.

(**e**) 2007 c. 27.

(**f**) 1972 c. 71; section 36(3) was amended by section 40 of, and paragraph 23 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(**g**) 1988 c. 33; section 36(5) was amended by section 40(4) of, and paragraph 48(1) and (2) of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(**h**) 1989 c. 37; section 14A(5A) was inserted by section 52 of, and paragraphs 1 and 3 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38).

(**i**) 1988 c. 33; section 159(1) was amended by section 61 of the Criminal Procedure and Investigations Act 1996 (c. 25).

(ii) 28 days after the court gives those reasons in any other case.

(2) An application for permission to appeal or to refer a sentencing case must—

(a) identify the point of law of general public importance that the appellant wants the court to certify is involved in the decision; and

(b) give reasons why—

(i) that point of law ought to be considered by the Supreme Court, and

(ii) the court ought to give permission to appeal.

(3) An application to refer a point of law must give reasons why that point ought to be considered by the Supreme Court.

(4) An application must include or attach any application for the following, with reasons—

(a) an extension of time within which to make the application for permission or for a reference;

(b) bail pending appeal; or

(c) permission to attend any hearing in the Supreme Court, if the appellant is in custody.

(5) A written application must be in the form issued under the Practice Direction.

[Note. In some legislation, including the Criminal Appeal Act 1968, permission to appeal is described as 'leave to appeal'.

Under the provisions listed in the note to rule 43.1, except section 36(3) of the Criminal Justice Act 1972 (Attorney General's reference of point of law), an appellant needs permission to appeal or to refer a sentencing case. Under those provisions, the Court of Appeal must not give permission unless it first certifies that—

(a) a point of law of general public importance is involved in the decision, and

(b) it appears to the court that the point is one which the Supreme Court ought to consider.

If the Court of Appeal gives such a certificate but refuses permission, an appellant may apply for such permission to the Supreme Court.

Under section 36(3) of the Criminal Justice Act 1972 an appellant needs no such permission. The Court of Appeal may refer the point of law to the Supreme Court, or may refuse to do so.

For the power of the court or the Registrar to shorten or extend a time limit, see rule 36.3. The time limit in this rule—

(a) for applying for permission to appeal under section 33 of the Criminal Appeal Act 1968 (28 days) is prescribed by section 34 of that Act(**a**)*. That time limit may be extended but not shortened by the court. But it may be extended on an application by a prosecutor only after an application to which Part 27 applies (Retrial after acquittal).*

(b) for applying for permission to refer a case under section 36(5) of the Criminal Justice Act 1988 (Attorney General's reference of sentencing decision: 14 days) is prescribed by paragraph 4 of Schedule 3 to that Act. That time limit may be neither extended nor shortened.

(c) for applying for permission to appeal under article 12 of the Criminal Justice Act 2003 (Mandatory Life Sentence: Appeals in Transitional Cases) Order 2005 (28 days) is prescribed by article 13 of that Order. That time limit may be extended but not shortened.

(d) for applying for permission to appeal under article 15 of the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006 (28 days) is prescribed by article 16 of that Order. That time limit may be extended but not shortened.

For the power of the Court of Appeal to grant bail pending appeal to the Supreme Court, see—

(**a**) 1968 c. 19; section 34 was amended by section 88 of the Courts Act 2003 (c. 39), section 81 of the Criminal Justice Act 2003 (c. 44), and section 40(4) of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(a) section 36 of the Criminal Appeal Act 1968(**a**)*;*

(b) article 18 of the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006(**b**)*.*

For the right of an appellant in custody to attend a hearing in the Supreme Court, see—

(a) section 38 of the Criminal Appeal Act 1968(**c**)*;*

(b) paragraph 9 of Schedule 3 to the Criminal Justice Act 1988(**d**)*;*

(c) article 15 of the Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005(**e**)*;*

(d) article 20 of the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006(**f**)*.]*

Determination of detention pending appeal, etc.

43.3. On an application for permission to appeal, the Court of Appeal must—

(a) decide whether to order the detention of a defendant who would have been liable to be detained but for the decision of the court; and

(b) determine any application for—

(i) bail pending appeal,

(ii) permission to attend any hearing in the Supreme Court, or

(iii) a representation order.

[Note. For the liability of a defendant to be detained pending a prosecutor's appeal to the Supreme Court and afterwards, see—

(a) section 37 of the Criminal Appeal Act 1968(**g**)*;*

(b) article 19 of the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006(**h**)*.*

For the grant of legal aid for proceedings in the Supreme Court, see sections 14, 16 and 19 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**i**)*.]*

Bail pending appeal

43.4. Rules 39.8 (Application for bail pending appeal or retrial), 39.9 (Conditions of bail pending appeal or re-trial) and 39.10 (Forfeiture of a recognizance given as a condition of bail) apply.

(**a**) 1968 c. 19; section 36 was amended by section 12 of, and paragraph 43 of Schedule 2 to, the Bail Act 1976 (c. 63), section 15 of, and paragraph 4 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 23 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 36 of the Criminal Procedure and Investigations Act 1996 (c. 25), sections 47 and 68 of the Criminal Justice Act 2003 (c. 44) and section 40 of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(**b**) S.I. 2006/2135.

(**c**) 1968 c. 19; section 38 was amended by section 81 of the Criminal Justice Act 2003 (c. 44), and section 40(4) of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(**d**) 1988 c. 33; paragraph 9 of Schedule 3 was amended by section 40 of, and paragraph 48 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(**e**) S.I. 2005/2798.

(**f**) S.I. 2006/2135.

(**g**) 1968 c. 19; section 37 was amended by section 65(1) of, and paragraph 39 of Schedule 3 to, the Mental Health (Amendment) Act 1982 (c. 51), section 148 of, and paragraph 23 of Schedule 4 to, the Mental Health Act 1983 (c. 20), section 58(1) of, and paragraph 5 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 40 of, and paragraph 16 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and section 47 of, and paragraphs 1 and 13 of Schedule 8 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(**h**) S.I. 2006/2135.

(**i**) 2012 c. 10.

PART 44

REOPENING A CASE IN A MAGISTRATES' COURT

Contents of this Part

When this Part applies	rule 44.1
Statutory declaration of ignorance of proceedings	rule 44.2
Setting aside a conviction or varying a costs, etc. order	rule 44.3

[Note. See also Part 24 (Trial and sentence in a magistrates' court).]

When this Part applies

44.1. This Part applies in a magistrates' court where—

(a) under section 14 or section 16E of the Magistrates' Courts Act 1980(**a**), the defendant makes a statutory declaration of not having found out about the case until after the trial began;

(b) under section 16M of the 1980 Act(**b**) the court can set aside a conviction; or

(c) under section 142 of the 1980 Act(**c**), the court can—

(i) set aside a conviction, or

(ii) vary or rescind a costs order, or an order to which Part 31 applies (Behaviour orders).

Statutory declaration of ignorance of proceedings

44.2.—(1) This rule applies where—

(a) the case started with—

(i) an application for a summons,

(ii) a written charge and requisition, or

(iii) a written charge and single justice procedure notice; and

(b) under section 14 or section 16E of the Magistrates' Courts Act 1980(**d**), the defendant makes a statutory declaration of not having found out about the case until after the trial began.

(2) The defendant must—

(a) serve such a declaration on the court officer—

(i) not more than 21 days after the date of finding out about the case, or

(ii) with an explanation for the delay, if serving it more than 21 days after that date; and

(b) serve with the declaration one of the following, as appropriate, if the case began with a written charge and single justice procedure notice—

(i) a notice under rule 24.9(4)(b) (notice to plead guilty and be sentenced by a single justice), with any representations that the defendant wants the court to consider and a statement of the defendant's assets and other financial circumstances, as required by that rule,

(ii) a notice under rule 24.9(4)(c) (notice of intention to plead guilty at a hearing before a court comprising more than one justice), or

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(**a**) 1980 c. 43; section 14 was amended by section 109 of, and paragraph 205 of Schedule 8 to, the Courts Act 2003 (c. 39). Section 16E was inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2).

(**b**) 1980 c. 43; section 16M was inserted by section 3 of the Judicial Review and Courts Act 2022 (c. 35).

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

(**d**) 1980 c. 43; section 14 was amended by section 109 of, and paragraph 205 of Schedule 8 to, the Courts Act 2003 (c. 39). Section 16E was inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2).

(iii) a notice under rule 24.9(4)(d) (notice of intention to plead not guilty).

(3) The court may extend that time limit, even after it has expired—

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

(b) without a hearing.

(4) Where the defendant serves such a declaration, in time or with an extension of time in which to do so, and the case began with a summons or requisition—

(a) the court must treat the summons or requisition and all subsequent proceedings as void (but not the application for the summons or the written charge with which the case began);

(b) if the defendant is present when the declaration is served, the rules in Part 24 (Trial and sentence in a magistrates' court) apply as if the defendant had been required to attend the court on that occasion; and

(c) if the defendant is absent when the declaration is served—

(i) the rules in Part 7 apply (Starting a prosecution in a magistrates' court) as if the prosecutor had just served an application for a summons in the same terms as the original application or written charge;

(ii) the court may exercise its power to issue a summons in accordance with those rules; and

(iii) except for rule 24.8 (Written guilty plea: special rules), the rules in Part 24 then apply.

(5) Where the defendant serves such a declaration, in time or with an extension of time in which to do so, and the case began with a single justice procedure notice—

(a) the court must treat the single justice procedure notice and all subsequent proceedings as void (but not the written charge with which the case began);

(b) rule 24.9 (Single justice procedure: special rules) applies as if the defendant had served the notice required by paragraph (2)(b) of this rule within the time allowed by rule 24.9(4); and

(c) where that notice is under rule 24.9(4)(c) (notice of intention to plead guilty at a hearing before a court comprising more than one justice) or under rule 24.9(4)(d) (notice of intention to plead not guilty), then—

(i) if the defendant is present when the declaration is served, the rules in Part 24 apply as if the defendant had been required to attend the court on that occasion, or

(ii) if the defendant is absent when the declaration is served, paragraph (6) of this rule applies.

(6) Where this paragraph applies, the court must exercise its power to issue a summons and—

(a) the rules in Part 7 apply (Starting a prosecution in a magistrates' court) as if the prosecutor had just served an application for a summons in the same terms as the written charge;

(b) except for rule 24.8 (Written guilty plea: special rules) and rule 24.9 (Single justice procedure: special rules), the rules in Part 24 apply.

[Note. Under sections 14 and 16E of the Magistrates' Courts Act 1980, proceedings which begin with a summons, requisition or single justice procedure notice will become void if the defendant, at any time during or after the trial, makes a statutory declaration that he or she did not know of them until a date after the trial began.

Under section 14(3) or section 16E(9) of the 1980 Act, the court which decides whether or not to extend the time limit for serving a declaration under this rule may comprise a single justice.

Under rule 2.11 (Taking of statutory declarations by court officers) a court officer may take the statutory declaration to which this rule refers.]

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

44.3.—(1) This rule applies where the court can—

(a) under section 16M of the Magistrates' Courts Act 1980 set aside a conviction under section 16H of the 1980 Act(**a**) (conviction on accepting the automatic online conviction option);

(b) under section 142 of the 1980 Act—

(i) set aside a conviction, or

(ii) vary or rescind a costs order or an order to which Part 31 applies (Behaviour orders); or

(c) substitute an order for a purported order that the court had no power to make.

(2) The court may exercise its power—

(a) on application by a party, or on its own initiative; and

(b) at a hearing, in public or in private, or without a hearing.

(3) The court must not exercise its power in a party's absence unless—

(a) the court makes a decision proposed by that party;

(b) the court makes a decision to which that party has agreed in writing; or

(c) that party has had an opportunity to make representations at a hearing (whether or not that party in fact attends).

(4) A party who wants the court to exercise its power must—

(a) apply in writing as soon as reasonably practicable after the conviction or order that that party wants the court to set aside, vary or rescind;

(b) serve the application on—

(i) the court officer, and

(ii) each other party; and

(c) in the application—

(i) explain why, as appropriate, the conviction should be set aside, or the order varied or rescinded,

(ii) specify any variation of the order that the applicant proposes,

(iii) identify any witness that the defendant wants to call, and any other proposed evidence,

(iv) say whether the defendant waives legal professional privilege, giving any relevant name and date, and

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

(5) The court may—

(a) extend (even after it has expired) the time limit under paragraph (4), unless the court's power to set aside the conviction, or vary the order, can no longer be exercised; and

(b) allow an application to be made orally.

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

(a) where a defendant is convicted by a magistrates' court, the court may order that the case should be heard again by different justices; and

(b) the court may vary or rescind an order which it has made when dealing with a convicted defendant,

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

(**a**) 1980 c. 43; section 16H was inserted by section 3 of the Judicial Review and Courts Act 2022 (c. 35).

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

Under section 16M of the 1980 Act a magistrates' court can set aside a conviction imposed on a defendant who accepts the automatic online conviction option under section 16H of the Act if the conviction appears to the court to be unjust. Under section 16M(3) the court may comprise a single justice to set aside a conviction but must comprise two or more to refuse to do so.

See also rule 28.4 (Variation of sentence), which applies to an application under (i) section 16M(5) of the 1980 Act to set aside a penalty under section 16I(**a**)*, or (ii) section 142 of the Act to vary or rescind a sentence.]*

PART 45

COSTS

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GENERAL RULES

When this Part applies

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

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

(**a**) 1980 c. 43; section 16I was inserted by section 3 of the Judicial Review and Courts Act 2022 (c. 35).
(**b**) 1985 c. 23.
(**c**) S.I. 1986/1335.

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

(c) section 52 of the Senior Courts Act 1981(**b**) and rule 45.6 or rule 45.7;

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

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

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

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

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

(i) section 4(7) of the Dangerous Dogs Act 1991(**h**);

(j) Part 3 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(**i**); or

(k) Part 1 or 2 of the Extradition Act 2003(**j**).

(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 under—

(a) section 16 of the Prosecution of Offences Act 1985(**k**) *(defence costs), for the payment out of central funds of a defendant's costs (see rule 45.4);*

(b) section 17 of the Prosecution of Offences Act 1985(**l**) *(prosecution costs), for the payment out of central funds of a private prosecutor's costs (see rule 45.4);*

(c) section 18 of the Prosecution of Offences Act 1985(**m**) *(award of costs against accused), for the payment by a defendant of another person's costs (see rules 45.5 and 45.6);*

(d) section 19(1) of the Prosecution of Offences Act 1985(**n**) *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 45.8);*

(**a**) 1980 c. 43; section 109(2) was amended by section 109 of, and paragraph 234 of Schedule 8 to, the Courts Act 2003 (c. 39).

(**b**) 1981 c. 54. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**c**) 1879 c. 11.

(**d**) 1965 c. 69; section 2C was substituted with section 2, 2A, 2B, 2D and 2E, for the existing section 2 by section 66(1) and (2) of the Criminal Procedure and Investigations Act 1996 (c. 25).

(**e**) 1972 c. 71; section 36(5) was amended by section 40 of, and paragraph 23 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(**f**) 1988 c. 33; paragraph 11 of Schedule 3 was amended by section 40 of, and paragraph 48 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and paragraph 11 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**g**) 1989 c. 37; section 14H was substituted, together with sections 14, 14A to 14G and 14J, for existing sections 14 to 17, by section 1 of, and paragraphs 1 and 2 of Schedule 1 to, the Football (Disorder) Act 2000 (c. 25).

(**h**) 1991 c. 65.

(**i**) S.I. 2008/1863.

(**j**) 2003 c. 41.

(**k**) 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), sections 69 and 312 of, and paragraph 57 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44), section 58 of, and Schedule 11 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 40 of, and paragraph 23 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and paragraphs 1 and 2 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**l**) 1985 c. 23; section 17 was amended by section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and paragraphs 1 and 4 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**m**) 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), sections 69 and 312 of the Criminal Justice Act 2003 (c. 44) and section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(**n**) 1985 c. 23.

(e) section 19A of the Prosecution of Offences Act 1985(**a**) *(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 45.9);

(f) section 19B of the Prosecution of Offences Act 1985(**b**) *(provision for award of costs against third parties) and regulation 3F of the Costs in Criminal Cases (General) Regulations 1986*(**c**)*, 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 45.10);*

(g) section 109 of the Magistrates' Courts Act 1980, section 52 of the Senior Courts Act 1981 and rule 45.6, for the payment by an appellant of a respondent's costs on abandoning an appeal to the Crown Court (see rule 45.6);

(h) section 52 of the Senior Courts Act 1981 and—

(i) rule 45.6, 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),

(ii) rule 45.7, for the payment by a party of another party's costs on an application to the Crown Court about the breach or variation of a deferred prosecution agreement, or on an application to lift the suspension of a prosecution after breach of such an agreement, or on an application in restraint or receivership proceedings;

(i) 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 45.7);

(j) 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 17.7 to have it withdrawn (see rule 45.7);

(k) 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 45.4);

(l) 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 45.6);

(m) 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 45.7);

(n) section 4(7) of the Dangerous Dogs Act 1991, for the payment by a defendant of another person's costs on an application to terminate a disqualification for having custody of a dog (see rule 45.7);

(o) article 14 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(**d**)*, corresponding with section 16 of the Prosecution of Offences Act 1985 (see rule 45.4);*

(p) article 15 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with section 18 of the Prosecution of Offences Act 1985 (see rule 45.6);

(**a**) 1985 c. 23; section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).
(**b**) 1985 c. 23; section 19B was inserted by section 93 of the Courts Act 2003 (c. 39).
(**c**) 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.
(**d**) S.I. 2008/1863.

(q) article 16 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with an order under section 19(1) of the 1985 Act (see rule 45.8);

(r) article 17 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with an order under section 19A of the 1985 Act (see rule 45.9);

(s) article 18 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with an order under section 19B of the 1985 Act (see rule 45.10);

(t) section 60 or 133 of the Extradition Act 2003 (costs where extradition ordered) for the payment by a defendant of another person's costs (see rule 45.4); or

(u) section 61 or 134 of the Extradition Act 2003(**a**) *(costs where discharge ordered) for the payment out of central funds of a defendant's costs (see rule 45.4).*

See also the Criminal Costs Practice Direction.

Part 39 (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.

Part 34 (Appeal to the Crown Court) and Part 39 (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.

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;*

(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

45.2.—(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—

(**a**) 2003 c. 41; sections 61 and 134 were amended by paragraphs 12, 13 and 16 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**b**) 1970 c. 31; section 41(3) was amended by section 62 of, and paragraph 35 of Schedule 13 to the Tribunals, Courts and Enforcement Act 2007 (c. 15) and section 17 of, and paragraph 52 of Schedule 9 to, the Crime and Courts Act 2013 (c. 22).

(**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); a relevant amendment was made to section 150(1) by paragraph 250 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c. 39).

(**g**) 2003 c. 39; Schedule 5 was amended by articles 2, 4, 6, 7 and 8 of S.I. 2006/1737, section 62 of, and paragraphs 148 and 149 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15), section 80 of the Criminal Justice and Immigration Act 2008 (c. 4), section 88 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), section 10 of, and paragraphs 24 and 27 of the Schedule to, the Prevention of Social Housing Fraud Act 2013 (c. 3), sections 26 and 27 of the Crime and Courts Act 2013 (c. 22), section 56 of the Criminal Justice and Courts Act 2015 (c. 2) and paragraph 23 of Schedule 5 to the Modern Slavery Act 2015 (c. 30).

(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) Subject to rule 45.7(6) (costs on an application in restraint or receivership proceedings), 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

(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 must 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 45.11, 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 45.8 (Costs resulting from unnecessary or improper act, etc.) and rule 45.9 (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. See, for example, section 16A of the Prosecution of Offences Act 1985(**a**).

Under section 141 of the Powers of Criminal Courts (Sentencing) Act 2000(**b**) *and section 75 of the Magistrates' Courts Act 1980*(**c**)*, the Crown Court and magistrates' court respectively can allow time for payment, or payment by instalments.]*

Court's power to vary requirements

45.3.—(1) Unless other legislation otherwise provides, the court may—

(a) extend a time limit for serving an application or representations under rules 45.4 to 45.10, even after it has expired; and

(b) consider an application or representations—

(i) made in a different form to one issued under 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.

[Note. The time limit for applying for a costs order may be affected by the legislation under which the order is made. See, for example, sections 19(1), (2) and 19A of the Prosecution of Offences Act 1985(**d**)*, regulation 3 of the Costs in Criminal Cases (General) Regulations 1986*(**e**) *and rules 45.8(4)(a) and 45.9(4)(a).]*

COSTS OUT OF CENTRAL FUNDS

Costs out of central funds

45.4.—(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 met by legal aid.

(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 apply as soon as practicable and—

(**a**) 1985 c. 23; section 16A was inserted by paragraphs 1 and 3 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

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

(**c**) 1980 c. 43; section 75 was amended by section 11 of, and paragraph 6 of Schedule 2 to, the Maintenance Enforcement Act 1991 (c. 17).

(**d**) 1985 c. 23; section 19 was amended by section 166 of the Criminal Justice Act 1988 (c. 33), section 45 of, and Schedule 6 to, the Legal Aid Act 1988 (c. 34), section 7 of, and paragraph 8 of Schedule 3 to, the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), section 24 of, and paragraphs 27 and 28 of Schedule 4 to, the Access to Justice Act 1999 (c. 22), sections 40 and 67 of, and paragraph 4 of Schedule 7 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 165 of, and paragraph 99 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 378 of, and paragraph 107 of Schedule 16 to, the Armed Forces Act 2006 (c. 52), section 6 of, and paragraph 32 of Schedule 4 and paragraphs 1 and 5 of Schedule 27 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraphs 22 and 23 of Schedule 5, and paragraphs 1 and 5 and Part 4 of Schedule 7, to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).

(**e**) S.I. 1986/1335; regulation 3 was amended by regulations 2 and 3 of S.I. 2008/2448.

(a) on an application for a defendant's costs order—

(i) outline the type of costs and the amount claimed, if the applicant wants the court to direct an assessment, or

(ii) specify the amount claimed, giving details, if the applicant wants the court to assess the amount itself; or

(b) on an application for a prosecutor's costs order—

(i) apply in writing and serve it on the court officer (or, in the Court of Appeal, the Registrar), and

(ii) in the application specify the amount claimed to the date of the application and provide the information listed in paragraph (5).

(5) The information required by paragraph (4)(b) is—

(a) a summary of the items of work to date done by a solicitor;

(b) a statement of the dates on which items of work were done, the time taken and the sums claimed;

(c) details of any disbursements claimed, the circumstances in which they were incurred and the amounts claimed in respect of them; and

(d) such further particulars, information and documents as the court may require.

(6) The general rule is that the court must 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;

(b) the court may decline to make a prosecutor's costs order if, for example, the prosecution was started or continued unreasonably; and

(c) the court may decline to make an order if the applicant fails to provide enough information for the court to decide whether to make an order at all and, if so, whether it should be for the full amount recoverable or for a lesser sum.

(7) If the court makes an order—

(a) the general rule is that it must be for such amount as the court considers reasonably sufficient to compensate the applicant for any expenses properly incurred in the proceedings;

(b) where the court considers there to be circumstances making it inappropriate for the applicant to recover that amount then the order must be for such lesser amount as the court considers just and reasonable;

(c) the court may fix the amount to be paid in a case in which either—

(i) the recipient agrees the amount, or

(ii) the court decides to allow a lesser sum than the full amount otherwise recoverable; and

(d) if the court does not fix the amount itself it must direct an assessment under, as applicable—

(i) Part III of the Costs in Criminal Cases (General) Regulations 1986(**a**), or

(ii) Part 3 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(**b**).

(8) If the court makes a defendant's costs order—

(a) the order may not require the payment of any amount in respect of fees payable to a legal representative, or disbursements paid by a legal representative (including expert witness

(**a**) S.I. 1986/1335; relevant amending instruments are S.I. 1999/2096 and S.I. 2008/2448.
(**b**) S.I. 2008/1863.

costs), but if the defendant is an individual then an order may require payment of such an amount in a case—

(i) in a magistrates' court, including in an extradition case,

(ii) in the Crown Court, on appeal from a magistrates' court,

(iii) in the Crown Court, where the defendant has been sent for trial, the High Court gives permission to serve a draft indictment or the Court of Appeal orders a retrial and the defendant has been found financially ineligible for legal aid, or

(iv) in the Court of Appeal, on an appeal against a verdict of not guilty by reason of insanity, or against a finding under the Criminal Procedure (Insanity) Act 1964(**a**), or on an appeal under section 16A of the Criminal Appeal Act 1968(**b**) (appeal against order made in cases of insanity or unfitness to plead);

(b) any such amount may not exceed an amount specified by regulations made by the Lord Chancellor; and

(c) an order which includes an amount in respect of fees payable to a legal representative, or disbursements paid by a legal representative, must include a statement to that effect.

(9) If the court fixes the amount to be paid itself, it must do so subject to any restriction on the amount that is imposed by regulations made by the Lord Chancellor.

(10) If the court directs an assessment, the order must specify any restriction on the amount to be paid that the court considers appropriate.

[Note. See also rule 45.2.

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 37 (Appeal to the Court of Appeal against ruling at preparatory hearing or in response to jury tampering) or Part 38 (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 41 (Reference to the Court of Appeal of point of law or unduly lenient sentence),

(vii) where the Court of Appeal decides an appeal by someone other than the defendant about a serious crime prevention order, or

(viii) where the defendant is discharged under Part 1 or 2 of the Extradition Act 2003;

*(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 11 of Schedule 3 to the Criminal Justice Act 1988; article 14 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008; and sections 61 and 134 of the Extradition Act 2003.)*

(b) for a private prosecutor, in proceedings in respect of an offence that must or may be tried in the Crown Court;

(**a**) 1964 c. 84.
(**b**) 1968 c. 19; section 16A was inserted by section 25 of the Domestic Violence, Crime and Victims Act 2004 (c. 28).
(**c**) S.I. 1986/1335; regulation 14 was amended by regulations 2 and 11 of S.I. 2008/2448.

(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.)

Where the court makes an order for the payment of a defendant's costs out of central funds, see also section 16A of the Prosecution of Offences Act 1985(**a**)*, sections 62A, 62B, 135A and 135B of the Extradition Act 2003*(**b**) *and regulations 4A and 7 of the Costs in Criminal Cases (General) Regulations 1986*(**c**)*.]*

PAYMENT OF COSTS BY ONE PARTY TO ANOTHER

Costs on conviction and sentence, etc.

45.5.—(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;

(c) dealt with for breach of a sentence; or

(d) in an extradition case—

(i) ordered to be extradited, under Part 1 of the Extradition Act 2003,

(ii) sent for extradition to the Secretary of State, under Part 2 of that Act, or

(iii) unsuccessful on an appeal by the defendant to the High Court, or on an application by the defendant for permission to appeal from the High Court to the Supreme Court.

(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 must make an order if it is satisfied that the defendant can pay.

(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 45.2;

(**a**) 1985 c. 23; section 16A was inserted by paragraphs 1 and 3 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and amended by S.I. 2014/130.

(**b**) 2003 c. 41; sections 62A and 62B were inserted by paragraphs 12 and 15 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and sections 135A and 135B were inserted by paragraphs 12 and 18 and Part 4 of that Schedule.

(**c**) S.I. 1986/1335; regulation 4A was inserted by regulations 4 and 5 of S.I. 2012/1804. Regulation 7 was substituted by regulations 4 and 6 of S.I. 2012/1804 and amended by S.I. 2013/2830.

(b) section 18 of the Prosecution of Offences Act 1985(**a**) *and regulation 14 of the Costs in Criminal Cases (General) Regulations 1986; and*

(c) sections 60 and 133 of the Extradition Act 2003.

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 39 (Appeal to the Court of Appeal about conviction or sentence) contains rules about appeal against a Crown Court costs order to which this rule applies.]

Costs on appeal

45.6.—(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; and

(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(**b**), or

(ii) section 45 of the Mental Health Act 1983(**c**).

(2) In this rule, costs include—

(a) costs incurred in the court that made the decision under appeal; and

(b) costs met by legal aid.

(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—

(**a**) 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), sections 69 and 312 of the Criminal Justice Act 2003 (c. 44) and section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(**b**) 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).

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

(i) apply in writing not more than 10 business 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 representations on the applicant, and on the Crown Court officer, not more than 5 business 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 45.11, or assess the amount itself where—

(a) the appellant abandons an appeal to the Crown Court;

(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 40 applies (Appeal to the Court of Appeal about 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 45.2.

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 34 (Appeal to the Crown Court) 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 37 (Appeal to the Court of Appeal against ruling at preparatory hearing), Part 39 (Appeal to the Court of Appeal about conviction or sentence) or Part 43 (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 38 (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 40 (Appeal to the Court of Appeal about reporting or public access restriction) applies.

See section 109 of the Magistrates' Courts Act 1980(**a**)*; section 52 of the Senior Courts Act 1981*(**b**) *(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*(**c**)*; and article 15 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008*(**d**)*.]*

Costs on an application

45.7.—(1) This rule—

(a) applies where the court can order a party to pay another person's costs in a case in which—

(i) the court decides an application for the production in evidence of a copy of a bank record,

(ii) a magistrates' court or the Crown Court decides an application to terminate a football banning order,

(iii) a magistrates' court or the Crown Court decides an application to terminate a disqualification for having custody of a dog,

(iv) the Crown Court allows an application to withdraw a witness summons,

(v) the Crown Court decides an application relating to a deferred prosecution agreement under rule 11.5 (breach), rule 11.6 (variation) or rule 11.7 (lifting suspension of prosecution), or

(vi) the Crown Court decides an application in the restraint and receivership proceedings to which Part 33 (Confiscation and related proceedings) applies; and

(b) authorises the Crown Court, in addition to its other powers, to order a party to pay another party's costs—

(i) on an application to that court under rule 11.5, 11.6 or 11.7, or

(ii) on an application in the restraint and receivership proceedings to which Part 33 applies.

(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—

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

(ii) in restraint or receivership proceedings, no later than 20 business days after the conclusion of the application or proceedings in respect of which costs are sought;

(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 45.11, or assess the amount itself.

(**a**) 1980 c. 43; section 109(2) was amended by section 109 of, and paragraph 234 of Schedule 8 to, the Courts Act 2003 (c. 39).
(**b**) 1981 c. 54. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).
(**c**) 1988 c. 33.
(**d**) S.I. 2008/1863.

(6) In restraint or receivership proceedings to which Part 33 (Confiscation and related proceedings) applies—

(a) the court may make more than one costs order but no one costs order may be made in respect of more than one application to make, vary or discharge a restraint order;

(b) the court must not order the defendant to pay the prosecutor's costs unless—

(i) the prosecutor succeeds, and

(ii) the defendant acted unreasonably;

(c) the court must not order the prosecutor to pay the defendant's costs unless—

(i) the defendant succeeds, and

(ii) the prosecutor acted unreasonably;

(d) in deciding whether a party has succeeded the court must take into account the extent of any difference between the terms of the order sought and the terms of the order (if any) made; and

(e) in deciding whether it was reasonable to make an application the success of any previous such application is not conclusive.

[Note. See—

(a) rule 45.2;

(b) section 8 of the Bankers Books Evidence Act 1879(**a**)*;*

(c) section 14H(5) of the Football Spectators Act 1989(**b**)*;*

(d) section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965(**c**)*; and*

(e) section 4(7) of the Dangerous Dogs Act 1991(**d**)*.*

Section 52 of the Senior Courts Act 1981 allows rules of court to authorise the Crown Court to order costs.]

Costs resulting from unnecessary or improper act, etc.

45.8.—(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 met by legal aid.

(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, and in any event no later than the end of the case;

(b) serve the application on—

(i) the court officer (or, in the Court of Appeal, the Registrar), and

(ii) each other party; and

(c) in that application specify—

(i) the party by whom costs should be paid,

(**a**) 1879 c. 11.

(**b**) 1989 c. 37; section 14H was substituted, together with sections 14, 14A to 14G and 14J, for existing sections 14 to 17, by section 1 of, and paragraphs 1 and 2 of Schedule 1 to, the Football (Disorder) Act 2000 (c. 25).

(**c**) 1965 c. 69; section 2C was substituted with section 2, 2A, 2B, 2D and 2E, for the existing section 2 by section 66(1) and (2) of the Criminal Procedure and Investigations Act 1996 (c. 25).

(**d**) 1991 c. 65.

(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 representations on the applicant and on the court officer (or Registrar) not more than 5 business days after it was served.

(7) If the court makes an order, it must assess the amount itself.

(8) To help assess the amount, the court may direct an enquiry by—

(a) the Lord Chancellor, where the assessment is by a magistrates' court or by the Crown Court; or

(b) the Registrar, where the assessment is by the Court of Appeal.

(9) In deciding whether to direct such an enquiry, the court must have regard to all the circumstances including—

(a) any agreement between the parties about the amount to be paid;

(b) the amount likely to be allowed;

(c) the delay and expense that may be incurred in the conduct of the enquiry; and

(d) the particular complexity of the assessment, or the difficulty or novelty of any aspect of the assessment.

(10) If the court directs such an enquiry—

(a) paragraphs (3) to (8) inclusive of rule 45.11 (Assessment and re-assessment) apply as if that enquiry were an assessment under that rule (but rules 45.12 (Appeal to a costs judge) and 45.13 (Appeal to a High Court judge) do not apply);

(b) the authority that carries out the enquiry must serve its conclusions on the court officer as soon as reasonably practicable after following that procedure; and

(c) the court must then assess the amount to be paid.

[Note. See—

(a) rule 45.2;

(b) section 19(1) of the Prosecution of Offences Act 1985(**a**) *and regulation 3 of the Costs in Criminal Cases (General) Regulations 1986*(**b**)*; and*

(c) article 16 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(**c**)*.*

Under section 19(1), (2) of the 1985 Act and regulation 3(1) of the 1986 Regulations, the court's power to make a costs order to which this rule applies can only be exercised during the proceedings.

(**a**) 1985 c. 23.
(**b**) S.I. 1986/1335; regulation 3 was amended by regulations 2 and 3 of S.I. 2008/2448.
(**c**) S.I. 2008/1863.

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.]

OTHER COSTS ORDERS

Costs against a legal representative

45.9.—(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

(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 met by legal aid.

(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, and in any event no later than the end of the case;

(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; and

(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 representations on the applicant and on the court officer (or Registrar) not more than 5 business days after it was served.

(7) If the court makes an order—

(a) the general rule is that it must 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) To help assess the amount, the court may direct an enquiry by—

(a) the Lord Chancellor, where the assessment is by a magistrates' court or by the Crown Court; or

(b) the Registrar, where the assessment is by the Court of Appeal.

(9) In deciding whether to direct such an enquiry, the court must have regard to all the circumstances including—

(a) any agreement between the parties about the amount to be paid;

(b) the amount likely to be allowed;

(c) the delay and expense that may be incurred in the conduct of the enquiry; and

(d) the particular complexity of the assessment, or the difficulty or novelty of any aspect of the assessment.

(10) If the court directs such an enquiry—

(a) paragraphs (3) to (8) inclusive of rule 45.11 (Assessment and re-assessment) apply as if that enquiry were an assessment under that rule (but rules 45.12 (Appeal to a costs judge) and 45.13 (Appeal to a High Court judge) do not apply);

(b) the authority that carries out the enquiry must serve its conclusions on the court officer as soon as reasonably practicable after following that procedure; and

(c) the court must then assess the amount to be paid.

(11) 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) to be met by legal aid, or

(ii) to be paid out of central funds; or

(b) there is to be an assessment under rule 45.11.

[Note. See—

(a) rule 45.2;

(b) section 19A of the Prosecution of Offences Act 1985(**a**)*;*

(c) article 17 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(**b**)*.*

Under section 19A(1) of the 1985 Act, the court's power to make a costs order to which this rule applies can only be exercised during the proceedings.

Part 34 (Appeal to the Crown Court) and Part 39 (Appeal to the Court of Appeal about conviction or sentence) contain rules about appeals against a costs order to which this rule applies.]

Costs against a third party

45.10.—(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 met by legal aid.

(3) The court may make an order—

(**a**) 1985 c. 23; section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).
(**b**) S.I. 2008/1863.

(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; and

(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 representations on the applicant and on the court officer (or Registrar) not more than 5 business days after it was served.

(7) If the court makes an order—

(a) the general rule is that it must do so at the end of the case, but it may do so earlier; and

(b) it must assess the amount itself.

(8) To help assess the amount, the court may direct an enquiry by—

(a) the Lord Chancellor, where the assessment is by a magistrates' court or by the Crown Court; or

(b) the Registrar, where the assessment is by the Court of Appeal.

(9) In deciding whether to direct such an enquiry, the court must have regard to all the circumstances including—

(a) any agreement between the parties about the amount to be paid;

(b) the amount likely to be allowed;

(c) the delay and expense that may be incurred in the conduct of the enquiry; and

(d) the particular complexity of the assessment, or the difficulty or novelty of any aspect of the assessment.

(10) If the court directs such an enquiry—

(a) paragraphs (3) to (8) inclusive of rule 45.11 (Assessment and re-assessment) apply as if that enquiry were an assessment under that rule (but rules 45.12 (Appeal to a costs judge) and 45.13 (Appeal to a High Court judge) do not apply);

(b) the authority that carries out the enquiry must serve its conclusions on the court officer as soon as reasonably practicable after following that procedure; and

(c) the court must then assess the amount to be paid.

[Note. See—

(a) rule 45.2;

(b) section 19B of the Prosecution of Offences Act 1985 and regulation 3F of the Costs in Criminal Cases (General) Regulations 1986; and

(c) article 18 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008.

Part 34 (Appeal to the Crown Court) and Part 39 (Appeal to the Court of Appeal about conviction or sentence) contain rules about appeals against a costs order to which this rule applies.]

ASSESSMENT OF COSTS

Assessment and re-assessment

45.11.—(1) This rule applies where the court directs an assessment under—

(a) rule 45.6 (Costs on appeal); or

(b) rule 45.7 (Costs on an application).

(2) The assessment must be carried out by the relevant assessing authority, namely—

(a) the Lord Chancellor, where the direction was given by a magistrates' court or by the Crown Court; or

(b) the Registrar, 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 15 business 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 to be 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 15 business 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;

(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 15 business days after service of the application, and

(iii) ask for a hearing, if that party wants one; and

(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 reasons on the parties, if not more than 15 business 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

45.12.—(1) This rule applies where—

(a) the assessing authority has re-assessed the amount allowed under rule 45.11; 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 15 business 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 15 business 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.

Appeal to a High Court judge

45.13.—(1) This rule applies where—

(a) a costs judge has determined an appeal under rule 45.12; 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, and

(ii) the other party

not more than 15 business 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 King'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

(**a**) S.I. 1998/3132.

(b) serve the appeal not more than 15 business 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 45.12; and

(c) may hear the appeal with one or more assessors.

[Note. See also section 70 of the Senior Courts Act 1981(**a**)*.]*

Application for an extension of time

45.14. A party who wants an extension of time under rule 45.11, 45.12 or 45.13 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.

PART 46

REPRESENTATIVES

Contents of this Part

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Functions of representatives and supporters

46.1.—(1) Under these Rules, anything that a party may or must do may be done—

(a) by a legal representative on that party's behalf;

(b) by a person with the corporation's written authority, where that corporation is a defendant; or

(c) with the help of a parent, guardian or other suitable supporting adult where that party is a defendant—

(i) who is under 18, or

(ii) whose understanding of what the case involves is limited

unless other legislation (including a rule) otherwise requires.

(2) A member, officer or employee of a prosecutor may, on the prosecutor's behalf—

(a) serve on the magistrates' court officer, or present to a magistrates' court, an application for a summons or warrant under section 1 of the Magistrates' Courts Act 1980(**b**); or

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(**a**) 1981 c. 54. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**b**) 1980 c. 43; section 1 was amended by section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), sections 43 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39), section 31 of, and paragraph 12 of Schedule 7 to, the Criminal Justice Act 2003 (c. 44) and section 153 of the Police Reform and Social Responsibility Act 2011 (c. 13). It is further amended by paragraphs 7 and 8 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(b) issue a written charge and requisition, or single justice procedure notice, under section 29 of the Criminal Justice Act 2003(**a**).

[Note. See also section 122 of the Magistrates' Courts Act 1980(**b**)*. A party's legal representative must be entitled to act as such under section 13 of the Legal Services Act 2007*(**c**)*.*

Section 33(6) of the Criminal Justice Act 1925(**d**)*, section 46 of the Magistrates' Courts Act 1980*(**e**) *and Schedule 3 to that Act*(**f**) *provide for the representation of a corporation.*

Sections 3 and 6 of the Prosecution of Offences Act 1985(**g**) *make provision about the institution of prosecutions.*

Section 223 of the Local Government Act 1972(**h**) *allows a member or officer of a local authority on that authority's behalf to prosecute or defend a case before a magistrates' court, and to appear in and to conduct any proceedings before a magistrates' court.*

Part 7 contains rules about starting a prosecution.]

Notice of appointment, etc. of legal representative: general rules

46.2.—(1) This rule applies—

(a) in relation to—

(i) a party who does not have legal aid for the purposes of a case, and

(ii) a party to an extradition case in the High Court, whether that party has legal aid or not;

(b) where such a party—

(i) appoints a legal representative for the purposes of the case, or

(ii) dismisses such a representative, with or without appointing another; and

(c) where a legal representative for such a party withdraws from the case.

(**a**) 2003 c. 44; section 29 has been brought into force for certain purposes only (see S.I. 2007/1999, S.I. 2008/1424 and S.I. 2009/2879). It was amended by section 50 of, and paragraph 130 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11) and section 59 of, and paragraph 196 of Schedule 4 to, the Serious Organised Crime and Police Act 2005 (c. 15).

(**b**) 1980 c. 43; section 122 was amended by section 125(3) of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 1990 (c. 41).

(**c**) 2007 c. 29.

(**d**) 1925 c. 86.

(**e**) 1980 c. 43.

(**f**) 1980 c. 43; Schedule 3 was amended by sections 25(2) and 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), section 47 of, and paragraph 13 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25) (in relation to proceedings begun on or after 1 April 1997) and paragraph 51 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).

(**g**) 1985 c. 23; section 3 was amended by section 15 of, and paragraph 13 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), paragraph 39 of Schedule 7 to the Police Act 1996 (c. 16), section 134 of, and paragraph 48 of Schedule 9 to, the Police Act 1997 (c. 50), section 164 of the Immigration and Asylum Act 1999 (c. 33), paragraph 10 of Schedule 7 to the Police Reform Act 2002 (c. 30), sections 86 and 92 of, and Schedule 3 to, the Anti-social Behaviour Act 2003 (c. 38), section 190 of the Extradition Act 2003 (c. 41), section 7 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), sections 59, 140 and 174 of, and paragraph 47 of Schedule 4 and Part 2 of Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c. 15), sections 7, 8 and 52 of, and paragraph 15 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38), section 74 of, and paragraph 149 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), paragraph 171 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13), section 15 of, and paragraph 30 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22) and article 3 of, and paragraphs 1 and 2 of the Schedule to, S.I. 2014/834.

(**h**) 1972 c. 70; section 223 was amended by paragraph 9 of Schedule 3 to the Solicitors Act 1974 (c. 47), section 134 of, and Schedule 10 to, the Police Act 1977 (c. 50), section 84 of, and paragraph 21 of Schedule 14 to, the Local Government Act 1985 (c. 51), section 237 of, and Schedule 13 to, the Education Reform Act 1988 (c. 40), section 120 of, and paragraph 17 of Schedule 22 and Schedule 24 to, the Environment Act 1995 (c. 25), paragraph 1 of Schedule 7 to the Police Act 1996 (c. 16), paragraphs 1 and 13 of Schedule 13 to the Local Government and Public Involvement in Health Act 2007 (c. 28), section 208 of, and paragraph 28 of Schedule 21 to, the Legal Services Act 2007 (c. 29), paragraphs 10 and 24 of Schedule 6 to the Local Democracy, Economic Development and Construction Act 2009 (c. 20), paragraphs 100 and 109 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13) and article 2 of, and paragraphs 1 and 2 of the Schedule to, S.I. 2001/3719.

(2) Where paragraph (1)(b) applies, that party must give notice of the appointment or dismissal to—

(a) the court officer;

(b) each other party; and

(c) where applicable, the legal representative who has been dismissed,

as soon as practicable and in any event within 5 business days.

(3) Where paragraph (1)(c) applies, that legal representative must—

(a) as soon as practicable give notice to—

(i) the court officer,

(ii) the party whom he or she has represented, and

(iii) each other party; and

(b) where that legal representative has represented the defendant in an extradition case in the High Court, include with the notice—

(i) confirmation that the defendant has notice of when and where the appeal hearing will take place and of the need to attend, if the defendant is on bail,

(ii) details sufficient to locate the defendant, including details of the custodian and of the defendant's date of birth and custody reference, if the defendant is in custody, and

(iii) details of any arrangements likely to be required by the defendant to facilitate his or her participation in consequence of the representative's withdrawal, including arrangements for interpretation.

(4) Any such notice—

(a) may be given orally if—

(i) it is given at a hearing, and

(ii) it specifies no restriction under paragraph (5)(b) (restricted scope of appointment); but

(b) must be in writing in any other case.

(5) A notice of the appointment of a legal representative—

(a) must identify—

(i) the legal representative who has been appointed, with details of how to contact that representative, and

(ii) all those to whom the notice is given;

(b) may specify a restriction, or restrictions, on the purpose or duration of the appointment; and

(c) if it specifies any such restriction, may nonetheless provide that documents may continue to be served on the represented party at the representative's address until—

(i) further notice is given under this rule, or

(ii) that party obtains legal aid for the purposes of the case.

(6) A legal representative who is dismissed by a party or who withdraws from representing a party must, as soon as practicable, make available to that party such documents in the representative's possession as have been served on that party.

Application to change legal representative (legal aid): general rules

46.3.—(1) This rule applies in a magistrates' court, the Crown Court and the Court of Appeal—

(a) in relation to a defendant who has legal aid for the purposes of a case; and

(b) where either—

(i) that defendant wants to select a legal representative (the 'proposed new representative') in place of the representative named in the legal aid representation order (the 'current representative') (see also rule 46.4), or

(ii) the current representative considers there to be a duty to withdraw from the case or no longer is able to represent the defendant through circumstances outside the representative's control (see also rule 46.5).

(2) The defendant or the current representative, as the case may be, 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,

(ii) the current representative, if the application is made by the defendant, and

(iii) the defendant, if the application is made by the current representative; and

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

(3) The court may determine the application—

(a) without a hearing, as a general rule; or

(b) at a hearing, if that is needed to resolve—

(i) matters in dispute, or

(ii) other matters unclear to the court.

(4) Unless the court otherwise directs, any hearing must be in private and in the absence of—

(a) the prosecutor,

(b) any co-defendant, and

(c) any legal representative or advocate of the prosecutor or a co-defendant.

(5) If the court allows the application, as soon as practicable—

(a) the current representative must make available to any new representative such documents in the current representative's possession as have been served on the defendant; and

(b) a new representative, if any, must serve notice of appointment on each other party.

(6) Paragraph (7) applies where—

(a) the court refuses an application under rule 46.4 and in response—

(i) the defendant declines further representation by the current representative or asks for legal aid to be withdrawn, or

(ii) the current representative declines further to represent the defendant; or

(b) the court allows an application under rule 46.5.

(7) If the court withdraws the defendant's legal aid—

(a) the court may specify the date on which that withdrawal will take effect; and

(b) the court officer must serve notice of the withdrawal on—

(i) the defendant,

(ii) the current representative, and

(iii) the prosecutor.

[Note. Under sections 16 and 19 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**a**) *and Part 2 of the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013*(**b**)*, a court before which criminal proceedings take place may determine whether an individual qualifies for legal aid representation in accordance with the 2012 Act.*

(**a**) 2012 c. 10.
(**b**) S.I. 2013/614.

Under regulation 13 of the 2013 Regulations, in relation to any proceedings involving co-defendants a represented person must select a representative who is also instructed by a co-defendant unless there is, or there is likely to be, a conflict of interest between the two defendants.

Under regulation 14 of the 2013 Regulations, once a representative has been selected the person who is represented has no right to select another in the place of the first unless the court so decides, in the circumstances set out in the regulation.

Under regulation 9 of the 2013 Regulations, if a represented person declines to accept representation on the terms offered or requests that legal aid representation is withdrawn, or if the current representative declines to continue to represent that person, the court may withdraw legal aid.

See also regulation 11 of the 2013 Regulations, which requires that an application under regulation 14 (among others) must be made by the represented person, must be in writing and must specify the grounds.]

Application by defendant to change legal representative (legal aid)

46.4.—(1) An application by a defendant with legal aid to select a new representative in place of the current representative must—

(a) explain what the case is about, including what offences are alleged, what stage it has reached and what is likely to be in issue at trial;

(b) explain how and why the defendant chose the current representative;

(c) if an advocate other than the current representative has been instructed for the defendant, explain whether the defendant wishes to replace that advocate;

(d) explain, giving relevant facts and dates—

(i) in what way, in the defendant's opinion, there has been a breakdown in the relationship between the defendant and the current representative such that neither that representative nor any colleague of theirs any longer can provide effective representation, or

(ii) what other compelling reason, in the defendant's opinion, means that neither the current representative nor any such colleague any longer can provide effective representation;

(e) give details of any previous application by the defendant to replace a legal representative named in the legal aid representation order;

(f) state whether the defendant—

(i) waives the legal professional privilege attaching to the defendant's communications with the current representative, to the extent required to allow that representative to respond to the matters set out in the application, or

(ii) declines to waive that privilege and acknowledges that the court may draw such inferences as it thinks fit in consequence;

(g) explain how and why the defendant has chosen the proposed new representative;

(h) include or attach a statement by the proposed new representative which—

(i) confirms that the proposed new representative is eligible and willing to conduct the case for the defendant,

(ii) confirms that the proposed new representative can and will meet the current timetable for the case, including any hearing date or dates that have been set, if the application succeeds,

(iii) explains what, if any, dealings the proposed new representative has had with the defendant before the present case,

(iv) confirms that the proposed new representative has informed the current representative of the defendant's wish to select a new representative,

(v) confirms that the proposed new representative has discussed the defendant's grounds for the proposed application with the current representative, and

(vi) confirms that the proposed new representative has explained to the defendant what it means to waive the legal professional privilege attaching to the defendant's communications with the current representative and the potential consequences of not doing so; and

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

(2) The current representative must—

(a) respond in writing no more than 5 business days after service of the application; and

(b) serve the response on—

(i) the court officer,

(ii) the defendant, and

(iii) the proposed new representative.

(3) The response must—

(a) if applicable, explain why the current representative—

(i) considers there to be a duty to withdraw from the case in accordance with professional rules of conduct, giving details of the nature of that duty, or

(ii) no longer is able to represent the defendant through circumstances outside the representative's control, giving details of the particular circumstances that render the representative unable to do so; or

(b) otherwise—

(i) identify those matters, if any, set out in the application with which the current representative disagrees, and

(ii) include any comments that the current representative thinks may assist the court.

Application by legal representative to withdraw (legal aid)

46.5. An application by a current representative to withdraw from the case must—

(a) explain what the case is about, including what offences are alleged, what stage it has reached and what is likely to be in issue at trial; and

(b) explain why the current representative—

(i) considers there to be a duty to withdraw from the case in accordance with professional rules of conduct, giving details of the nature of that duty, or

(ii) no longer is able to represent the defendant through circumstances outside the representative's control, giving details of the particular circumstances that render the representative unable to do so.

PART 47

INVESTIGATION ORDERS AND WARRANTS

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SECTION 1: GENERAL RULES

When this Part applies

47.1. This Part applies to the exercise of the powers listed in each of rules 47.4, 47.24, 47.35, 47.42, 47.46, 47.51, 47.54, 47.59 and 47.63.

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

47.2. In this Part—

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

(b) 'applicant' means a person who, or an authority which, can apply for an order or warrant to which this Part applies; and

(c) 'respondent' means any person—

(i) against whom such an order is sought or made, or

(ii) on whom an application for such an order is served.

Documents and recordings held by the court officer

47.3.—(1) Unless the court otherwise directs—

(a) the court officer—

(i) must either keep a written application, and a recording of any hearing of an application, or arrange for the whole or any part to be kept by some other appropriate person, including the applicant, subject to any conditions that the court may impose, and

(ii) must arrange for any separate document to which rule 47.26(4) refers (information that the applicant thinks should be kept confidential) to be retained by the applicant, subject to any such conditions; and

(b) a person who, under such arrangements, keeps an application or recording, or retains such a document, must return it to the court if and when the court officer so requires.

(2) Where the court makes an order when the court office is closed, the applicant must, not more than 72 hours later, serve on the court officer—

(a) a copy of the order; and

(b) any written material that was submitted to the court.

(3) Where the court issues a warrant—

(a) the applicant must return it to the court officer as soon as practicable after it has been executed, and in any event not more than 3 months after it was issued (unless other legislation otherwise provides); and

(b) the court officer must—

(i) keep the warrant for 12 months after its return, and

(ii) during that period, make it available for inspection by the occupier of the premises to which it relates, if that occupier asks to inspect it.

[Note. See section 16(10) of the Police and Criminal Evidence Act 1984(**a**)*.]*

SECTION 2: INVESTIGATION ORDERS

When this Section applies

47.4. This Section applies where—

(a) a Circuit judge can make, vary or discharge an order for the production of, or for giving access to, material under paragraph 4 of Schedule 1 to the Police and Criminal Evidence Act 1984(**b**), other than material that consists of or includes journalistic material;

(b) for the purposes of a terrorist investigation, 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(**c**),

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

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

(c) for the purposes of—

(i) a terrorist investigation, 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(**f**), or

(ii) a terrorist financing investigation, a judge entitled to exercise the jurisdiction of the Crown Court can make, and the Crown Court can vary or discharge, a disclosure order, under paragraphs 9 and 14 of Schedule 5A to the 2000 Act(**g**);

(d) for the purposes of an investigation to which Part 8 of the Proceeds of Crime Act 2002(**h**) or the Proceeds of Crime Act 2002 (External Investigations) Order 2014(**i**) applies, a Crown Court judge can make, and the Crown Court can vary or discharge—

(i) a production order, under sections 345 and 351 of the 2002 Act(**j**) or under articles 6 and 12 of the 2014 Order,

(ii) an order to grant entry, under sections 347 and 351 of the 2002 Act or under articles 8 and 12 of the 2014 Order,

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(**a**) 1984 c. 60; section 16(10) was substituted by section 114 of the Serious Organised Crime and Police Act 2005 (c. 15).

(**b**) 1984 c. 60; paragraph 4 of Schedule 1 was amended by section 65 of, and paragraph 6 of Schedule 4 to, the Courts Act 2003 (c. 39).

(**c**) 2000 c. 11; paragraph 5 of Schedule 5 is amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from a date to be appointed. Paragraph 10 of Schedule 5 was amended by section 109(1) of, and paragraph 389 of Schedule 8 to, the Courts Act 2003 (c. 39) and it is further amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from a date to be appointed.

(**d**) 2000 c. 11; paragraph 13 of Schedule 5 was amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39) and section 41(3)(d) of the Criminal Finances Act 2017 (c. 22).

(**e**) 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). Paragraph 4 of Schedule 6 was amended by section 109(1) of, and paragraph 390 of Schedule 8 to, the Courts Act 2003 (c. 39).

(**f**) 2000 c. 11; Schedule 6A was inserted by section 3 of, and paragraph 1(1) and (3) of Part 1 of Schedule 2 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24). Paragraph 4 was amended by section 41(5)(c) of the Criminal Finances Act 2017 (c. 22).

(**g**) 2000 c. 11; Schedule 5A was inserted by Schedule 2 to the Criminal Finances Act 2017 (c. 22).

(**h**) 2002 c. 29.

(**i**) S.I. 2014/1893.

(**j**) 2002 c. 29; section 345 was amended by section 75 of the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 6 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 49 of, and paragraphs 1 and 4 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22). 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), section 169 of, and paragraphs 1 and 9 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25), sections 66 and 112 of, and Part 5 of Schedule 8 to, the Policing and Crime Act 2009 (c. 26), sections 15 and 55 of, and paragraphs 108 and 136 of Schedule 8 and paragraphs 14 and 30 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22) and section 224 of, and paragraphs 1 and 11 of Schedule 48 to, the Finance Act 2013 (c. 29).

(iii) a disclosure order, under sections 357 and 362 of the 2002 Act(**a**) or under articles 16 and 21 of the 2014 Order,

(iv) a customer information order, under sections 363 and 369 of the 2002 Act(**b**) or under articles 22 and 28 of the 2014 Order, or

(v) an account monitoring order, under sections 370, 373 and 375 of the 2002 Act(**c**) or under articles 29, 32 and 34 of the 2014 Order;

(e) in connection with an extradition request, a Circuit judge can make an order for the production of, or for giving access to, material under section 157 of the Extradition Act 2003(**d**);

(f) a magistrates' court can make an information order under section 22B of the Terrorism Act 2000(**e**) in connection with—

(i) an investigation into whether a person is involved in the commission of an offence under any of sections 15 to 18 of the 2000 Act(**f**),

(ii) determining whether such an investigation should be started, or

(iii) identifying terrorist property or its movement or use;

(g) a magistrates' court can make an information order under section 339ZH of the Proceeds of Crime Act 2002(**g**) in connection with—

(i) an investigation into whether a person is engaged in money laundering,

(ii) determining whether such an investigation should be started, or

(iii) an investigation into money laundering by an authority in a country outside the United Kingdom;

(h) for the purposes of an investigation to which Part 1 of the National Security Act 2023(**h**) applies, a Crown Court judge can make—

(i) an order for the production of, or for giving access to, material, or for a statement of its location, under paragraphs 3 and 4 of Schedule 2 to the 2023 Act, or

(ii) an explanation order, under paragraph 10 of that Schedule; and

(i) for the purposes of an investigation to which Part 1 of the National Security Act 2023 applies, a Crown Court judge can make, and the Crown Court can vary or discharge—

(i) a disclosure order, under paragraphs 2 and 5 of Schedule 3 to the 2023 Act,

(ii) a customer information order, under paragraphs 1 and 4 of Schedule 4 to that Act, or

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(**a**) 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), section 169 of, and paragraphs 1 and 13 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25), sections 15, 49 and 55 of, and paragraphs 108 and 139 of Schedule 8, paragraphs 1 and 8 of Schedule 19 and paragraphs 14 and 34 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22) and article 3 of, and paragraphs 19 and 27 of Schedule 2 to, S.I. 2014/834. Section 362 was amended by section 74 of, and paragraphs 103 and 110 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 15 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 15 of, and paragraphs 108 and 140 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22).

(**b**) 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 169 of, and paragraphs 1 and 16 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 49 of, and paragraphs 1 and 10 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22). Section 369 was amended by section 74 of, and paragraphs 103 and 111 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), sections 15 and 55 of, and paragraphs 108 and 141 of Schedule 8, and paragraphs 14 and 35 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22) and section 224 of, and paragraphs 1 and 14 of Schedule 48 to, the Finance Act 2013 (c. 29).

(**c**) 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), section 169 of, and paragraphs 1 and 17 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 49 of, and paragraphs 1 and 12 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22). Section 375 was amended by section 74 of, and paragraphs 103 and 112 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), sections 15 and 55 of, and paragraphs 108 and 142 of Schedule 8 and paragraphs 14 and 36 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22) and section 224 of, and paragraphs 1 and 15 of Schedule 48 to, the Finance Act 2013 (c. 29).

(**d**) 2003 c. 41; section 157 was amended by section 174 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

(**e**) 2000 c. 11; section 22B was inserted by section 37 of the Criminal Finances Act 2017 (c. 22).

(**f**) 2000 c. 11; section 17A was inserted by section 42 of the Counter-Terrorism and Security Act 2015 (c. 6).

(**g**) 2002 c. 29; section 339ZH was inserted by section 12 of the Criminal Finances Act 2017 (c. 22).

(**h**) 2023 c. 32.

(iii) an account monitoring order, under paragraphs 1 and 3 of Schedule 5 to that Act.

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

(a) under the Police and Criminal Evidence Act 1984, a production order requiring a person to produce or give access to material, other than material that consists of or includes journalistic material;

(b) for the purposes of a terrorist investigation under the Terrorism Act 2000—

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

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

(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;

(c) for the purposes of a terrorist financing investigation under the Terrorism Act 2000, a disclosure order, requiring a person to provide information or documents, or to answer questions;

(d) for the purposes of an investigation to which Part 8 of the Proceeds of Crime Act 2002 or the Proceeds of Crime Act 2002 (External Investigations) Order 2014 applies—

(i) a production order, requiring a person to produce or give access to material,

(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;

(e) in connection with extradition proceedings, a production order requiring a person to produce or give access to material;

(f) under the Terrorism Act 2000, an information order requiring a person to provide information (i) related to a matter arising from a disclosure under section 21A of that Act(**a**) *(Failure to disclose: regulated sector) or under the law of a country outside the United Kingdom which corresponds with Part III of that Act (Terrorist property), or (ii) to assist in analysis by the National Crime Agency or by a financial intelligence unit outside the UK;*

(g) under the Proceeds of Crime Act 2002, an information order requiring a person to provide information (i) related to a matter arising from a disclosure under Part 7 of that Act (Money laundering) or under the law of a country outside the United Kingdom which corresponds with that Part of that Act, or (ii) to assist in analysis by the National Crime Agency or by a financial intelligence unit outside the UK;

(h) for the purposes of an investigation under the National Security Act 2023—

(i) an order requiring a person to produce, give access to, or state the location of confidential material within the meaning of that Act,

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(**a**) 2000 c. 11; section 21A was inserted by section 3 of, and paragraph 5 of Schedule 2 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24) and amended by regulation 2 of, and paragraphs 1 and 3 of Schedule 1 to, S.I. 2007/3398, section 59 of, and paragraphs 125 and 128 of, the Serious Organised Crime and Police Act 2005 (c. 15) and section 15 of, and paragraphs 67 and 72 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22).

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

(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.

These rules do not apply to an application for a production order under the Police and Criminal Evidence Act 1984 requiring a person to produce or give access to journalistic material: see paragraph 15A of Schedule 1 to the Act(**a**)*.*

For all the relevant terms under which these orders can be made, see the provisions listed in rule 47.4.

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

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 Police and Criminal Evidence Act 1984 and under the Terrorism Act 2000.

Under section 66 of the Courts Act 2003(**c**)*, in criminal cases a High Court judge, a Circuit judge, a Recorder and a qualifying judge advocate each has the powers of a justice of the peace who is a District Judge (Magistrates' Courts).*

By section 341 of the Proceeds of Crime Act 2002(**d**)*, an investigation under Part 8 of the Act may be—*

(a) an investigation into (i) whether a person has benefited from criminal conduct, (ii) the extent or whereabouts of such benefit, (iii) the available amount in respect of that person, or (iv) the extent or whereabouts of realisable property available for satisfying a confiscation order made in respect of that person ('a confiscation investigation');

(b) an investigation into whether a person has committed a money laundering offence ('a money laundering investigation');

(c) an investigation into whether property is recoverable property or associated property (as defined by section 316 of the 2002 Act(**e**)*), or into who holds the property or its extent or whereabouts ('a civil recovery investigation');*

(d) an investigation into the derivation of cash detained under the 2002 Act, or into whether such cash is intended to be used in unlawful conduct ('a detained cash investigation');

(**a**) 1984 c. 60; paragraph 15A of Schedule 1 was inserted by section 82 of the Deregulation Act 2015 (c. 20).

(**b**) 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 paragraph 1 of Schedule 2 to the Armed Forces Act 2011 (c. 18). The 1981 Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**c**) 2003 c. 39; section 66 was amended by paragraph 6 of Schedule 2 to the Armed Forces Act 2011 (c. 18) and sections 17 and 21 of, and paragraphs 83 and 90 of Schedule 10 and paragraph 4 of Schedule 14 to, the Crime and Courts Act 2013 (c. 22).

(**d**) 2002 c. 29; section 341 was amended by section 75 of the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 2 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 112 of, and paragraphs 99 and 110 of Schedule 7 to, the Policing and Crime Act 2009 (c. 26), section 49 of, and paragraphs 1, 2, 24 and 25 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22) and sections 38 and 85 of, and paragraph 55 of Schedule 4 to, the Serious Crime Act 2015 (c. 9).

(**e**) 2002 c. 29; section 316 was amended by paragraph 78 of Schedule 36 to the Criminal Justice Act 2003 (c. 44), section 109 of, and paragraphs 4 and 22 of Schedule 6 to, the Serious Organised Crime and Police Act 2005 (c. 15), section 74 of, and paragraphs 85 and 91 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), article 12 of, and paragraphs 47 and 65 of Schedule 14 to, S.I. 2010/976, sections 15 and 48 of, and paragraphs 108 and 121 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22), article 3 of, and paragraphs 19 and 25 of Schedule 2 to, S.I. 2014/834, section 85 of, and paragraph 54 of Schedule 4 to, the Serious Crime Act 2015 (c. 9) and article 8 of S.I. 2015/798.

(e) an investigation into the derivation of property detained under the 2002 Act, or into whether such property is intended to be used in unlawful conduct ('a detained property investigation');

(f) an investigation into the derivation of money held in an account in relation to which an account freezing order made under the 2002 Act has effect, or into whether such money is intended to be used in unlawful conduct ('a frozen funds investigation');

(g) an investigation for the purposes of the civil recovery provisions of the 2002 Act into the derivation of cryptoassets, or into whether such assets are intended to be used in unlawful conduct ('a cryptoasset investigation');

(h) an investigation for the purposes of Part 7 of the Coroners and Justice Act 2009(**a**) *(criminal memoirs, etc.) into whether a person is a qualifying offender or has obtained exploitation proceeds from a relevant offence, or into the value of any benefits derived by such a person from such an offence or the amount available ('an exploitation proceeds investigation').*

Under section 343 of the Proceeds of Crime Act 2002(**b**)*—*

(a) any Crown Court judge may make an order to which this Section applies for the purposes of a confiscation investigation, a money laundering investigation, a detained cash investigation, a detained property investigation or a frozen funds investigation;

(b) only a High Court judge may make such an order for the purposes of a civil recovery investigation, an exploitation proceeds investigation or a cryptoasset investigation (and these rules do not apply to an application to such a judge in such a case).

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 15A of Schedule 1 to the Police and Criminal Evidence Act 1984;

(b) paragraph 10 of Schedule 5, paragraph 14 of Schedule 5A, paragraph 4 of Schedule 6 and paragraph 5 of Schedule 6A to the Terrorism Act 2000;

(c) sections 351, 362, 369, 375 and 446 of the Proceeds of Crime Act 2002; and

(d) paragraph 16 of Schedule 2, paragraph 6 of Schedule 3, paragraph 5 of Schedule 4 and paragraph 4 of Schedule 5 to the National Security Act 2023.]

Exercise of court's powers

47.5.—(1) Subject to paragraphs (2), (3) and (4), the court may determine an application for an order, or to vary or discharge an order—

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

(b) in the absence of—

(i) the applicant,

(ii) any respondent,

(iii) any other person affected by the order.

(2) The court must not determine such an application in the applicant's absence if—

(a) the applicant asks for a hearing; or

(b) it appears to the court that—

(**a**) 2009 c. 25.

(**b**) 2002 c. 29; section 343 was amended by section 77 of, and paragraphs 1 and 3 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 4 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and sections 66 and 112 of, and Part 5 of Schedule 8 to, the Policing and Crime Act 2009 (c. 26).

(i) the proposed order may infringe legal privilege, within the meaning of section 10 of the Police and Criminal Evidence Act 1984(**a**), section 348 or 361 of the Proceeds of Crime Act 2002(**b**) or article 9 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014(**c**), or paragraph 17(5) of Schedule 2 to the National Security Act 2023,

(ii) the proposed order may require the production of excluded material, within the meaning of section 11 of the 1984 Act, or

(iii) for any other reason the application is so complex or serious as to require the court to hear the applicant.

(3) The court must not determine such an application in the absence of any respondent or 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,

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

(iv) the absentee has waived the opportunity to attend.

(4) The court must not determine such an application in the absence of any respondent who, if the order sought by the applicant were made, would be required to produce or give access to journalistic material, unless that respondent has waived the opportunity to attend.

(5) The court officer must arrange for the court to hear such an application no sooner than 2 business days after it was served, unless—

(a) the court directs that no hearing need be arranged; or

(b) the court gives other directions for the hearing.

(6) The court must not determine an application unless satisfied that sufficient time has been allowed for it.

(7) If the court so directs, the parties to an application may attend a hearing by live link.

(8) The court must not make, vary or discharge an order unless the applicant states, in writing or orally, that to the best of the applicant's knowledge and belief—

(a) the application discloses all the information that is material to what the court must decide; and

(b) the content of the application is true.

(9) Where the statement required by paragraph (8) is made orally—

(a) the statement must be on oath or affirmation, unless the court otherwise directs; and

(b) the court must arrange for a record of the making of the statement.

(10) The court may—

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

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

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

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

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

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(**a**) 1984 c. 60.
(**b**) 2002 c. 29; section 361 was amended by section 74 of, and paragraphs 103 and 109 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).
(**c**) S.I. 2014/1893.

(b) explain the delay.

Application for order: general rules

47.6.—(1) This rule applies to each application for an order to which this Section applies.

(2) The applicant must—

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

(b) demonstrate that the applicant is entitled to apply, for example as a constable or under legislation that applies to other officers;

(c) give the court an estimate of how long the court should allow—

(i) to read the application and prepare for any hearing, and

(ii) for any hearing of the application;

(d) attach a draft order in the terms proposed by the applicant;

(e) serve notice of the application on the respondent, if any, unless the court otherwise directs; and

(f) serve the application on any respondent to such extent, if any, as the court directs.

(3) A notice served on a respondent must—

(a) specify the material or information in respect of which the application is made; and

(b) identify—

(i) the power that the applicant invites the court to exercise, and

(ii) the conditions for the exercise of that power which the applicant asks the court to find are met.

(4) The applicant must serve any order made on a respondent.

Application containing information withheld from a respondent or other person

47.7.—(1) This rule applies where an application includes information that the applicant thinks ought to be revealed only to the court.

(2) The application must—

(a) identify that information; and

(b) explain why that information ought not to be served on a respondent or other person.

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

(a) the general rule is that the court must consider, in the following sequence—

(i) representations first by the applicant and then by the respondent, if any, 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 vary or discharge an order

47.8.—(1) This rule applies where one of the following wants the court to vary or discharge an order to which a rule in this Section refers—

(a) an applicant;

(b) a 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 to punish for contempt of court

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

(a) a production order made under paragraph 4 of Schedule 1 to the Police and Criminal Evidence Act 1984;

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

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

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

(e) a production order made under section 345 of the Proceeds of Crime Act 2002 or article 6 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014;

(f) an account monitoring order made under section 370 of the 2002 Act or article 29 of the 2014 Order;

(g) a production order made under section 157 of the Extradition Act 2003;

(h) a production order made under paragraph 3 or 4 of Schedule 2 to the National Security Act 2023; or

(i) an account monitoring order made under paragraph 1 of Schedule 5 to the National Security Act 2023.

(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 48 (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; sections 351(7) and 375(6) of the Proceeds of Crime Act 2002 and articles 12(6) and 34(5) of the Proceeds of Crime Act 2002 (External Investigations) Order 2014; paragraph 8 of Schedule 2 and paragraph 5 of Schedule 5 to the National Security Act 2023; and section 45 of the Senior Courts Act 1981(**a**)*.*

A Circuit judge has power to punish a person who disobeys a production order under the Police and Criminal Evidence Act 1984 as if that were a contempt of the Crown Court: see paragraph 15 of Schedule 1 to the Act(**b**)*.*

Disobedience to an explanation order, to a disclosure order or to a customer information order under the Terrorism Act 2000 is an offence: see paragraph 14 of Schedule 5, paragraph 11 of Schedule 5A and paragraph 1(3) of Schedule 6, to the Act.

Disobedience to a disclosure order or to a customer information order under the Proceeds of Crime Act 2002 or under the Proceeds of Crime Act 2002 (External Investigations) Order 2014 is an offence: see sections 359 and 366 of the Act and articles 18 and 25 of the Order. Under section 342 of the Act(**c**) *and under article 5 of the Order, subject to the exceptions for which those provide it is an offence to make a disclosure likely to prejudice an investigation or to interfere with documents relevant to it.*

(**a**) 1981 c. 54. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**b**) 1984 c. 60; paragraph 15 of Schedule 1 was amended by section 65 of, and paragraph 6 of Schedule 4 to, the Courts Act 2003 (c. 39).

(**c**) 2002 c. 29; section 342 was amended by section 77 of, and paragraphs 1 and 2 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), regulation 3 of, and paragraphs 1 and 8 of Schedule 2 to, S.I. 2007/3398 and section 169 of, and paragraphs 1 and 3 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25).

If a person fails to comply with a further information order under the Terrorism Act 2000 or under the Proceeds of Crime Act 2002 the magistrates' court may order that person to pay an amount not exceeding £5,000, which order may be enforced as if the sum due had been adjudged to be paid by a conviction: see section 22B(8), (9) of the Terrorism Act 2000(**a**) *and section 339ZH((8), (9) of the Proceeds of Crime Act 2002*(**b**)*.*

Disobedience to an explanation order, to a disclosure order or to a customer information order under the National Security Act 2003 is an offence: see paragraph 11 of Schedule 2, paragraph 7 of Schedule 3 and paragraph 6 of Schedule 4 to the Act.]

ORDERS UNDER THE POLICE AND CRIMINAL EVIDENCE ACT 1984

Application for a production order under the Police and Criminal Evidence Act 1984

47.10.—(1) This rule applies where an applicant wants the court to make an order to which rule 47.4(a) refers.

(2) As well as complying with rule 47.6 (Application for order: general rules), the application must, in every case—

(a) specify the offence under investigation (and see paragraph (3)(a));

(b) describe the material sought;

(c) identify the respondent;

(d) specify the premises on which the material is believed to be, or explain why it is not reasonably practicable to do so;

(e) explain the grounds for believing that the material is on the premises specified, or (if applicable) on unspecified premises of the respondent;

(f) specify the set of access conditions on which the applicant relies (and see paragraphs (3) and (4)); and

(g) propose—

(i) the terms of the order, and

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

(3) Where the applicant relies on paragraph 2 of Schedule 1 to the Police and Criminal Evidence Act 1984(**c**) ('the first set of access conditions': general power to gain access to special procedure material), the application must—

(a) specify the indictable offence under investigation;

(b) explain the grounds for believing that the offence has been committed;

(c) explain the grounds for believing that the material sought—

(i) is likely to be of substantial value to the investigation (whether by itself, or together with other material),

(ii) is likely to be admissible evidence at trial for the offence under investigation, and

(iii) does not consist of or include items subject to legal privilege or excluded material;

(d) explain what other methods of obtaining the material—

(i) have been tried without success, or

(ii) have not been tried because they appeared bound to fail; and

(e) explain why it is in the public interest for the respondent to produce the material, having regard to—

(**a**) 2000 c. 11; section 22B was inserted by section 37 of the Criminal Finances Act 2017 (c. 22).
(**b**) 2002 c. 29; section 339ZH was inserted by section 12 of the Criminal Finances Act 2017 (c. 22).
(**c**) 1984 c. 60; paragraph 2 of Schedule 1 was amended by sections 111 and 113 of, and paragraph 43 of Schedule 7 to, the Serious Organised Crime and Police Act 2005 (c. 15).

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

(ii) the circumstances under which the respondent holds the material.

(4) Where the applicant relies on paragraph 3 of Schedule 1 to the Police and Criminal Evidence Act 1984(**a**) ('the second set of access conditions': use of search warrant power to gain access to excluded or special procedure material), the application must—

(a) state the legislation under which a search warrant could have been issued, had the material sought not been excluded or special procedure material (in this paragraph, described as 'the main search power');

(b) include or attach the terms of the main search power;

(c) explain how the circumstances would have satisfied any criteria prescribed by the main search power for the issue of a search warrant; and

(d) explain why the issue of such a search warrant would have been appropriate.

[Note. See paragraphs 1 to 4 of Schedule 1 to the Police and Criminal Evidence Act 1984(**b**)*. The applicant for an order must be a constable. Sections 10, 11 and 14 of the 1984 Act*(**c**) *define 'items subject to legal privilege', 'excluded material' and 'special procedure material'. The period within which an order takes effect must be specified in the order and, unless the court considers a longer period appropriate, must be 7 days from the date of the order.*

See also the code of practice for searches of premises by police officers and the seizure of property found by police officers on persons or premises issued under section 66 of the Police and Criminal Evidence Act 1984(**d**)*.]*

ORDERS UNDER THE TERRORISM ACT 2000 AND THE NATIONAL SECURITY ACT 2023

Application for an order under the Terrorism Act 2000 or the National Security Act 2023

47.11.—(1) This rule applies where an applicant wants the court to make one of the orders to which rule 47.4(b), (c), (h) or (i) refers.

(2) As well as complying with rule 47.6 (Application for order: general rules)—

(a) an application for an order to which rule 47.4(b) or (c) refers must—

(i) specify the offence under investigation, and

(ii) explain how the investigation constitutes a terrorist investigation or terrorist financing investigation, as appropriate, within the meaning of the Terrorism Act 2000(**e**);

(b) an application for an order to which rule 47.4(h) or (i) refers must briefly describe the relevant act under investigation or the relevant investigation taking place; and

(c) the application must—

(i) identify any respondent, and

(ii) give the information required by whichever of rules 47.12 to 47.16 applies.

[Note. 'Terrorist investigation' is defined by section 32 of the Terrorism Act 2000, 'terrorist financing investigation' by paragraph 4 of Schedule 5A to the 2000 Act and 'terrorist property' by section 14 of the 2000 Act.

(**a**) 1984 c. 60; paragraph 3 of Schedule 1 was amended by section 113 of the Serious Organised Crime and Police Act 2005 (c. 15).

(**b**) 1984 c. 60; paragraphs 1 and 4 of Schedule 1 were amended by section 65 of, and paragraph 6 of Schedule 4 to, the Courts Act 2003 (c. 39).

(**c**) 1984 c. 60; section 14 was amended by section 1177 of, and paragraph 193 of Schedule 1 to, the Corporation Tax Act 2010 (c. 4).

(**d**) 1984 c. 60; section 66 was amended by section 57 of the Criminal Justice and Court Services Act 2000 (c. 43), sections 110 and 174 of, and Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c. 15) and section 115 of, and paragraph 21 of Schedule 9 to, the Protection of Freedoms Act 2012 (c. 9).

(**e**) 2000 c. 11.

'Relevant act' is defined by paragraph 1(2) of Schedule 2 to the National Security Act 2023. In summary, such an act is (i) an offence of espionage, sabotage or foreign interference in elections, (ii) conduct preparatory to such an offence, and (iii) acts or threats involving serious violence, the endangering of life or the creation of a serious risk to public health or safety where those acts or threats are carried out for a foreign power, or at the instigation or with the assistance of such a power.

The other investigations to which this rule applies are described in paragraph 1 of each of Schedules 3, 4 and 5 of the National Security Act 2023. Each concerns 'foreign power threat activity' as defined in section 33 of the Act.]

Content of application for a production etc. order under the Terrorism Act 2000 or the National Security Act 2023

47.12.—(1) As well as complying with rules 47.6 and 47.11, an applicant who wants the court to make an order under paragraph 5 of Schedule 5 to the Terrorism Act 2000(**a**) for the production of, or for giving access to, material, or for a statement of its location, must—

(a) identify the material sought;

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

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

(ii) expected to come into existence and then to be in the respondent's possession, custody or power within 28 days of the order;

(c) explain—

(i) how the material consists of or includes excluded material or special procedure material (or, if not yet in existence, will do so), and

(ii) why the material is not expected to include items subject to legal privilege.

(2) An applicant who wants the court to make an order under paragraph 5(5) of Schedule 5 to the 2000 Act to grant entry in aid of a production order must—

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

(b) explain why the order is needed.

(3) As well as complying with rules 47.6 and 47.11, an applicant who wants the court to make an order under paragraph 3 or paragraph 4 of Schedule 2 to the National Security Act 2023(**b**) for the production of, or for giving access to, material, or for a statement of its location must—

(a) identify the material sought;

(b) explain the grounds for suspecting that the material is—

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

(ii) expected to come into existence and then to be in the respondent's possession, custody or control within 28 days of the order;

(c) explain the grounds for suspecting that the material—

(i) consists of or includes confidential material (or, if not yet in existence, will do so), but

(ii) does not (or will not) include items subject to legal privilege;

(d) explain the grounds for suspecting that—

(i) if the material is in existence, it is likely to be evidence that a relevant act has been, or is about to be, committed, or

(ii) it will be such evidence if the material is likely to come into existence and then to be in the respondent's possession, custody or power within 28 days of the order;

(**a**) 2000 c. 11; paragraph 5 of Schedule 5 was amended by section 41 of the Criminal Finances Act 2017 (c. 22).
(**b**) 2023 c. 32.

(4) In each case the application must explain the grounds for believing that—

(a) the material is likely to be of substantial value, whether by itself or with other material, to the investigation; and

(b) 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.

(5) In each case the applicant must propose—

(a) the terms of the order sought, and

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

[Note. See paragraphs 5 to 9 of Schedule 5 to the Terrorism Act 2000(**a**) *and paragraphs 3 to 7 of Schedule 2 to the National Security Act 2023.*

The applicant for a production, etc. order under Schedule 5 to the 2000 Act must be an 'appropriate officer' as defined by paragraph 5(6) of that Schedule. Where the applicant is a counter-terrorism financial investigator the application must be for the purposes of an investigation relating to 'terrorist property' as defined by section 14 of the 2000 Act. Under paragraphs 5 and 7 of Schedule 5 to that Act a production order may require a specified person—

(a) to produce to an appropriate officer within a specified period for seizure and retention any material which that person has in his or her possession, custody or power and to which the application relates; to give an appropriate officer access to any such material within a specified period; and to state to the best of that person's knowledge and belief the location of material to which the application relates if it is not in, and it will not come into, his or her possession, custody or power within the period specified; or

(b) where such material is expected to come into existence within the period of 28 days beginning with the date of the order, to notify a named appropriate officer as soon as is reasonably practicable after any material to which the application relates comes into that person's possession, custody or power, and then to produce that material to an appropriate officer; to give an appropriate officer access to it; and to state to the best of that person's knowledge and belief the location of material to which the application relates if it is not in, and it will not come into, his or her possession, custody or power within that period of 28 days.

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 applicant for a production, etc. order under Schedule 2 to the National Security Act 2023 must be a constable investigating the commission, or anticipated commission, of a relevant act. Under paragraphs 3 and 4 of Schedule 2 to the 2023 Act a production order may impose on a specified person a requirement to produce confidential material to a constable, or to identify the location of such material, or to notify a named constable of the receipt of such material, comparably with those of a requirement imposed under the 2000 Act, described above.

Under paragraph 17 of Schedule 2 to the 2023 Act, 'confidential material' means—

(a) material created or acquired for the purposes of journalism which is held in confidence or which the sender of that material to someone else intends the intended recipient to hold in confidence;

(b) items subject to legal privilege within the meaning of section 10 of the Police and Criminal Evidence Act 1984(**b**)*; and*

(**a**) 2000 c. 11; paragraphs 5, 6 and 7 of Schedule 5 were amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39) and section 41 of the Criminal Finances Act 2017 (c. 22).

(**b**) 1984 c. 60.

(c) excluded material and special procedure material within the meaning of sections 11 and 14 of the Police and Criminal Evidence Act 1984(**a**)*, other than journalistic material.*

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 expected to have the material within 28 days, 7 days from the date the respondent gives notice of its receipt.]

Content of application for a disclosure order or information order under the Terrorism Act 2000 or the National Security Act 2023

47.13.—(1) As well as complying with rules 47.6 and 47.11, an applicant who wants the court to make a disclosure order must—

(a) explain, as applicable, the grounds for suspecting that—

(i) a person has committed an offence under any of sections 15 to 18 of the Terrorism Act 2000(**b**),

(ii) property specified in the application is terrorist property within the meaning of section 14 of the 2000 Act(**c**), or

(iii) money or other property specified in the application is relevant property within the meaning of paragraph 1 of Schedule 3 to the National Security Act 2023;

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

(c) explain the grounds for believing that—

(i) information which may be provided is likely to be of substantial value, whether or not by itself, to the investigation, and

(ii) 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.

(2) As well as complying with rule 47.6, an applicant who wants the court to make an information order must—

(a) identify the respondent from whom the information is sought and explain—

(i) whether the respondent is the person who made the disclosure to which the information relates or is otherwise carrying on a business in the regulated sector within the meaning of Part 1 of Schedule 3A to the 2000 Act(**d**), and

(ii) why the applicant thinks that the information is in the possession, or under the control, of the respondent;

(b) specify or describe the information that the applicant wants the respondent to provide;

(c) where the information sought relates to a disclosure of information by someone under section 21A of the 2000 Act(**e**) (Failure to disclose: regulated sector), explain—

(**a**) 1984 c. 60; section 14 was amended by sections 1177 and 1184 of, and paragraph 193 of Schedule 1 to, the Corporation Tax Act 2010 (c. 4).

(**b**) 2000 c. 11; section 17A was inserted by section 42 of the Counter-Terrorism and Security Act 2015 (c. 6).

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

(**d**) 2000 c. 11; Part 1 of Schedule 3A was inserted by section 3 of, and paragraph 5 of Schedule 2 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24), substituted by article 2 of S.I. 2007/3288 and amended by articles 3 and 6 of, and paragraph 25 of Schedule 1 to, S.I. 2008/948, sections 183 and 237 of, and paragraph 1 of Schedule 18 and Part 29 of Schedule 25 to, the Localism Act 2011 (c. 20), regulation 79 of, and paragraph 3 of Schedule 4 to, S.I. 2011/99, article 2 of S.I. 2011/2701, article 2 of S.I. 2012/2299, article 2 of S.I. 2012/1534, regulation 46 of, and paragraph 40 of Schedule 2 to, S.I. 2013/3115, section 151 of, and paragraph 73 of Schedule 4 to, the Co-operative and Community Benefit Societies Act 2014 (c. 14), regulation 59 of, and paragraph 21 of Schedule 1 to, S.I. 2015/575, regulation 12 of S.I. 2016/680, regulation 2 of, and paragraph 11 of the Schedule to, S.I. 2017/80, regulation 109 of, and paragraph 4 of Schedule 7 to, S.I. 2017/692 and regulation 50 of, and paragraph 6 of Schedule 4 to, S.I. 2017/701.

(**e**) 2000 c. 11; section 21A was inserted by section 3 of, and paragraph 5 of Schedule 2 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24) and amended by regulation 2 of, and paragraphs 1 and 3 of Schedule 1 to, S.I. 2007/3398, section

(i) how the information sought relates to a matter arising from that disclosure,

(ii) how the information would assist in investigating whether a person is involved in the commission of an offence under any of sections 15 to 18 of that Act(**a**), or in determining whether an investigation of that kind should be started, or in identifying terrorist property or its movement or use, and

(iii) why it is reasonable in all the circumstances for the information to be provided;

(d) where the information sought relates to a disclosure made under a requirement of the law of a country outside the United Kingdom which corresponds with Part III of the 2000 Act (Terrorist property), and an authority in that country which investigates offences corresponding with sections 15 to 18 of that Act has asked the National Crime Agency for information in connection with that disclosure, explain—

(i) how the information sought relates to a matter arising from that disclosure,

(ii) why the information is likely to be of substantial value to the authority that made the request in determining any matter in connection with the disclosure, and

(iii) why it is reasonable in all the circumstances for the information to be provided;

(e) where the information sought is to assist the National Crime Agency to conduct analysis for the purposes of the Agency's criminal intelligence function so far as that relates to terrorist financing—

(i) explain how the information would assist the Agency to conduct that analysis,

(ii) demonstrate that the applicant has had regard to the code of practice under section 22F of the 2000 Act(**b**), and

(iii) explain why it is reasonable in all the circumstances for the information to be provided;

(f) where the information sought is to assist a financial intelligence unit in a country outside the United Kingdom to conduct analysis concerned with terrorist financing, following a request by that unit to the National Crime Agency—

(i) explain how the information is likely to be of substantial value to that financial intelligence unit in carrying out that analysis,

(ii) demonstrate that the applicant has had regard to the code of practice under section 22F of the 2000 Act, and

(iii) explain why it is reasonable in all the circumstances for the information to be provided; and

(g) propose the terms of the order, including—

(i) how the respondent must provide the information required, and

(ii) the date by which the information must be provided.

(3) Rule 47.8 (Application to vary or discharge an order) does not apply to an information order.

(4) Paragraph (5) applies where a party to an application for an information order wants to appeal to the Crown Court from the decision of the magistrates' court.

(5) The appellant must—

(a) serve an appeal notice—

(i) on the Crown Court officer and on the other party,

(ii) not more than 15 business days after the magistrates' court's decision; and

(b) in the appeal notice, explain, as appropriate, why the Crown Court should (as the case may be) make, discharge or vary an information order.

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59 of, and paragraphs 125 and 128 of Schedule 4 to, the Serious Organised Crime and Police Act 2005 (c. 15) and section 15 of, and paragraphs 67 and 72 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22).

(**a**) 2000 c. 11; section 17A was inserted by section 42 of the Counter-Terrorism and Security Act 2015 (c. 6).

(**b**) 2000 c. 11; section 22F was inserted by section 186 of the Economic Crime and Corporate Transparency Act 2023 (c. 56).

(6) Rule 34.11 (Constitution of the Crown Court) applies on such an appeal.

[Note. See sections 22B, 22D, 22E and 22F of, and Schedule 5A to, the Terrorism Act 2000(**a**) *and Schedule 3 to the National Security Act 2023.*

The applicant for a disclosure order must be—

(a) under the 2000 Act, a constable or a counter-terrorism financial investigator who is, or who is authorised to apply by, a police officer of at least the rank of superintendent;

(b) under the 2023 Act, a police officer of at least the rank of superintendent, a constable authorised by an officer of at least the rank of superintendent, the Director General of the National Crime Agency, or an officer of that Agency authorised by or on behalf of the Director General.

Under section 22B(12) of the 2000 Act—

(a) the applicant for an information order to which paragraph (2)(c) or (d) refers must be 'a law enforcement officer', as defined by section 22B(14), who is, or who is authorised to apply by, a 'senior law enforcement officer', defined by section 22B(14) as a police officer of at least the rank of superintendent, the Director General of the National Crime Agency or an officer of that Agency authorised by the Director General for that purpose; and

(b) the applicant for an information order to which paragraph (2)(e) or (f) refers must be the Director General of the National Crime Agency or an officer of that Agency authorised by the Director General for that purpose.

Section 14 of the 2000 Act(**b**) *defines terrorist property as money or other property which is likely to be used for the purposes of terrorism; proceeds of the commission of terrorism; and proceeds of acts carried out for the purposes of terrorism. Sections 15 to 18 of the Act create offences of fund raising for the purposes of terrorism; use or possession of property for the purposes of terrorism; funding terrorism; making an insurance payment in response to a terrorist demand; and facilitating the retention or control of terrorist property.*

Paragraph 1 of Schedule 3 to the 2023 Act(**c**) *defines 'relevant property' as money or other property which is likely to be used for the purposes of foreign power threat activity (as defined by section 33 of the Act) or proceeds of involvement in such activity.*

A disclosure order—

(a) cannot require a person to—

(i) answer any question, provide any information or produce any document or other material which the person would be entitled to refuse to answer, provide or produce on grounds of legal professional privilege in the High Court, or

(ii) produce excluded material; but

(b) can require a lawyer to provide a client's name and address.

Under section 21A of the 2000 Act(**d**) *a person engaged in a business in the regulated sector commits an offence where the conditions listed in that section are met and that person does not disclose, in the manner required by that section, knowledge or a suspicion that another person has committed or attempted to commit an offence under any of sections 15 to 18 in Part III of the Act. Part III of the Act also contains other disclosure provisions.*

(**a**) 2000 c. 11; sections 22B, 22D and 22E were inserted by section 37 of the Criminal Finances Act 2017 (c. 22) and section 22B was amended by section 186 of the Economic Crime and Corporate Transparency Act 2023 (c. 56). Schedule 5A was inserted by paragraph 3 of Schedule 2 to that Act.

(**b**) 2000 c. 11.

(**c**) 2023 c. 32.

(**d**) 2000 c. 11; section 21A was inserted by section 3 of, and paragraph 5 of Schedule 2 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24) and amended by regulation 2 of, and paragraph 3 of Schedule 1 to, S.I. 2007/3398, section 59 of, and paragraph 128 of Schedule 4 to, the Serious Organised Crime and Police Act 2005 (c. 15) and section 61 of, and paragraph 72 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22).

Under section 22B(6A) and (6B) of the 2000 Act the analysis to assist in which information may be sought may be (i) operational analysis of information that is relevant to a terrorist financing or suspected terrorist financing (defined by section 22B(14) as an act which constitutes an offence under any of sections 15 to 18 of the Act, or under a provision corresponding with an offence under any of those sections), or (ii) strategic analysis identifying trends or patterns in the conduct of terrorist financing, or systemic deficiencies or vulnerabilities which have been, are being or are likely to be, exploited for the purposes of terrorist financing. Section 1 of the Crime and Courts Act 2013(**a**) *confers functions on the National Crime Agency, including the 'criminal intelligence function' defined by section 1(5) of that Act.*

Under section 22E of the 2000 Act an information order does not confer the right to require information which a person would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the High Court.]

Content of application for an explanation order under the Terrorism Act 2000 or the National Security Act 2023

47.14. As well as complying with rules 47.6 and 47.11, an applicant who wants the court to make an explanation order must—

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

(b) propose the terms of the order.

[Note. See paragraph 13 of Schedule 5 to the Terrorism Act 2000(**b**) *and paragraph 10 of Schedule 2 to the National Security Act 2023. The applicant for an explanation order may be a constable or, where the application concerns material produced to a counter-terrorism financial investigator, such an investigator.*

An explanation order—

(a) cannot require a person to disclose any information which the person would be entitled to refuse to disclose on grounds of legal professional privilege in the High Court; but

(b) can require a lawyer to provide a client's name and address.]

Content of application for a customer information order under the Terrorism Act 2000 or the National Security Act 2023

47.15. As well as complying with rules 47.6 and 47.11, an applicant who wants the court to make a customer information order must—

(a) specify the person in respect of whom customer information is sought;

(b) explain, as applicable—

(i) why the order is desirable for the purposes of a terrorist investigation to trace terrorist property within the meaning of the Terrorism Act 2000, or

(ii) why the order is sought for the purposes of an investigation into foreign power threat activity within the meaning of the National Security Act 2023;

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

(d) propose the terms of the order.

[Note. See Schedule 6 to the Terrorism Act 2000 and Schedule 4 to the National Security Act 2023. The applicant for a customer information order must be—

(a) under the 2000 Act, a police officer of at least the rank of superintendent;

(**a**) 2013 c. 22.

(**b**) 2000 c. 11; paragraph 13 of Schedule 5 was amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39) and section 41(3)(d) of the Criminal Finances Act 2017 (c. 22).

(b) under the 2023 Act, a police officer of at least the rank of superintendent, a constable authorised by an officer of at least the rank of superintendent, the Director General of the National Crime Agency, or an officer of that Agency authorised by or on behalf of the Director General.

'Customer information' is defined by paragraph 7 of Schedule 6 to the 2000 Act and paragraph 8 of Schedule 4 to the 2023 Act, each incorporating section 364 of the Proceeds of Crime Act 2002(**a**)*. In summary, such information is whether the individual or corporation named in the order holds or has held an account at the respondent financial institution and, if so, the details listed in section 364 of the 2002 Act.*

'Terrorist property' is defined by section 14 of the 2000 Act.]

Content of application for an account monitoring order under the Terrorism Act 2000 or the National Security Act 2023

47.16. As well as complying with rules 47.6 and 47.11, an applicant who wants the court to make an account monitoring order must—

(a) specify—

(i) the person in respect of whose account or accounts information is sought,

(ii) the information sought,

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

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

(b) explain, as applicable—

(i) why the order is desirable for the purposes of a terrorist investigation to trace terrorist property within the meaning of the Terrorism Act 2000, or

(ii) why the order is sought for the purposes of an investigation into foreign power threat activity within the meaning of the National Security Act 2023;

(c) explain how 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(**b**) *and Schedule 5 to the National Security Act 2023*(**c**)*. The applicant for an account monitoring order must be—*

(a) under the 2000 Act, a police officer or a counter-terrorism financial investigator;

(b) under the 2023 Act, a constable or an officer of the National Crime Agency.

'Terrorist property' is defined by section 14 of the 2000 Act.]

ORDERS UNDER THE PROCEEDS OF CRIME ACT 2002

Application for an order under the Proceeds of Crime Act 2002

47.17.—(1) This rule applies where an applicant wants the court to make one of the orders to which rule 47.4(d) refers.

(2) As well as complying with rule 47.6 (Application for order: general rules), the application must—

(**a**) 2002 c. 29; section 364 was amended by section 107 of the Serious Organised Crime and Police Act 2005 (c. 15) and S.I. 2009/1941.

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

(**c**) 2023 c. 32.

(a) identify—

(i) any respondent, and

(ii) the person or property the subject of the investigation;

(b) in the case of an investigation in the United Kingdom, explain why the applicant thinks that—

(i) the person under investigation has benefited from criminal conduct, in the case of a confiscation investigation, or committed a money laundering offence, in the case of a money laundering investigation, or

(ii) in the case of a detained cash investigation, a detained property investigation or a frozen funds investigation, the cash or property involved, or the money held in the frozen account, was obtained through unlawful conduct or is intended to be used in unlawful conduct;

(c) in the case of an investigation outside the United Kingdom, explain why the applicant thinks that—

(i) there is an investigation by an overseas authority which relates to a criminal investigation or to criminal proceedings (including proceedings to remove the benefit of a person's criminal conduct following that person's conviction), and

(ii) the investigation is into whether property has been obtained as a result of or in connection with criminal conduct, or into the extent or whereabouts of such property; and

(d) give the additional information required by whichever of rules 47.18 to 47.22 applies.

[Note. 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 under the Proceeds of Crime Act 2002

47.18. As well as complying with rules 47.6 and 47.17, an applicant who wants the court to make an order for the production of, or for giving 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

(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.

(**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), article 12 of, and paragraphs 47 and 67 of Schedule 14 to, S.I. 2010/976, sections 15 and 55 of, and paragraphs 108 and 143 of Schedule 8 and paragraphs 14 and 37 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22) and section 224 of, and paragraphs 1 and 17 of Schedule 48 to, the Finance Act 2013 (c. 29).

(**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) and amended by article 3 of, and paragraphs 19 and 28 of Schedule 2 to, S.I. 2014/834.

[Note. See sections 345 to 350 of the Proceeds of Crime Act 2002(**a**) *and articles 6 to 11 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014*(**b**)*. 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.

A Crown Court judge may make a production order for the purposes of a confiscation investigation, a money laundering investigation, a detained cash investigation, a detained property investigation or a frozen funds investigation.

The applicant for a production order must be an 'appropriate officer' as defined by section 378(1), (4) and (5) of the 2002 Act(**c**) *and article 2(1) of the 2014 Order.]*

Content of application for an order to grant entry under the Proceeds of Crime Act 2002

47.19. An applicant who wants the court to make an order to grant entry in aid of a production order 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 and article 8 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014. 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 and article 2(1) of the 2014 Order.]

Content of application for a disclosure order or information order under the Proceeds of Crime Act 2002

47.20.—(1) As well as complying with rules 47.6 and 47.17, an applicant who wants the court to make a disclosure order must—

(a) describe in general terms the information that the applicant wants a person 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.

(2) As well as complying with rule 47.6, an applicant who wants the court to make an information order must—

(a) identify the respondent from whom the information is sought and explain—

(**a**) 2002 c. 29; sections 345 and 346 were amended by section 75 of the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1, 6 and 7 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 49 of, and paragraphs 1, 4 and 5 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22). Section 350 was amended by section 77 of, and paragraphs 1 and 5 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 8 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and sections 66 and 112 of, and Schedule 8 to, the Policing and Crime Act 2009 (c. 26).

(**b**) S.I. 2014/1893.

(**c**) 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), 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), sections 15, 49 and 55 of, and paragraphs 108 and 144 of Schedule 8 and paragraphs 1, 24, 27, 29 and 30 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22) and section 224 of, and paragraphs 1 and 18 of Schedule 48 to, the Finance Act 2013 (c. 29).

(i) whether the respondent is the person who made the disclosure to which the information relates or is otherwise carrying on a business in the regulated sector within the meaning of Part 1 of Schedule 9 to the Proceeds of Crime Act 2002(**a**), and

(ii) why the applicant thinks that the information is in the possession, or under the control, of the respondent;

(b) specify or describe the information that the applicant wants the respondent to provide;

(c) where the information sought relates to a disclosure of information under Part 7 of the Proceeds of Crime Act 2002 (Money laundering), explain—

(i) how the information sought relates to a matter arising from that disclosure,

(ii) how the information would assist in investigating whether a person is engaged in money laundering or in determining whether an investigation of that kind should be started, and

(iii) why it is reasonable in all the circumstances for the information to be provided;

(d) where the information sought relates to a disclosure made under a requirement of the law of a country outside the United Kingdom which corresponds with Part 7 of the 2002 Act, and an authority in that country which investigates money laundering has asked the National Crime Agency for information in connection with that disclosure, explain—

(i) how the information sought relates to a matter arising from that disclosure,

(ii) why the information is likely to be of substantial value to the authority that made the request in determining any matter in connection with the disclosure, and

(iii) why it is reasonable in all the circumstances for the information to be provided;

(e) where the information sought is to assist the National Crime Agency to conduct analysis for the purposes of the Agency's criminal intelligence function so far as that relates to money laundering—

(i) explain how the information would assist the Agency to conduct that analysis,

(ii) demonstrate that the applicant has had regard to the code of practice under section 339ZL of the 2002 Act(**b**), and

(iii) explain why it is reasonable in all the circumstances for the information to be provided;

(f) where the information sought is to assist a financial intelligence unit in a country outside the United Kingdom to conduct analysis concerned with money laundering, following a request by that unit to the National Crime Agency—

(i) explain how the information is likely to be of substantial value to that financial intelligence unit in carrying out that analysis,

(ii) demonstrate that the applicant has had regard to the code of practice under section 339ZL of the 2002 Act, and

(iii) explain why it is reasonable in all the circumstances for the information to be provided; and

(g) propose the terms of the order, including—

(i) how the respondent must provide the information required, and

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(**a**) 2002 c. 29; Part 1 of Schedule 9 was substituted by articles 2 and 3 of S.I. 2007/3287 and amended by sections 183 and 237 of, and paragraph 2 of Schedule 18 and Part 29 of Schedule 25 to, the Localism Act 2011 (c. 20), regulation 79 of, and paragraph 3 of Schedule 4 to, S.I. 2011/99, article 3 of S.I. 2011/2701, article 3 of S.I. 2012/1534, article 3 of S.I. 2012/2299, regulation 46 of, and paragraph 41 of Schedule 2 to, S.I. 2013/3115, section 151 of, and paragraph 81 of Schedule 4 to, the Co-operative and Community Benefit Societies Act 2014 (c. 14), regulation 59 of, and paragraph 23 of Schedule 1 to, S.I. 2015/575, regulation 14 of S.I. 2016/680, regulation 2 of, and paragraph 13 of the Schedule to, S.I. 2017/80, regulation 109 of, and paragraph 6 of Schedule 7 to, S.I. 2017/692 and regulation 50 of, and paragraph 7 of Schedule 4 to, S.I. 2017/701.

(**b**) 2002 c. 29; section 339ZL was inserted by section 185 of the Economic Crime and Corporate Transparency Act 2023 (c. 56).

(ii) the date by which the information must be provided.

(3) Rule 47.8 (Application to vary or discharge an order) does not apply to an information order.

(4) Paragraph (5) applies where a party to an application for an information order wants to appeal to the Crown Court from the decision of the magistrates' court.

(5) The appellant must—

(a) serve an appeal notice on the Crown Court officer and on the other party not more than 15 business days after the magistrates' court's decision; and

(b) in the appeal notice, explain, as appropriate, why the Crown Court should (as the case may be) make, discharge or vary an information order.

(6) Rule 34.11 (Constitution of the Crown Court) applies on such an appeal.

[Note. See sections 339ZH, 339ZJ, 339ZK, 339ZL, 357, 358 and 361 of the Proceeds of Crime Act 2002(**a**) *and articles 16, 17 and 20 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014*(**b**)*.*

Where the 2002 Act applies, a Crown Court judge may make a disclosure order for the purposes of a confiscation investigation or a money laundering investigation.

The applicant for a disclosure order must be a 'relevant authority' as defined by section 357(7) of the 2002 Act, or an 'appropriate officer' as defined by article 2(1) of the 2014 Order where the Order applies. Under section 362(6) of the Act(**c**)*, a relevant authority who under section 357(7) is an 'appropriate officer' (as defined by section 378(1), (4) and (5)*(**d**)*) may apply only if that person is, or is authorised to do so by, a 'senior appropriate officer' (as defined by section 378(2)).*

Under section 339ZH(1), (12) of the 2002 Act(**e**) *the applicant for an information order must be the Director General of the National Crime Agency or an officer of that Agency authorised by the Director General for that purpose.*

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

Under sections 330, 331 and 332 in Part 7 of the 2002 Act(**f**) *a person engaged in a business in the regulated sector commits an offence where the conditions listed in any of those sections are*

(**a**) 2002 c. 29; sections 339ZH, 339ZJ and 339ZK were inserted by section 12 of the Criminal Finances Act 2017 (c. 22). 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), section 169 of, and paragraphs 1 and 13 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25), sections 15, 49 and 55 of, and paragraphs 108 and 139 of Schedule 8, paragraphs 1 and 8 of Schedule 19 and paragraphs 14 and 34 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22) and article 3 of, and paragraphs 19 and 27 of Schedule 2 to, S.I. 2014/834 and section 7(2) of, and paragraph 51 of Schedule 5 to, the Criminal Finances Act 2017 (c. 22). Section 358 was amended by section 169 of, and paragraphs 1 and 14 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25), section 49(a) of, and paragraphs 1 and 9 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22) and section 7(3) of the Criminal Finances Act 2017 (c. 22). Section 361 was amended by section 74 of, and paragraphs 103 and 109 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).

(**b**) S.I. 2014/1893.

(**c**) 2002 c. 29; section 362 was amended by section 74 of, and paragraphs 103 and 110 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 15 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25), section 15 of, and paragraphs 108 and 140 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22) and section 7(4) of the Criminal Finances Act 2017 (c. 22).

(**d**) 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), 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), sections 15, 49 and 55 of, and paragraphs 108 and 144 of Schedule 8 and paragraphs 1, 24, 27, 29 and 30 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22), section 224 of, and paragraphs 1 and 18 of Schedule 48 to, the Finance Act 2013 (c. 29) and paragraph 25 of Schedule 1, and paragraph 59 of Schedule 5, to the Criminal Finances Act 2017 (c. 22).

(**e**) 2002 c. 29; section 339ZH was inserted by section 12 of the Criminal Finances Act 2017 (c. 22) and amended by section 185 of the Economic Crime and Corporate Transparency Act 2023 (c. 56).

(**f**) 2002 c. 29; section 330 was amended by sections 102, 104, 105, 106 and 174 of, and Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c. 15), article 2 of S.I. 2006/308, regulation 3 of, and paragraphs 1 and 2 of Schedule 2 to, S.I. 2007/3398 and section 15 of, and paragraphs 108 and 129 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22). Section 331 was amended by sections 102 and 104 of the Serious Organised Crime and Police Act 2005 (c. 15) and section 15 of, and paragraphs 108 and 130 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22). Section 332 was amended by sections 102 and 104 of the Serious Organised Crime and Police Act 2005 (c. 15) and section 15 of, and paragraphs 108 and 131 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22).

met and that person does not disclose, in the manner required by the relevant section, knowledge or a suspicion that another person is engaged in money laundering.

Under section 339ZH(6A) and (6B) of the 2002 Act the analysis to assist in which information may be sought may be (i) operational analysis of information that is relevant to money laundering or suspected money laundering, or (ii) strategic analysis identifying trends or patterns in the conduct of money laundering, or systemic deficiencies or vulnerabilities which have been, are being or are likely to be, exploited for the purposes of money laundering. Section 1 of the Crime and Courts Act 2013 confers functions on the National Crime Agency, including the 'criminal intelligence function' defined by section 1(5) of that Act.

Under section 339ZK of the 2002 Act(**a**) *an information order does not confer the right to require information which a person would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the High Court.]*

Content of application for a customer information order under the Proceeds of Crime Act 2002

47.21. As well as complying with rules 47.6 and 47.17, 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(**b**) *and articles 22, 23, 24 and 27 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014.*

A Crown Court judge may make a customer information order for the purposes of a confiscation investigation or a money laundering investigation.

The applicant for a customer information order must be an 'appropriate officer' as defined by section 378(1), (4) and (5) of the 2002 Act and article 2(1) of the 2014 Order.

'Customer information' is defined by section 364 of the 2002 Act and article 2(1) of the 2014 Order.]

Content of application for an account monitoring order under the Proceeds of Crime Act 2002

47.22. As well as complying with rules 47.6 and 47.17, 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;

(**a**) 2002 c. 29; section 339ZK was inserted by section 12 of the Criminal Finances Act 2017 (c. 22) and amended by section 185 of the Economic Crime and Corporate Transparency Act 2023 (c. 56).

(**b**) 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 169 of, and paragraphs 1 and 16 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 49 of, and paragraphs 1 and 10 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22). Section 364 was amended by section 107 of the Serious Organised Crime and Police Act 2005 (c. 27) and article 2(1) of, and paragraph 196 of Schedule 1 to, S.I. 2009/1941.

(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(**a**) *and articles 29, 30 and 33 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014.*

Where the 2002 Act applies, a Crown Court judge may make an account monitoring order for the purposes of a confiscation investigation, a money laundering investigation, a detained cash investigation, a detained property investigation or a frozen funds investigation.

The applicant for an account monitoring order must be an 'appropriate officer' as defined by section 378(1), (4) and (5) of the 2002 Act and article 2(1) of the 2014 Order.

'Account information' is defined by section 370 of the 2002 Act and article 29(3) of the 2014 Order.]

ORDERS UNDER THE EXTRADITION ACT 2003

Application for a production order under the Extradition Act 2003

47.23.—(1) This rule applies where an applicant wants the court to make an order to which rule 47.4(e) refers.

(2) As well as complying with rule 47.6 (Application for order: general rules), the application must—

(a) identify the person whose extradition is sought;

(b) specify the extradition offence of which that person is accused;

(c) identify the respondent; and

(d) describe the special procedure or excluded material sought.

(3) In relation to the person whose extradition is sought, the application must explain the grounds for believing that—

(a) that person has committed the offence for which extradition is sought;

(b) that offence is an extradition offence; and

(c) that person is in the United Kingdom or is on the way to the United Kingdom.

(4) In relation to the material sought, the application must—

(a) specify the premises on which the material is believed to be;

(b) explain the grounds for believing that—

(i) the material is on those premises,

(ii) the material consists of or includes special procedure or excluded material, and

(iii) the material would be likely to be admissible evidence at a trial in England and Wales for the offence for which extradition is sought;

(c) explain what other methods of obtaining the material—

(i) have been tried without success, or

(ii) have not been tried because they appeared bound to fail; and

(d) explain why it is in the public interest for the respondent to produce or give access to the material.

(**a**) 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), section 169 of, and paragraphs 1 and 17 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 49 of, and paragraphs 1 and 12 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22).

(5) The application must propose—

(a) the terms of the order, and

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

[Note. See sections 157 and 158 of the Extradition Act 2003(**a**)*. Under those provisions—*

(a) 'special procedure material' means the same as under section 14 of the Police and Criminal Evidence Act 1984; and

(b) 'excluded material' means the same as under section 11 of the 1984 Act.

The applicant for a production order must be a constable.

The period within which an order takes effect must be specified in the order and, unless the court considers a longer period appropriate, must be 7 days from the date of the order.]

SECTION 3: INVESTIGATION WARRANTS

When this Section applies

47.24. This Section applies where—

(a) a justice of the peace can issue a warrant under—

(i) section 8 of the Police and Criminal Evidence Act 1984(**b**),

(ii) section 2 of the Criminal Justice Act 1987(**c**),

(iii) paragraph 1 of Schedule 5 to the Terrorism Act 2000(**d**), or

(iv) paragraph 2 of Schedule 2 to the National Security Act 2023;

(b) a Circuit judge can issue a warrant under—

(i) paragraph 12 of Schedule 1 to the Police and Criminal Evidence Act 1984(**e**),

(ii) paragraph 11 of Schedule 5 to the Terrorism Act 2000(**f**), or

(iii) section 160 of the Extradition Act 2003(**g**);

(c) a Crown Court judge can issue a warrant under—

(i) section 352 of the Proceeds of Crime Act 2002(**h**), or

(ii) article 13 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014(**i**);

(d) a Crown Court judge can issue a warrant under—

(i) paragraph 9 of Schedule 2 to the National Security Act 2023, or

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(**a**) 2003 c. 41; section 157 was amended by section 174 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

(**b**) 1984 c. 60; section 8 was amended by paragraph 80 of Schedule 14 to the Immigration and Asylum Act 1999 (c. 33), sections 111, 113 and 114 of, and paragraph 43 of Schedule 7 to, the Serious Organised Crime and Police Act 2005 (c. 15) and section 86 of the Finance Act 2007 (c. 11).

(**c**) 1987 c. 38; section 2 was amended by sections 143 and 170 of, and paragraph 113 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 164 of the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 20 of Schedule 3 to the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 23 of Schedule 2 to the Criminal Justice and Police Act 2001 (c. 16), paragraphs 11 and 12 of Schedule 5 to the Crime (International Co-operation) Act 2003 (c. 32) and section 12 of, and paragraphs 11, 12 and 13 of Schedule 1 to, the Criminal Justice Act 2003 (c. 44).

(**d**) 2000 c. 11; paragraph 1 of Schedule 5 was amended by section 26 of the Terrorism Act 2006 (c. 11).

(**e**) 1984 c. 60; paragraph 12 of Schedule 1 was amended by section 65 of, and paragraph 6 of Schedule 4 to, the Courts Act 2003 (c. 39) and section 113 of the Serious Organised Crime and Police Act 2005 (c. 15).

(**f**) 2000 c. 11; paragraph 11 of Schedule 5 was amended by section 26 of the Terrorism Act 2006 (c. 11) and section 82 of the Deregulation Act 2015 (c. 20). It is further amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from a date to be appointed.

(**g**) 2003 c. 41; section 160 was amended by section 174 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

(**h**) 2002 c. 29; section 352 was amended by sections 74, 76, 77 and 80 of, and paragraphs 103 and 105 of Schedule 8 and paragraphs 1 and 7 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 10 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25), sections 15, 49 and 55 of, and paragraphs 108 and 137 of Schedule 8, paragraphs 1 and 6 of Schedule 19 and paragraphs 14 and 31 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22), section 224 of, and paragraphs 1 and 12 of Schedule 48 to, the Finance Act 2013 (c. 29), article 3 of, and paragraphs 19 and 26 of Schedule 2 to, S.I. 2014/834 and section 82 of the Deregulation Act 2015 (c. 20).

(**i**) S.I. 2014/1893.

(ii) paragraph 13 of that Schedule; and

(e) a court to which these Rules apply can issue a warrant to search for and seize articles or persons under a power not listed in paragraphs (a) to (d).

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

(a) under the Police and Criminal Evidence Act 1984, a warrant authorising entry to, and the search of, premises for material, articles or persons;

(b) under the Criminal Justice Act 1987, a warrant authorising entry to, and the search of, premises for documents sought by the Director of the Serious Fraud Office;

(c) under the Terrorism Act 2000, a warrant authorising entry to, and the search of, premises for material sought for the purposes of a terrorist investigation;

(d) under the Proceeds of Crime Act 2002 or under the Proceeds of Crime Act 2002 (External Investigations) Order 2014, a warrant authorising entry to, and the search of, premises for material sought for the purposes of a confiscation investigation, a money laundering investigation, a detained cash investigation or an external investigation;

(e) under the Extradition Act 2003, a warrant authorising entry to, and the search of, premises for material sought in connection with the prosecution of a person whose extradition has been requested;

(f) under the National Security Act 2023—

(i) a warrant authorising entry to, and the search of, premises for material sought for the purposes of an investigation to which Schedule 2 to that Act applies,

(ii) a warrant authorising the retention of confidential journalistic material seized under the authority of a senior police officer;

(g) under these and other Acts, comparable warrants.

For all the relevant terms under which such warrants can be issued, see the provisions listed in this rule.

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

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 Police and Criminal Evidence Act 1984 and under the Terrorism Act 2000.

Under section 66 of the Courts Act 2003(**b**)*, in criminal cases a High Court judge, a Circuit judge, a Recorder and a qualifying judge advocate each has the powers of a justice of the peace who is a District Judge (Magistrates' Courts).*

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

(a) paragraph 15A of Schedule 1 to the Police and Criminal Evidence Act 1984(**c**)*;*

(b) paragraph 11 of Schedule 5 to the Terrorism Act 2000;

(c) section 352 of the Proceeds of Crime Act 2002;

(d) section 160 of the Extradition Act 2003; and

(e) paragraph 16 of Schedule 2 to the National Security Act 2023.

(**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 paragraph 1 of Schedule 2 to the Armed Forces Act 2011 (c. 18). The 1981 Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**b**) 2003 c. 39; section 66 was amended by paragraph 6 of Schedule 2 to the Armed Forces Act 2011 (c. 18) and sections 17 and 21 of, and paragraphs 83 and 90 of Schedule 10 and paragraph 4 of Schedule 14 to, the Crime and Courts Act 2013 (c. 22).

(**c**) 1984 c. 60; paragraph 15A of Schedule 1 was inserted by section 82 of the Deregulation Act 2015 (c. 20).

For a list of the types of investigation under Part 8 of the Proceeds of Crime Act 2002 and a list of the powers of judges in respect of each type, see the note to rule 47.4 (Section 2: Investigation orders; When this Section applies).]

Exercise of court's powers

47.25.—(1) The court must determine an application for a warrant—

(a) at a hearing, which must be in private unless the court otherwise directs;

(b) in the presence of the applicant; and

(c) in the absence of any person affected by the warrant, including any person in occupation or control of premises which the applicant wants to search.

(2) If the court so directs, the applicant may attend the hearing by live link.

(3) The court must not determine an application unless satisfied that sufficient time has been allowed for it.

(4) The court must not determine an application unless the applicant confirms, on oath or affirmation, that to the best of the applicant's knowledge and belief—

(a) the application discloses all the information that is material to what the court must decide, including any circumstances that might reasonably be considered capable of undermining any of the grounds of the application; and

(b) the content of the application is true.

(5) If the court requires the applicant to answer a question about an application—

(a) the applicant's answer must be on oath or affirmation;

(b) the court must arrange for a record of the gist of the question and reply; and

(c) if the applicant cannot answer to the court's satisfaction, the court may—

(i) specify the information the court requires, and

(ii) give directions for the presentation of any renewed application.

(6) If the court considers information to which rule 47.26(4) refers (information that the applicant thinks should be kept confidential), the court must so record.

(7) Unless to do so would be inconsistent with other legislation, on an application the court may issue—

(a) a warrant in respect of specified premises;

(b) a warrant in respect of all premises occupied or controlled by a specified person;

(c) a warrant in respect of all premises occupied or controlled by a specified person which specifies some of those premises; or

(d) more than one warrant—

(i) each one in respect of premises specified in the warrant,

(ii) each one in respect of all premises occupied or controlled by a person specified in the warrant (whether or not such a warrant also specifies any of those premises), or

(iii) at least one in respect of specified premises and at least one in respect of all premises occupied or controlled by a specified person (whether or not such a warrant also specifies any of those premises).

(8) Paragraph (9) applies—

(a) only in a magistrates' court; and

(b) unless the court—

(i) includes a District Judge (Magistrates' Courts), and

(ii) otherwise directs.

(9) A justices' legal adviser must assist the court by completing the preparation of any warrant to be issued.

[Note. See section 15 of the Police and Criminal Evidence Act 1984(**a**) *and section 2(4) of the Criminal Justice Act 1987*(**b**)*. Not all the powers to which the rules in this Section apply permit the issue of a warrant in respect of all premises occupied or controlled by a specified person: see, for example, rule 47.32 (Application for warrant under section 352 of the Proceeds of Crime Act 2002).*

For the functions of a justices' legal adviser, see sections 28 and 29 of the Courts Act 2003(**c**)*. See also rule 2.12 (Duties of justices' legal adviser).]*

Application for warrant: general rules

47.26.—(1) This rule applies to each application to which this Section applies.

(2) The applicant must—

(a) apply in writing;

(b) serve the application on—

(i) the court officer, or

(ii) if the court office is closed, the court;

(c) demonstrate that the applicant is entitled to apply, for example as a constable or under legislation that applies to other officers;

(d) give the court an estimate of how long the court should allow—

(i) to read and prepare for the application, and

(ii) for the hearing of the application; and

(e) tell the court when the applicant expects any warrant issued to be executed.

(3) The application must disclose anything known or reported to the applicant that might reasonably be considered capable of undermining any of the grounds of the application.

(4) Where the application includes information that the applicant thinks should be kept confidential, the applicant may—

(a) set out that information in a separate document, marked accordingly; and

(b) in that document, explain why the applicant thinks that that information ought not to be supplied to anyone other than the court.

(5) The application must include—

(a) a declaration by the applicant that to the best of the applicant's knowledge and belief—

(i) the application discloses all the information that is material to what the court must decide, including anything that might reasonably be considered capable of undermining any of the grounds of the application, and

(ii) the content of the application is true; and

(b) a declaration by an officer senior to the applicant that the senior officer has reviewed and authorised the application.

(6) The application must attach a draft warrant or warrants in the terms proposed by the applicant.

Information to be included in a warrant

47.27.—(1) A warrant must identify—

(a) the person or description of persons by whom it may be executed;

(**a**) 1984 c. 60; section 15 was amended by sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c. 15) and article 7 of S.I. 2005/3496.

(**b**) 1987 c. 38.

(**c**) 2003 c. 39; sections 28 and 29 were substituted by section 3 of, and paragraphs 25 and 26 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).

(b) any person who may accompany a person executing the warrant;

(c) so far as practicable—

(i) the documents, electronic devices, or kinds of devices, or other material, or persons to be sought, and

(ii) any information to be sought which may be stored electronically;

(d) the legislation under which it was issued;

(e) the name of the applicant;

(f) the court that issued it, unless that is otherwise recorded by the court officer;

(g) the court office for the court that issued it; and

(h) the date on which it was issued.

(2) A warrant must specify—

(a) either—

(i) the premises to be searched, where the application was for authority to search specified premises, or

(ii) the person in occupation or control of premises to be searched, where the application was for authority to search any premises occupied or controlled by that person; and

(b) the number of occasions on which specified premises may be searched, if more than one.

(3) A warrant must include an indication that it has been approved by the court that issued it.

(4) Where a warrant comprises more than a single page, each page must include such an indication.

(5) A copy of a warrant must include a prominent certificate that it is such a copy.

[Note. See sections 15 and 16 of the Police and Criminal Evidence Act 1984(**a**)*. Not all the powers to which the rules in this Section apply permit the issue of a warrant in respect of all premises occupied or controlled by a specified person: see, for example, rule 47.32 (Application for warrant under section 352 of the Proceeds of Crime Act 2002).]*

Application for warrant under section 8 of the Police and Criminal Evidence Act 1984

47.28.—(1) This rule applies where an applicant wants a magistrates' court to issue a warrant or warrants under section 8 of the Police and Criminal Evidence Act 1984(**b**).

(2) As well as complying with rule 47.26, the application must—

(a) specify the offence under investigation (and see paragraph (3));

(b) so far as practicable, identify the material sought (and see paragraph (4));

(c) specify the premises to be searched (and see paragraphs (5) and (6));

(d) state whether the applicant wants the premises to be searched on more than one occasion (and see paragraph (7)); and

(e) state whether the applicant wants other persons to accompany the officers executing the warrant or warrants (and see paragraph (8)).

(3) In relation to the offence under investigation, the application must—

(a) state whether that offence is—

(i) an indictable offence, or

(**a**) 1984 c. 60; section 16 was amended by paragraph 281 of Schedule 8 to the Courts Act 2003 (c. 39), section 2 of the Criminal Justice Act 2003 (c. 44), sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c. 15) and article 8 of S.I. 2005/3496.

(**b**) 1984 c. 60; section 8 was amended by paragraph 80 of Schedule 14 to the Immigration and Asylum Act 1999 (c. 33), sections 111, 113 and 114 of, and paragraph 43 of Schedule 7 to, the Serious Organised Crime and Police Act 2005 (c. 15) and section 86 of the Finance Act 2007 (c. 11).

(ii) a relevant offence as defined in section 28D of the Immigration Act 1971(**a**); and

(b) explain the grounds for believing that the offence has been committed.

(4) In relation to the material sought, the application must—

(a) explain the grounds for believing that that material—

(i) is likely to be of substantial value to the investigation (whether by itself, or together with other material),

(ii) is likely to be admissible evidence at trial for the offence under investigation, and

(iii) does not consist of or include items subject to legal privilege, excluded material or special procedure material; and

(b) if that material may be stored in an electronic device or devices—

(i) so far as practicable, describe each device or kind of device sought, and

(ii) explain the grounds for believing that the material may be stored there.

(5) In relation to premises which the applicant wants to be searched and can specify, the application must—

(a) specify each set of premises;

(b) in respect of each set of premises, explain the grounds for believing that material sought is on those premises; and

(c) in respect of each set of premises, explain the grounds for believing that—

(i) it is not practicable to communicate with any person entitled to grant entry to the premises,

(ii) it is practicable to communicate with such a person but it is not practicable to communicate with any person entitled to grant access to the material sought,

(iii) entry to the premises will not be granted unless a warrant is produced, or

(iv) the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.

(6) In relation to premises which the applicant wants to be searched but at least some of which the applicant cannot specify, the application must—

(a) explain the grounds for believing that—

(i) because of the particulars of the offence under investigation it is necessary to search any premises occupied or controlled by a specified person, and

(ii) it is not reasonably practicable to specify all the premises which that person occupies or controls which might need to be searched;

(b) specify as many sets of premises as is reasonably practicable;

(c) in respect of each set of premises, whether specified or not, explain the grounds for believing that material sought is on those premises; and

(d) in respect of each specified set of premises, explain the grounds for believing that—

(i) it is not practicable to communicate with any person entitled to grant entry to the premises,

(ii) it is practicable to communicate with such a person but it is not practicable to communicate with any person entitled to grant access to the material sought,

(iii) entry to the premises will not be granted unless a warrant is produced, or

(iv) the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.

(**a**) 1971 c. 77; section 28D was inserted by section 131 of the Immigration and Asylum Act 1999 (c. 33) and amended by sections 144 and 150 of the Nationality, Immigration and Asylum Act 2002 (c. 41).

(7) In relation to any set of premises which the applicant wants to be searched on more than one occasion, the application must—

(a) explain why it is necessary to search on more than one occasion in order to achieve the purpose for which the applicant wants the court to issue the warrant; and

(b) specify any proposed maximum number of occasions.

(8) In relation to any set of premises which the applicant wants to be searched by the officers executing the warrant with other persons authorised by the court, the application must—

(a) identify those other persons, by function or description; and

(b) explain why those persons are required.

[Note. Under section 8 of the Police and Criminal Evidence Act 1984, where there are reasonable grounds for believing that an indictable offence has been committed a constable may apply to a justice of the peace for a warrant authorising a search for evidence on specified premises, or on the premises of a specified person. Under section 8(6) of the 1984 Act, section 8 applies also in relation to relevant offences as defined in section 28D(4) of the Immigration Act 1971 (some of which are not indictable offences).

Under section 23 of the 1984 Act(**a**)*, 'premises' includes any place, and in particular any vehicle, vessel, aircraft or hovercraft, any offshore installation, any renewable energy installation and any tent or moveable structure.*

Under section 16(3) of the 1984 Act(**b**)*, entry and search under a warrant must be within 3 months from the date of its issue.*

See also the code of practice for the search of premises issued under section 66 of the 1984 Act(**c**)*.]*

Application for warrant under section 2 of the Criminal Justice Act 1987

47.29.—(1) This rule applies where an applicant wants a magistrates' court to issue a warrant or warrants under section 2 of the Criminal Justice Act 1987(**d**).

(2) As well as complying with rule 47.26, the application must—

(a) describe the investigation being conducted by the Director of the Serious Fraud Office and include—

(i) an explanation of what is alleged and why, and

(ii) a chronology of relevant events;

(b) specify the document, documents or description of documents sought by the applicant (and see paragraphs (3) and (4)); and

(c) specify the premises which the applicant wants to be searched (and see paragraph (5)).

(3) In relation to each document or description of documents sought, the application must—

(a) explain the grounds for believing that each such document—

(i) relates to a matter relevant to the investigation, and

(ii) could not be withheld from disclosure or production on grounds of legal professional privilege;

(**a**) 1984 c. 60; section 23 was amended by sections 103 and 197 of, and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20).

(**b**) 1984 c. 60; section 16(3) was amended by section 114 of the Serious Organised Crime and Police Act 2005 (c. 15).

(**c**) 1984 c. 60; section 66 was amended by section 57 of the Criminal Justice and Court Services Act 2000 (c. 43), sections 110 and 174 of, and Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c. 15) and section 115 of, and paragraph 21 of Schedule 9 to, the Protection of Freedoms Act 2012 (c. 9).

(**d**) 1987 c. 38; section 2 was amended by sections 143 and 170 of, and paragraph 113 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), section 164 of the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 20 of Schedule 3 to the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 23 of Schedule 2 to the Criminal Justice and Police Act 2001 (c. 16), paragraphs 11 and 12 of Schedule 5 to the Crime (International Co-operation) Act 2003 (c. 32) and section 12 of, and paragraphs 11, 12 and 13 of Schedule 1 to, the Criminal Justice Act 2003 (c. 44).

(b) explain the grounds for believing that—

(i) a person has failed to comply with a notice by the Director to produce the document or documents,

(ii) it is not practicable to serve such a notice, or

(iii) the service of such a notice might seriously impede the investigation; and

(c) if the document or documents may be stored in an electronic device or devices—

(i) so far as practicable, describe each device or kind of device sought, and

(ii) explain the grounds for believing that the document or documents may be stored there.

(4) In relation to any document or description of documents which the applicant wants to be preserved but not seized under a warrant, the application must—

(a) specify the steps for which the applicant wants the court's authority in order to preserve and prevent interference with the document or documents; and

(b) explain why such steps are necessary.

(5) In respect of each set of premises which the applicant wants to be searched, the application must explain the grounds for believing that a document or description of documents sought by the applicant is on those premises.

(6) If the court so directs, the applicant must make available to the court material on which is based the information given under paragraph (2).

[Note. Under section 2 of the Criminal Justice Act 1987, where the Director of the Serious Fraud Office is investigating a case of serious or complex fraud a member of that Office may apply to a justice of the peace for a warrant authorising a search of specified premises for documents relating to any matter relevant to the investigation. Under section 66 of the Courts Act 2003(**a**)*, a Circuit judge can exercise the power to issue a warrant.*

Under section 16(3) of the Police and Criminal Evidence Act 1984, entry and search under a warrant must be within 3 months from the date of its issue.]

Application for warrant under paragraph 12 of Schedule 1 to the Police and Criminal Evidence Act 1984

47.30.—(1) This rule applies where an applicant wants a Circuit judge to issue a warrant or warrants under paragraph 12 of Schedule 1 to the Police and Criminal Evidence Act 1984(**b**).

(2) As well as complying with rule 47.26, the application must—

(a) specify the offence under investigation (and see paragraph (3)(a));

(b) specify the set of access conditions on which the applicant relies (and see paragraphs (3) and (4));

(c) so far as practicable, identify the material sought and if that material may be stored in an electronic device or devices—

(i) so far as practicable, describe each device or kind of device sought, and

(ii) explain the grounds for believing that the material may be stored there;

(d) specify the premises to be searched (and see paragraphs (6) and (7)); and

(e) state whether the applicant wants other persons to accompany the officers executing the warrant or warrants (and see paragraph (8)).

(**a**) 2003 c. 39; section 66 was amended by paragraph 6 of Schedule 2 to the Armed Forces Act 2011 (c. 18) and sections 17 and 21 of, and paragraphs 83 and 90 of Schedule 10 and paragraph 4 of Schedule 14 to, the Crime and Courts Act 2013 (c. 22).

(**b**) 1984 c. 60; paragraph 12 of Schedule 1 was amended by section 65 of, and paragraph 6 of Schedule 4 to, the Courts Act 2003 (c. 39) and section 113 of the Serious Organised Crime and Police Act 2005 (c. 15).

(3) Where the applicant relies on paragraph 2 of Schedule 1 to the Police and Criminal Evidence Act 1984(**a**) ('the first set of access conditions': general power to gain access to special procedure material), the application must—

(a) specify the indictable offence under investigation;

(b) explain the grounds for believing that the offence has been committed;

(c) explain the grounds for believing that the material sought—

(i) is likely to be of substantial value to the investigation (whether by itself, or together with other material),

(ii) is likely to be admissible evidence at trial for the offence under investigation, and

(iii) does not consist of or include items subject to legal privilege or excluded material;

(d) explain what other methods of obtaining the material—

(i) have been tried without success, or

(ii) have not been tried because they appeared bound to fail; and

(e) explain why it is in the public interest to obtain the material, having regard to—

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

(ii) the circumstances under which the material is held.

(4) Where the applicant relies on paragraph 3 of Schedule 1 to the Police and Criminal Evidence Act 1984(**b**) ('the second set of access conditions': use of search warrant power to gain access to excluded or special procedure material), the application must—

(a) state the legislation under which a search warrant could have been issued, had the material sought not been excluded or special procedure material (in this paragraph, described as 'the main search power');

(b) include or attach the terms of the main search power;

(c) explain how the circumstances would have satisfied any criteria prescribed by the main search power for the issue of a search warrant; and

(d) explain why the issue of such a search warrant would have been appropriate.

(5) Where the applicant relies on the second set of access conditions and on an assertion that a production order made under paragraph 4 of Schedule 1 to the 1984 Act in respect of the material sought has not been complied with—

(a) the application must—

(i) identify that order and describe its terms, and

(ii) specify the date on which it was served; but

(b) the application need not comply with paragraphs (6) or (7).

(6) In relation to premises which the applicant wants to be searched and can specify, the application must (unless paragraph (5) applies)—

(a) specify each set of premises;

(b) in respect of each set of premises, explain the grounds for believing that material sought is on those premises; and

(c) in respect of each set of premises, explain the grounds for believing that—

(i) it is not practicable to communicate with any person entitled to grant entry to the premises,

(ii) it is practicable to communicate with such a person but it is not practicable to communicate with any person entitled to grant access to the material sought,

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(**a**) 1984 c. 60; paragraph 2 of Schedule 1 was amended by sections 111 and 113 of, and paragraph 43 of Schedule 7 to, the Serious Organised Crime and Police Act 2005 (c. 15).

(**b**) 1984 c. 60; paragraph 3 of Schedule 1 was amended by section 113 of the Serious Organised Crime and Police Act 2005 (c. 15).

(iii) the material sought contains information which is subject to a restriction on disclosure or an obligation of secrecy contained in an enactment and is likely to be disclosed in breach of the restriction or obligation if a warrant is not issued, or

(iv) service of notice of an application for a production order under paragraph 4 of Schedule 1 to the 1984 Act may seriously prejudice the investigation.

(7) In relation to premises which the applicant wants to be searched but at least some of which the applicant cannot specify, the application must (unless paragraph (5) applies)—

(a) explain the grounds for believing that—

(i) because of the particulars of the offence under investigation it is necessary to search any premises occupied or controlled by a specified person, and

(ii) it is not reasonably practicable to specify all the premises which that person occupies or controls which might need to be searched;

(b) specify as many sets of premises as is reasonably practicable;

(c) in respect of each set of premises, whether specified or not, explain the grounds for believing that material sought is on those premises; and

(d) in respect of each specified set of premises, explain the grounds for believing that—

(i) it is not practicable to communicate with any person entitled to grant entry to the premises,

(ii) it is practicable to communicate with such a person but it is not practicable to communicate with any person entitled to grant access to the material sought,

(iii) the material sought contains information which is subject to a restriction on disclosure or an obligation of secrecy contained in an enactment and is likely to be disclosed in breach of the restriction or obligation if a warrant is not issued, or

(iv) service of notice of an application for a production order under paragraph 4 of Schedule 1 to the 1984 Act(**a**) may seriously prejudice the investigation.

(8) In relation to any set of premises which the applicant wants to be searched by the officers executing the warrant with other persons authorised by the court, the application must—

(a) identify those other persons, by function or description; and

(b) explain why those persons are required.

[Note. Under paragraph 12 of Schedule 1 to the Police and Criminal Evidenced Act 1984, where the conditions listed in that paragraph and, if applicable, in paragraphs 12A and 14 of that Schedule(**b**) *are fulfilled a constable may apply to a Circuit judge for a warrant authorising a search for evidence consisting of special procedure material or, in some cases, excluded material on specified premises or on the premises of a specified person.*

Under section 16(3) of the 1984 Act(**c**)*, entry and search under a warrant must be within 3 months from the date of its issue.*

See also the code of practice for the search of premises issued under section 66 of the 1984 Act.]

Application for warrant under Schedule 5 to the Terrorism Act 2000 or Schedule 2 to the National Security Act 2023

47.31.—(1) This rule applies where an applicant wants a judge or justice of the peace, as applicable—

(**a**) 1984 c. 60; paragraph 4 of Schedule 1 was amended by section 65 of, and paragraph 6 of Schedule 4 to, the Courts Act 2003 (c. 39).

(**b**) 1984 c. 60; paragraph 12A of Schedule 1 was inserted by section 113 of the Serious Organised Crime and Police Act 2005 (c. 15). Paragraph 14 of Schedule 1 was amended by sections 113 and 174 of, and Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c. 15).

(**c**) 1984 c. 60; section 16(3) was amended by section 114 of the Serious Organised Crime and Police Act 2005 (c. 15).

(a) to issue a search warrant or warrants under—

(i) paragraph 1 or paragraph 11 of Schedule 5 to the Terrorism Act 2000(**a**), or

(ii) paragraph 2 or paragraph 9 of Schedule 2 to the National Security Act 2023(**b**); or

(b) to issue a warrant for the retention of confidential journalistic material seized by order made under paragraph 15 of Schedule 5 to the Terrorism Act 2000(**c**) or paragraph 12 of Schedule 2 to the National Security Act 2023 (urgent cases: seizure of confidential material under the authority of a senior police officer) under, as applicable—

(i) paragraph 15A of Schedule 5 to the Terrorism Act 2000(**d**), or

(ii) paragraph 13 of Schedule 2 to the National Security Act 2023.

(2) As well as complying with rule 47.26, on an application for a search warrant the application must—

(a) specify the offence or relevant act under investigation and, as applicable, either—

(i) explain how the investigation constitutes a terrorist investigation within the meaning of the 2000 Act, or

(ii) explain the grounds for suspecting that a relevant act within the meaning of the 2023 Act has been, or is about to be, committed;

(b) so far as practicable, identify the material sought and if that material may be stored in an electronic device or devices—

(i) so far as practicable, describe each device or kind of device sought, and

(ii) explain the grounds for suspecting that the material may be stored there;

(c) in relation to premises which the applicant can specify—

(i) specify each set of premises to be searched, and

(ii) in respect of each set of premises, explain the grounds for believing (where the application is under Schedule 5 to the 2000 Act) or suspecting (where the application is under Schedule 2 to the 2023 Act) that material sought is on those premises;

(d) in relation to premises at least some of which the applicant cannot specify—

(i) identify the person who occupies or controls the premises,

(ii) explain why it is not reasonably practicable to specify all the premises which that person occupies or controls which might need to be searched,

(iii) specify as many sets of premises as is reasonably practicable, and

(iv) in respect of each set of premises, whether specified or not, explain the grounds for believing (where the application is under Schedule 5 to the 2000 Act) or suspecting (where the application is under Schedule 2 to the 2023 Act) that material sought is on those premises;

(e) in relation to any set of premises which the applicant wants to be searched on more than one occasion—

(i) explain why it is necessary to search on more than one occasion in order to achieve the purpose for which the applicant wants the court to issue the warrant, and

(ii) specify any proposed maximum number of occasions; and

(**a**) 2000 c. 11; paragraph 11 of Schedule 5 was amended by section 26 of the Terrorism Act 2006 (c. 11) and section 82 of the Deregulation Act 2015 (c. 20). It is further amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from a date to be appointed.

(**b**) 2023 c. 32.

(**c**) 2000 c. 11; paragraph 15 of Schedule 5 was amended by sections 50 to 55 and 68 of, and paragraphs 71, 83 and 109 of Schedule 1 to, the Criminal Justice and Police Act 2001 (c. 16), section 280 of, and paragraph 55 of Schedule 26 to, the Criminal Justice Act 2003 (c. 44) and paragraph 2 of Schedule 17 to the National Security Act 2023 (c. 32).

(**d**) 2000 c. 11; paragraph 15A of Schedule 5 was inserted by paragraph 2 of Schedule 17 to the National Security Act 2023 (c. 32).

(f) in relation to any set of premises which the applicant wants to be searched by the officers executing the warrant with other persons authorised by the court—

(i) identify those other persons, by function or description, and

(ii) explain why those persons are required.

(3) Where the grounds of an application for a search warrant are those listed in paragraph 1 of Schedule 5 to the 2000 Act (terrorist investigation; application to a justice of the peace), the application must explain—

(a) the grounds for believing that—

(i) the material sought does not consist of or include excluded material, special procedure material or items subject to legal privilege,

(ii) the material is likely to be of substantial value to a terrorist investigation (whether by itself, or together with other material), and

(iii) the material must be seized in order to prevent it from being concealed, lost, damaged, altered or destroyed; and

(b) why the issue of a warrant is likely to be necessary in the circumstances of the case, unless the application—

(i) is made by a police officer of at least the rank of superintendent, and

(ii) does not relate to residential premises.

(4) Where the grounds of an application for a search warrant are those listed in paragraph 2 of Schedule 2 to the 2023 Act (relevant act investigation; application to a justice of the peace), the application must explain the grounds for suspecting that the material sought—

(a) is likely to be evidence that a relevant act has been, or is about to be, committed; and

(b) does not consist of or include confidential material.

(5) Where the grounds of an application for a search warrant are those listed in paragraphs 11 and 12(1) of Schedule 5 to the 2000 Act(**a**) or paragraph 9(2) of the 2023 Act (non-compliance with a production, etc. order; application to a judge) the application must—

(a) identify the order and describe its terms; and

(b) specify the date on which it was served.

(6) Where the grounds of an application for a search warrant are those listed in paragraphs 11 and 12(2) to (4) of Schedule 5 to the 2000 Act (terrorist investigation; application to a judge), the application must explain the grounds for believing that—

(a) the material sought consists of or includes excluded material or special procedure material but does not include items subject to legal privilege;

(b) the material is likely to be of substantial value to a terrorist investigation (whether by itself, or together with other material); and

(c) it is not appropriate to make an order under paragraph 5 of Schedule 11 to the 2000 Act in relation to the material because—

(i) it is not practicable to communicate with any person entitled to produce the material,

(ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to premises to which the application for the warrant relates, or

(iii) a terrorist investigation may be seriously prejudiced unless a constable can secure immediate access to the material.

(7) Where the grounds of an application for a search warrant are those listed in paragraph 9(3) of Schedule 2 to the 2023 Act (relevant act investigation; application to a judge), the application must—

(**a**) 2000 c. 11; paragraph 12 of Schedule 5 was amended by section 26 of the Terrorism Act 2006 (c. 11). It is further amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from a date to be appointed.

(a) explain the grounds for suspecting that the material sought—

(i) is likely to be evidence that a relevant act has been, or is about to be, committed, and

(ii) consists of or includes confidential material but does not include items subject to legal privilege;

(b) explain the grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed;

(c) explain the grounds for believing that it is in the public interest for the material to be obtained 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 any of the material; and

(d) explain how any one or more of the following applies—

(i) it is not practicable to communicate with any person entitled to grant entry to those premises,

(ii) it is not practicable to communicate with any person entitled to grant access to the material,

(iii) the investigation may be seriously prejudiced unless a constable can secure immediate access to the material.

(8) Where the application is for a warrant for the retention of confidential journalistic material under paragraph 15A of Schedule 5 to the 2000 Act or under paragraph 13 of Schedule 2 to the 2023 Act, as well as complying with rule 47.26 the application must—

(a) be made as soon as reasonably practicable after the confidential journalistic material is seized;

(b) describe the circumstances of the seizure;

(c) specify the offence or relevant act under investigation and, as applicable, either—

(i) explain how the investigation constitutes a terrorist investigation within the meaning of the 2000 Act, or

(ii) explain the grounds for suspecting that a relevant act within the meaning of the 2023 Act has been, or is about to be, committed;

(d) explain the grounds for believing that the confidential journalistic material seized is likely to be of substantial value, whether by itself or with other material, to the investigation;

(e) explain the grounds for believing that it is in the public interest for that material to be retained having regard to the benefit likely to accrue to the investigation if it is retained;

(f) explain to what conditions, if any, the applicant proposes that the retention of the material should be made subject, if the court issues a warrant; and

(g) explain whether, if the court declines to issue a warrant, the applicant proposes that the material should be—

(i) returned to the person from whom it was seized, or

(ii) destroyed.

[Note. Under paragraph 1 of Schedule 5 to the Terrorism Act 2000, where the conditions listed in that paragraph are fulfilled a constable may apply to a justice of the peace for a warrant authorising a search for material, other than excluded material or special procedure material, on specified premises or on any premises of a specified person. Under paragraph 2 of Schedule 2 to the National Security Act 2023, where the conditions listed in that paragraph are fulfilled a constable may apply to a justice of the peace for a warrant authorising a search for material, other than confidential material. Under paragraphs 11 and 12(**a**) *of Schedule 5 to the 2000 Act a*

(**a**) 2000 c. 11; paragraph 12 of Schedule 5 was amended by Section 26 of the Terrorism Act 2006 (c. 11). It is further amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from a date to be appointed.

constable may apply to a Circuit judge for such a warrant in respect of excluded or special procedure material. Under paragraph 9 of Schedule 2 to the 2023 Act, a constable may apply to a Crown Court judge for a warrant in respect of confidential material. No such warrant authorises the seizure of items subject to legal privilege.

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(**a**).

Under paragraph 15 of Schedule 5 to the 2000 Act, 'confidential journalistic material' means material which is excluded material by virtue of section 11(1)(c) of the Police and Criminal Evidence Act 1984 (journalistic material which a person holds in confidence and which consists of documents or records other than documents).

Under paragraph 17 of Schedule 2 to the 2023 Act, 'confidential material' means—

(a) material created or acquired for the purposes of journalism which is held in confidence or which the sender of that material to someone else intends the intended recipient to hold in confidence ('confidential journalistic material');

(b) items subject to legal privilege within the meaning of section 10 of the Police and Criminal Evidence Act 1984; and

(c) excluded material and special procedure material within the meaning of sections 11 and 14 of the Police and Criminal Evidence Act 1984, other than journalistic material.

Under section 16(3) of the 1984 Act(**b**)*, entry and search under a warrant must be within 3 months from the date of its issue.*

See also the code of practice for the search of premises issued under section 66 of the 1984 Act(**c**)*.]*

Application for warrant under section 352 of the Proceeds of Crime Act 2002

47.32.—(1) This rule applies where an applicant wants a Crown Court judge to issue a warrant or warrants under—

(a) section 352 of the Proceeds of Crime Act 2002(**d**); or

(b) article 13 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014(**e**).

(2) As well as complying with rule 47.26, the application must—

(a) explain whether the investigation is a confiscation investigation, a money laundering investigation, a detained cash investigation, a detained property investigation, a frozen funds investigation or an external investigation;

(b) in the case of an investigation in the United Kingdom, explain why the applicant suspects that—

(i) the person under investigation has benefited from criminal conduct, in the case of a confiscation investigation, or committed a money laundering offence, in the case of a money laundering investigation, or

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(**a**) 1984 c. 60; section 14 was amended by sections 1177 and 1184 of, and paragraph 193 of Schedule 1 to, the Corporation Tax Act 2010 (c. 4).

(**b**) 1984 c. 60; section 16(3) was amended by section 114 of the Serious Organised Crime and Police Act 2005 (c. 15).

(**c**) 1984 c. 60; section 66 was amended by section 57 of the Criminal Justice and Court Services Act 2000 (c. 43), section 110 and Part 2 of Schedule 17 to the Serious Organised Crime and Police Act 2005 (c. 15) and section 120 of, and paragraph 21 of Schedule 9 to, the Protection of Freedoms Act 2012 (c. 9).

(**d**) 2002 c. 29; section 352 was amended by sections 74, 76, 77 and 80 of, and paragraphs 103 and 105 of Schedule 8 and paragraphs 1 and 7 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 10 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25), sections 15, 49 and 55 of, and paragraphs 108 and 137 of Schedule 8, paragraphs 1 and 6 of Schedule 19 and paragraphs 14 and 31 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22), section 224 of, and paragraphs 1 and 12 of Schedule 48 to, the Finance Act 2013 (c. 29), article 3 of, and paragraphs 19 and 26 of Schedule 2 to, S.I. 2014/834 and section 82 of the Deregulation Act 2015 (c. 20).

(**e**) S.I. 2014/1893.

(ii) in the case of a detained cash investigation, a detained property investigation or a frozen funds investigation, the cash or property involved, or the money held in the frozen account, was obtained through unlawful conduct or is intended to be used in unlawful conduct;

(c) in the case of an investigation outside the United Kingdom, explain why the applicant believes that—

(i) there is an investigation by an overseas authority which relates to a criminal investigation or to criminal proceedings (including proceedings to remove the benefit of a person's criminal conduct following that person's conviction), and

(ii) the investigation is into whether property has been obtained as a result of or in connection with criminal conduct, or into the extent or whereabouts of such property;

(d) indicate what material is sought (and see paragraphs (4) and (5));

(e) specify the premises to be searched (and see paragraph (6)); and

(f) state whether the applicant wants other persons to accompany the officers executing the warrant or warrants (and see paragraph (7)).

(3) Where the applicant relies on an assertion that a production order made under sections 345 and 351 of the 2002 Act(**a**) or under articles 6 and 12 of the 2014 Order has not been complied with—

(a) the application must—

(i) identify that order and describe its terms,

(ii) specify the date on which it was served, and

(iii) explain the grounds for believing that the material in respect of which the order was made is on the premises specified in the application for the warrant; but

(b) the application need not comply with paragraphs (4) or (5).

(4) Unless paragraph (3) applies, in relation to the material sought the application must—

(a) specify the material and if that material may be stored in an electronic device or devices—

(i) so far as practicable, describe each device or kind of device sought, and

(ii) explain the grounds for believing that the material may be stored there; or

(b) give a general description of the material and explain the grounds for believing that it relates to the person, cash, property or money under investigation and—

(i) in the case of a confiscation investigation, relates to the question whether that person has benefited from criminal conduct, or to any question about the extent or whereabouts of that benefit,

(ii) in the case of a money laundering investigation, relates to the question whether that person has committed a money laundering offence,

(iii) in the case of a detained cash investigation, a detained property investigation or a frozen funds investigation into the derivation of cash, property or money, relates to the question whether that cash, property or money is recoverable property,

(iv) in the case of a detained cash investigation, a detained property investigation or a frozen funds investigation into the intended use of cash, property or money, relates to

(**a**) 2002 c. 29; section 345 was amended by section 75 of the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 6 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 49 of, and paragraphs 1 and 4 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22). 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), section 169 of, and paragraphs 1 and 9 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25), sections 66 and 112 of, and Part 5 of Schedule 8 to, the Policing and Crime Act 2009 (c. 26), sections 15 and 55 of, and paragraphs 108 and 136 of Schedule 8 and paragraphs 14 and 30 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22) and section 224 of, and paragraphs 1 and 11 of Schedule 48 to, the Finance Act 2013 (c. 29).

the question whether that cash, property or money is intended by any person to be used in unlawful conduct, or

(v) in the case of an investigation outside the United Kingdom, relates to that investigation.

(5) Unless paragraph (3) applies, in relation to the material sought the application must explain also the grounds for believing that—

(a) the material consists of or includes special procedure material but does not include excluded material or privileged material;

(b) the material is likely to be of substantial value to the investigation (whether by itself, or together with other material); and

(c) it is in the public interest for the material to be obtained, having regard to—

(i) other potential sources of information, and

(ii) the benefit likely to accrue to the investigation if the material is obtained.

(6) In relation to the premises which the applicant wants to be searched, unless paragraph (3) applies the application must—

(a) explain the grounds for believing that material sought is on those premises;

(b) if the application specifies the material sought, explain the grounds for believing that it is not appropriate to make a production order under sections 345 and 351 of the 2002 Act or under articles 6 and 12 of the 2014 Order because—

(i) it is not practicable to communicate with any person against whom the production order could be made,

(ii) it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises, or

(iii) the investigation might be seriously prejudiced unless an appropriate person is able to secure immediate access to the material; and

(c) if the application gives a general description of the material sought, explain the grounds for believing that—

(i) it is not practicable to communicate with any person entitled to grant entry to the premises,

(ii) entry to the premises will not be granted unless a warrant is produced, or

(iii) the investigation might be seriously prejudiced unless an appropriate person arriving at the premises is able to secure immediate access to them.

(7) In relation to any set of premises which the applicant wants to be searched by those executing the warrant with other persons authorised by the court, the application must—

(a) identify those other persons, by function or description; and

(b) explain why those persons are required.

[Note. Under section 352 of the Proceeds of Crime Act 2002 where there is a confiscation investigation, a money laundering investigation, a detained cash investigation, a detained property investigation or a frozen funds investigation, an 'appropriate officer' within the meaning of that section may apply to a Crown Court judge for a warrant authorising a search for special procedure material on specified premises, on the conditions listed in that section and in section 353 of the Act(**a**)*.*

(**a**) 2002 c. 29; section 353 was amended by sections 74, 76, 77 and 80 of, and paragraphs 103 and 106 of Schedule 8 and paragraphs 1 and 8 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 11 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25), sections 15, 49 and 55 of, and paragraphs 108 and 138 of Schedule 8, paragraphs 1 and 7 of Schedule 19 and paragraphs 14 and 32 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22), section 224 of, and paragraphs 1 and 13 of Schedule 48 to, the Finance Act 2013 (c. 29) and section 38 of the Serious Crime Act 2015 (c. 9) and paragraph 48 of Schedule 5 to the Criminal Finances Act 2017 (c. 22).

Under article 13 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014, where there is an external investigation an 'appropriate officer' within the meaning of that article may apply to a Crown Court judge for a warrant authorising a search for special procedure material on specified premises, on the conditions listed in that article and in article 14 of the Order.

Under section 16(3) of the 1984 Act(**a**)*, as applied by article 3 of the Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) Order 2015*(**b**)*, entry and search under a warrant must be within 3 months from the date of its issue.*

See also the code of practice for the search of premises issued under section 66 of the 1984 Act.]

Application for warrant under section 160 of the Extradition Act 2003

47.33.—(1) This rule applies where an applicant wants a Circuit judge to issue a warrant or warrants under section 160 of the Extradition Act 2003(**c**).

(2) As well as complying with rule 47.26, the application must—

(a) identify the person whose extradition is sought (and see paragraph (3));

(b) specify the extradition offence of which that person is accused;

(c) specify the material, or description of material, sought (and see paragraph (4)); and

(d) specify the premises to be searched (and see paragraph (5)).

(3) In relation to the person whose extradition is sought, the application must explain the grounds for believing that—

(a) that person has committed the offence for which extradition is sought;

(b) that offence is an extradition offence; and

(c) that person is in the United Kingdom or is on the way to the United Kingdom.

(4) In relation to the material sought, the application must

(a) explain the grounds for believing that—

(i) the material consists of or includes special procedure or excluded material, and

(ii) the material would be likely to be admissible evidence at a trial in England and Wales for the offence for which extradition is sought; and

(b) if that material may be stored in an electronic device or devices—

(i) so far as practicable, describe each device or kind of device sought, and

(ii) explain the grounds for believing that the material may be stored there.

(5) In relation to the premises which the applicant wants to search, the application must explain the grounds for believing that—

(a) material sought is on those premises; and

(b) one or more of the following conditions is satisfied, namely—

(i) it is not practicable to communicate with any person entitled to grant entry to the premises,

(ii) it is practicable to communicate with such a person but it is not practicable to communicate with any person entitled to grant access to the material sought, or

(iii) the material contains information which is subject to a restriction on disclosure or an obligation of secrecy contained in an enactment and is likely to be disclosed in breach of the restriction or obligation if a warrant is not issued.

(6) In relation to any set of premises which the applicant wants to be searched by the officers executing the warrant with other persons authorised by the court, the application must—

(**a**) 1984 c. 60; section 16(3) was amended by section 114 of the Serious Organised Crime and Police Act 2005 (c. 15).
(**b**) S.I. 2015/759.
(**c**) 2003 c. 41; section 160 was amended by section 174 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

(a) identify those other persons, by function or description; and

(b) explain why those persons are required.

[Note. Under section 160 of the Extradition Act 2003, where a person's extradition is sought a constable may apply to a Circuit judge for a warrant authorising a search for special procedure material or excluded material on specified premises, on the conditions listed in that section.

Under section 16(3) of the 1984 Act, entry and search under a warrant must be within 3 months from the date of its issue.

See also the code of practice for the search of premises issued under section 66 of the 1984 Act.]

Application for warrant under any other power

47.34.—(1) This rule applies—

(a) where an applicant wants a court to issue a warrant or warrants under a power (in this rule, 'the relevant search power') to which rule 47.24(d) (other powers) refers; but

(b) subject to any inconsistent provision in legislation that applies to the relevant search power.

(2) As well as complying with rule 47.26, the application must—

(a) demonstrate the applicant's entitlement to apply;

(b) identify the relevant search power (and see paragraph (3));

(c) so far as practicable, identify the articles or persons sought (see also paragraph (4)) and if such an article may be stored in an electronic device or devices—

(i) so far as practicable, describe each device or kind of device sought, and

(ii) explain the grounds for believing that the article may be stored there;

(d) specify the premises to be searched (and see paragraphs (5) and (6));

(e) state whether the applicant wants the premises to be searched on more than one occasion, if the relevant search power allows (and see paragraph (7)); and

(f) state whether the applicant wants other persons to accompany the officers executing the warrant or warrants, if the relevant search power allows (and see paragraph (8)).

(3) The application must—

(a) include or attach the terms of the relevant search power; and

(b) explain how the circumstances satisfy the criteria prescribed by that power for making the application.

(4) In relation to the articles or persons sought, the application must explain how they satisfy the criteria prescribed by the relevant search power about such articles or persons.

(5) In relation to premises which the applicant wants to be searched and can specify, the application must—

(a) specify each set of premises; and

(b) in respect of each, explain how the circumstances satisfy any criteria prescribed by the relevant search power—

(i) for asserting that the articles or persons sought are on those premises, and

(ii) for asserting that the court can exercise its power to authorise the search of those particular premises.

(6) In relation to premises which the applicant wants to be searched but at least some of which the applicant cannot specify, the application must—

(a) explain how the relevant search power allows the court to authorise such searching;

(b) specify the person who occupies or controls such premises;

(c) specify as many sets of such premises as is reasonably practicable;

(d) explain why—

(i) it is necessary to search more premises than those specified, and

(ii) it is not reasonably practicable to specify all the premises which the applicant wants to be searched;

(e) in respect of each set of premises, whether specified or not, explain how the circumstances satisfy any criteria prescribed by the relevant search power for asserting that the articles or persons sought are on those premises; and

(f) in respect of each specified set of premises, explain how the circumstances satisfy any criteria prescribed by the relevant search power for asserting that the court can exercise its power to authorise the search of those premises.

(7) In relation to any set of premises which the applicant wants to be searched on more than one occasion, the application must—

(a) explain how the relevant search power allows the court to authorise such searching;

(b) explain why the applicant wants the premises to be searched more than once; and

(c) specify any proposed maximum number of occasions.

(8) In relation to any set of premises which the applicant wants to be searched by the officers executing the warrant with other persons authorised by the court, the application must—

(a) identify those other persons, by function or description; and

(b) explain why those persons are required.

[Note. See, among other provisions, sections 15 and 16 of the Police and Criminal Evidence Act 1984(**a**)*, which apply to an application by a constable under any Act for a warrant authorising the search of specified premises, or the search of premises of a specified person, and to the execution of such a warrant. Unless other legislation otherwise provides, under section 16(3) of the 1984 Act entry and search under a warrant must be within 3 months from the date of its issue.]*

SECTION 4: ORDERS FOR THE RETENTION OR RETURN OF PROPERTY

When this Section applies

47.35.—(1) This Section applies where—

(a) under section 1 of the Police (Property) Act 1897(**b**), a magistrates' court can—

(i) order the return to the owner of property which has come into the possession of the police or the National Crime Agency in connection with an investigation of a suspected offence, or

(ii) make such order with respect to such property as the court thinks just, where the owner cannot be ascertained; and

(b) a Crown Court judge can—

(i) order the return of seized property under section 59(4) of the Criminal Justice and Police Act 2001(**c**), or

(ii) order the examination, retention, separation or return of seized property under section 59(5) of the Act.

(**a**) 1984 c. 60; section 15 was amended by sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c. 15) and article 7 of S.I. 2005/3496. Section 16 was amended by paragraph 281 of Schedule 8 to the Courts Act 2003 (c. 39), section 2 of the Criminal Justice Act 2003 (c. 44), sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c. 15) and article 8 of S.I. 2005/3496.

(**b**) 1897 c. 30; section 1 was amended by sections 33 and 36 of, and Part III of Schedule 3 to, the Theft Act 1968 (c. 60), section 58 of the Criminal Justice Act 1972 (c. 71), section 192 of, and Part I of Schedule 5 to, the Consumer Credit Act 1974 (c. 39), the Statute Law (Repeals) Act 1989 (c. 43) and section 4 of the Police (Property) Act 1997 (c. 30).

(**c**) 2001 c. 16.

(2) In this Section, a reference to a person with 'a relevant interest' in seized property means someone from whom the property was seized, or someone with a proprietary interest in the property, or someone who had custody or control of it immediately before it was seized.

Exercise of court's powers

47.36.—(1) The court may determine an application for an order—

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

(b) in a party's absence, if that party—

(i) applied for the order, or

(ii) has had at least 10 business days in which to make representations.

(2) The court officer must arrange for the court to hear such an application no sooner than 10 business days after it was served, unless—

(a) the court directs that no hearing need be arranged; or

(b) the court gives other directions for the hearing.

(3) If the court so directs, the parties to an application may attend a hearing by live link.

(4) The court may—

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

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

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

(5) 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.

Application for an order under section 1 of the Police (Property) Act 1897

47.37.—(1) This rule applies where an applicant wants the court to make an order to which rule 47.35(1)(a) refers.

(2) The applicant must apply in writing and serve the application on—

(a) the court officer; and

(b) as appropriate—

(i) the officer who has the property,

(ii) any person who appears to be its owner.

(3) The application must—

(a) explain the applicant's interest in the property (either as a person who claims to be its owner or as an officer into whose possession the property has come);

(b) specify the direction that the applicant wants the court to make, and explain why; and

(c) include or attach a list of those on whom the applicant has served the application.

[Note. Under section 1 of the Police (Property) Act 1897, the owner of property which has come into the possession of the police or the National Crime Agency in connection with the investigation of a suspected offence can apply to a magistrates' court for an order for its delivery to the claimant.]

Application for an order under section 59 of the Criminal Justice and Police Act 2001

47.38.—(1) This rule applies where an applicant wants the court to make an order to which rule 47.35(1)(b) refers.

(2) The applicant must apply in writing and serve the application on—

(a) the court officer; and

(b) as appropriate—

(i) the person who for the time being has the seized property,

(ii) each person whom the applicant knows or believes to have a relevant interest in the property.

(3) In each case, the application must—

(a) explain the applicant's interest in the property (either as a person with a relevant interest, or as possessor of the property in consequence of its seizure, as appropriate);

(b) explain the circumstances of the seizure of the property and identify the power that was exercised to seize it (or which the person seizing it purported to exercise, as appropriate); and

(c) include or attach a list of those on whom the applicant has served the application.

(4) On an application for an order for the return of property under section 59(4) of the Criminal Justice and Police Act 2001, the application must explain why any one or more of these applies—

(a) there was no power to make the seizure;

(b) the property seized is, or contains, an item subject to legal privilege which is not an item that can be retained lawfully in the circumstances listed in section 54(2) of the Act;

(c) the property seized is, or contains, excluded or special procedure material which is not material that can be retained lawfully in the circumstances listed in sections 55 and 56 of the Act(**a**); or

(d) the property seized is, or contains, something taken from premises under section 50 of the Act, or from a person under section 51 of the Act, in the circumstances listed in those sections and which cannot lawfully be retained on the conditions listed in the Act.

(5) On an application for an order for the examination, retention, separation or return of property under section 59(5) of the 2001 Act, the application must—

(a) specify the direction that the applicant wants the court to make, and explain why;

(b) if applicable, specify each requirement of section 53(2) of the Act (examination and return of property) which is not being complied with; and

(c) if applicable, explain why the retention of the property by the person who now has it would be justified on the grounds that, even if it were returned, it would immediately become appropriate for that person to get it back under—

(i) a warrant for its seizure, or

(ii) a production order made under paragraph 4 of Schedule 1 to the Police and Criminal Evidence Act 1984(**b**), section 20BA of the Taxes Management Act 1970(**c**) or paragraph 5 of Schedule 5 to the Terrorism Act 2000(**d**).

[Note. Under section 59 of the Criminal Justice and Police Act 2001, a person with a 'relevant interest' (see rule 47.35(2)) in seized property can apply in the circumstances listed in the Act to a Crown Court judge for an order for its return. A person who has the property in consequence of its seizure can apply for an order authorising its retention. Either can apply for an order relating to the examination of the property.]

(**a**) 2001 c. 16; section 55 was amended by sections 456 and 457 of, and paragraphs 1 and 40 of Schedule 11 and Schedule 12 to, the Proceeds of Crime Act 2002 (c. 29). Section 56 was amended by article 364 of S.I. 2001/3649, section 12 of, and paragraph 14 of Schedule 1 to, the Criminal Justice Act 2003 (c. 44) and article 2 of, and paragraph 189 of Schedule 1 to, S.I. 2009/1941.

(**b**) 1984 c. 60; paragraph 4 of Schedule 1 was amended by section 65 of, and paragraph 6 of Schedule 4 to, the Courts Act 2003 (c. 39).

(**c**) 1970 c. 9; section 20BA was inserted by section 149 of the Finance Act 2000 (c. 17).

(**d**) 2000 c. 11; paragraph 5 of Schedule 5 is amended by section 65 of, and paragraph 9 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from a date to be appointed.

Application containing information withheld from another party

47.39.—(1) This rule applies where—

(a) an applicant serves an application to which rule 47.37 (Application for an order under section 1 of the Police (Property) Act 1897) or rule 47.38 (Application for an order under section 59 of the Criminal Justice and Police Act 2001) applies; and

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

(2) The applicant must—

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

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

(c) in that other part, explain why the applicant has withheld that information from that other party.

(3) If the court so directs, any hearing of an application to which this rule applies may be, wholly or in part, in the absence of a party from whom information has been withheld.

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

(a) the general rule is that the court must consider, in the following sequence—

(i) representations first by the applicant and then by each other party, in all the parties' presence, and then

(ii) further representations by the applicant, in the absence of a party from whom information has been withheld; but

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

Representations in response

47.40.—(1) This rule applies where a person wants to make representations about an application under rule 47.37 or rule 47.38.

(2) Such a person must—

(a) serve the representations on—

(i) the court officer, and

(ii) the applicant and any other party to the application;

(b) do so not more than 10 business days after service of the application; and

(c) ask for a hearing, if that person wants one.

(3) Representations in opposition to an application must explain why the grounds on which the applicant relies are not met.

(4) Where representations include information that the person making them thinks ought not be revealed to another party, that person must—

(a) omit that information from the representations served on that other party;

(b) mark the information to show that, unless the court otherwise directs, it is only for the court; and

(c) with that information include an explanation of why it has been withheld from that other party.

Application to punish for contempt of court

47.41.—(1) This rule applies where a person is accused of disobeying an order under section 59 of the Criminal Justice and Police Act 2001.

(2) A person who wants the court to exercise its power to punish that person for contempt of court must comply with the rules in Part 48 (Contempt of court).

[Note. A Crown Court judge has power to punish a person who disobeys an order under section 59 of the 2001 Act as if that were a contempt of the Crown Court: see section 59(9) of the Act.]

SECTION 5: ORDERS FOR THE RETENTION OF FINGERPRINTS, ETC.

When this Section applies

47.42. This Section applies where—

(a) a magistrates' court consisting of a District Judge (Magistrates' Court) can make an order under—

(i) section 63F(7) or 63R(6) of the Police and Criminal Evidence Act 1984(**a**),

(ii) paragraph 20B(5) or 20G(6) of Schedule 8 to the Terrorism Act 2000(**b**), or

(iii) paragraph 20(6) or 25(9) of Schedule 6 to the National Security Act 2023(**c**); and

(b) the Crown Court can determine an appeal under—

(i) section 63F(10) of the Police and Criminal Evidence Act 1984,

(ii) paragraph 20B(8) of Schedule 8 to the Terrorism Act 2000, or

(iii) paragraph 20(9) of Schedule 6 to the National Security Act 2023.

[Note. Under the Police and Criminal Evidence Act 1984, under the Terrorism Act 2000 or under the National Security Act 2023, an order may be made extending the period during which fingerprints, DNA profiles or samples may be retained by the police.]

Exercise of court's powers

47.43.—(1) The court must determine an application under rule 47.44, and an appeal under rule 47.45—

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

(b) in the presence of the applicant or appellant.

(2) The court must not determine such an application or appeal unless any person served under those rules—

(a) is present; or

(b) has had an opportunity—

(i) to attend, or

(ii) to make representations.

Application to extend retention period

47.44.—(1) This rule applies where a magistrates' court can make an order extending the period for which there may be retained material consisting of—

(a) fingerprints taken from a person—

(i) under a power conferred by Part V of the Police and Criminal Evidence Act 1984(**d**),

(ii) with that person's consent, in connection with the investigation of an offence by the police,

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(**a**) 1984 c. 60; section 63D was inserted by section 1 of the Protection of Freedoms Act 2012 (c. 9). Section 63R was inserted by section 14 of that Act.

(**b**) 2000 c. 11; paragraph 20B of Schedule 8 was inserted by section 19 of, and paragraph 1 of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9) and amended by section 181 of, and paragraph 125 of Schedule 11 to, the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12). Paragraph 20G of Schedule 8 was inserted by section 19 of, and paragraph 1 of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9).

(**c**) 2023 c. 32.

(**d**) 1984 c. 60.

(iii) under a power conferred by Schedule 8 to the Terrorism Act 2000(**a**) in relation to a person detained under section 41 of that Act, or

(iv) under a power conferred by Schedule 6 to the National Security Act 2023 in relation to a person detained under section 27 of that Act(**b**);

(b) a DNA profile derived from a DNA sample so taken; or

(c) a sample so taken.

(2) A chief officer of police who wants the court to make such an order must—

(a) apply in writing—

(i) within the period of 3 months ending on the last day of the retention period, where the application relates to fingerprints or a DNA profile, or

(ii) before the expiry of the retention period, where the application relates to a sample;

(b) in the application—

(i) identify the material,

(ii) state when the retention period expires,

(iii) give details of any previous such application relating to the material, and

(iv) outline the circumstances in which the material was acquired;

(c) serve the application on the court officer, in every case; and

(d) serve the application on the person from whom the material was taken, where—

(i) the application relates to fingerprints or a DNA profile, or

(ii) the application is for the renewal of an order extending the retention period for a sample.

(3) An application to extend the retention period for fingerprints or a DNA profile must explain why that period should be extended.

(4) An application to extend the retention period for a sample must explain why, having regard to the nature and complexity of other material that is evidence in relation to the offence, the sample is likely to be needed in any proceedings for the offence for the purposes of—

(a) disclosure to, or use by, a defendant; or

(b) responding to any challenge by a defendant in respect of the admissibility of material that is evidence on which the prosecution proposes to rely.

(5) On an application to extend the retention period for fingerprints or a DNA profile, the applicant must serve notice of the court's decision on any respondent where—

(a) the court makes the order sought; and

(b) the respondent was absent when it was made.

[Note. See rule 47.42(a). The powers to which rule 47.44 applies may be exercised only by a District Judge (Magistrates' Courts).

The time limits for making an application under this rule are prescribed by sections 63F(8) and 63R(8) of the Police and Criminal Evidence Act 1984(**c**)*, by paragraphs 20B(6) and 20G(8) of Schedule 8 to the Terrorism Act 2000*(**d**) *and by paragraphs 20(7) and 25(8) of Schedule 6 to the National Security Act 2023. They may be neither extended nor shortened.*

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

(**b**) 2023 c. 32.

(**c**) 1984 c. 60; section 63F was inserted by section 3 of the Protection of Freedoms Act 2012 (c. 9). Section 63R was inserted by section 14 of that Act.

(**d**) 2000 c. 11; paragraph 20B of Schedule 8 was inserted by section 19 of, and paragraph 1 of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9) and amended by section 181 of, and paragraph 125 of Schedule 11 to, the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12). Paragraph 20G of Schedule 8 was inserted by section 19 of, and paragraph 1 of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9).

Sections 63D and 63R of the 1984 Act(**a**)*, paragraphs 20A and 20G of Schedule 8 to the 2000 Act*(**b**) *and paragraphs 19 and 24 of Schedule 6 to the 2023 Act provide for the circumstances in which there must be destroyed the material to which this rule applies.*

Section 63F of the 1984 Act, paragraph 20B of Schedule 8 to the 2000 Act and paragraph 20 of Schedule 6 to the 2023 Act provide for the circumstances in which fingerprints and DNA profiles may be retained instead of being destroyed. Under section 63F(7) of the 1984 Act(**c**)*, paragraph 20B(5) of Schedule 8 to the 2000 Act*(**d**) *and paragraph 20(6) of Schedule 6 to the 2023 Act a chief officer of police to whom those provisions apply may apply for an order extending the statutory retention period of 3 years by up to another 2 years.*

Section 63R of the 1984 Act, paragraph 20G of Schedule 8 to the 2000 Act and paragraph 25 of Schedule 6 to the 2023 Act provide for the circumstances in which samples taken from a person may be retained instead of being destroyed. Under section 63R(6) of the 1984 Act, paragraph 20G(6) of Schedule 8 to the 2000 Act and paragraph 25(6) of Schedule 6 to the 2023 Act, a chief officer of police to whom those provisions apply may apply for an order to retain a sample for up to 12 months after the date on which it would otherwise have to be destroyed. Under section 63R(9) of the 1984 Act(**e**)*, paragraph 20G(9) of Schedule 8 to the 2000 Act*(**f**) *and paragraph 25(9)(b) of Schedule 6 to the 2023 Act such an order may be renewed, on one or more occasions, for a further period of not more than 12 months from the end of the period when the order would otherwise cease to have effect.]*

Appeal

47.45.—(1) This rule applies where, under rule 47.44, a magistrates' court determines an application relating to fingerprints or a DNA profile and—

(a) the person from whom the material was taken wants to appeal to the Crown Court against an order extending the retention period; or

(b) a chief officer of police wants to appeal to the Crown Court against a refusal to make such an order.

(2) The appellant must—

(a) serve an appeal notice—

(i) on the Crown Court officer and on the other party, and

(ii) not more than 15 business days after the magistrates' court's decision, or, if applicable, service of notice under rule 47.44(5); and

(b) in the appeal notice, explain, as appropriate, why the retention period should, or should not, be extended.

(3) Rule 34.11 (Constitution of the Crown Court) applies on such an appeal.

[Note. Under section 63F(10) of the Police and Criminal Evidence Act 1984, under paragraph 20B(8) of Schedule 8 to the Terrorism Act 2000 and under paragraph 20(9) of Schedule 6 to the National Security Act 2023, the person from whom fingerprints were taken, or from whom a DNA profile derives, may appeal to the Crown Court against an order extending the retention period; and a chief officer of police may appeal to the Crown Court against the refusal of such an order.]

(**a**) 1984 c. 60; section 63D was inserted by section 1 of the Protection of Freedoms Act 2012 (c. 9).

(**b**) 2000 c. 11; paragraph 20A of Schedule 8 was inserted by section 19 of, and paragraph 1 of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9).

(**c**) 1984 c. 60; section 63F was inserted by section 3 of the Protection of Freedoms Act 2012 (c. 9) and amended by section 70 of the Policing and Crime Act 2017 (c. 3), paragraph 2 of Schedule 2 to the Counter-Terrorism and Border Security Act 2019 (c. 3) and paragraph 4 of Schedule 18 to the National Security Act 2023 (c. 32).

(**d**) 2000 c. 11; paragraph 20B of Schedule 8 was inserted by section 19 of, and paragraph 1 of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9) and amended by section 181 of, and paragraph 125 of Schedule 11 to, the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12) and section 71 of the Policing and Crime Act 2017 (c. 3).

(**e**) 1984 c. 60; section 63R was inserted by section 14 of the Protection of Freedoms Act 2012 (c. 9).

(**f**) 2000 c. 11; paragraph 20G of Schedule 8 was inserted by section 19 of, and paragraph 1 of Schedule 1 to, the Protection of Freedoms Act 2012 (c. 9).

SECTION 6: INVESTIGATION ANONYMITY ORDERS UNDER THE CORONERS AND JUSTICE ACT 2009

When this Section applies

47.46. This Section applies where—

(a) a justice of the peace can make or discharge an investigation anonymity order, under sections 76 and 80(1) of the Coroners and Justice Act 2009(**a**); and

(b) a Crown Court judge can determine an appeal against—

(i) a refusal of such an order, under section 79 of the 2009 Act, or

(ii) a decision on an application to discharge such an order, under section 80(6) of the 2009 Act.

[Note. Under the Coroners and Justice Act 2009, an investigation anonymity order may be made prohibiting the disclosure of information that identifies, or might identify, a specified person as someone who is, or was, willing to assist the investigation of an offence of murder or manslaughter caused by a gun or knife.]

Exercise of court's powers

47.47.—(1) The court may determine an application for an investigation anonymity order, and any appeal against the refusal of such an order—

(a) at a hearing (which must be in private unless the court otherwise directs); or

(b) without a hearing.

(2) The court must determine an application to discharge an investigation anonymity order, and any appeal against the decision on such an application—

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

(b) in the presence of the person specified in the order, unless—

(i) that person applied for the discharge of the order,

(ii) that person has had an opportunity to make representations, or

(iii) the court is satisfied that it is not reasonably practicable to communicate with that person.

(3) The court may consider an application or an appeal made orally instead of in writing.

Application for an investigation anonymity order

47.48.—(1) This rule applies where an applicant wants a magistrates' court to make an investigation anonymity order.

(2) The applicant must—

(a) apply in writing;

(b) serve the application on the court officer;

(c) identify the person to be specified in the order, unless—

(i) the applicant wants the court to determine the application at a hearing, or

(ii) the court otherwise directs;

(d) explain how the proposed order meets the conditions prescribed by section 78 of the Coroners and Justice Act 2009(**b**);

(**a**) 2009 c. 25.
(**b**) 2009 c. 25.

(e) say if the applicant intends to appeal should the court refuse the order;

(f) attach any material on which the applicant relies; and

(g) propose the terms of the order.

(3) At any hearing of the application, the applicant must—

(a) identify to the court the person to be specified in the order, unless—

(i) the applicant has done so already, or

(ii) the court otherwise directs; and

(b) unless the applicant has done so already, inform the court if the applicant intends to appeal should the court refuse the order.

[Note. See section 77 of the Coroners and Justice Act 2009.]

Application to discharge an investigation anonymity order

47.49.—(1) This rule applies where one of the following wants a magistrates' court to discharge an investigation anonymity order—

(a) an applicant; or

(b) the person specified in the order.

(2) That applicant or the specified person 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 as applicable

(ii) the applicant for the order, and

(iii) the specified person;

(c) explain—

(i) what material circumstances have changed since the order was made, or since any previous application was made to discharge it, and

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

(d) attach—

(i) a copy of the order, and

(ii) any material on which the applicant relies.

(3) A party must inform the court if that party intends to appeal should the court discharge the order.

[Note. See section 80 of the Coroners and Justice Act 2009.]

Appeal

47.50.—(1) This rule applies where one of the following ('the appellant') wants to appeal to the Crown Court—

(a) the applicant for an investigation anonymity order, where a magistrates' court has refused to make the order; or

(b) a party to an application to discharge such an order, where a magistrates' court has decided that application.

(2) The appellant must—

(a) serve on the Crown Court officer a copy of the application to the magistrates' court; and

(b) where the appeal concerns a discharge decision, notify each other party,

not more than 15 business days after the decision against which the appellant wants to appeal.

(3) The Crown Court must hear the appeal without justices of the peace.

[Note. See sections 79 and 80(6) of the Coroners and Justice Act 2009, and section 74 of the Senior Courts Act 1981(**a**)*.]*

SECTION 7: INVESTIGATION APPROVAL ORDERS UNDER THE REGULATION OF INVESTIGATORY POWERS ACT 2000

When this Section applies

47.51. This Section applies where a justice of the peace can make an order approving—

(a) the grant or renewal of an authorisation, or the giving or renewal of a notice, under section 23A of the Regulation of Investigatory Powers Act 2000(**b**); and

(b) the grant or renewal of an authorisation under section 32A of the 2000 Act(**c**).

[Note. Under the Regulation of Investigatory Powers Act 2000, an order may be made approving a local authority officer's authorisation for the obtaining of information about the use of postal or telecommunications services, or for the use of surveillance or of a 'covert human intelligence source'.]

Exercise of court's powers

47.52.—(1) Rule 47.5 (Investigation orders; Exercise of court's powers) applies, subject to sections 23B(2) and 32B(2) of the Regulation of Investigatory Powers Act 2000(**d**).

(2) Where a magistrates' court refuses to approve the grant, giving or renewal of an authorisation or notice, the court must not exercise its power to quash that authorisation or notice unless the applicant has had at least 2 business days from the date of the refusal in which to make representations.

[Note. Under sections 23B(2) and 32B(2) of the Regulation of Investigatory Powers Act 2000, the applicant is not required to give notice of an application to any person to whom the authorisation or notice relates, or to such a person's legal representatives. See also sections 23B(3) and 32B(3) of the 2000 Act.]

Application for approval for authorisation or notice

47.53.—(1) This rule applies where an applicant wants a magistrates' court to make an order approving—

(a) under sections 23A and 23B of the Regulation of Investigatory Powers Act 2000(**e**)—

(i) an authorisation to obtain or disclose communications data, under section 22(3) of the 2000 Act(**f**), or

(ii) a notice that requires a postal or telecommunications operator if need be to obtain, and in any case to disclose, communications data, under section 22(4) of the 2000 Act; or

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(**a**) 1981 c. 54; section 74 was amended by sections 79 and 106 of, and Table (4) of Part V of Schedule 15 to, the Access to Justice Act 1999 (c. 22), article 3 of, and paragraphs 11 and 12 of the Schedule to, S.I. 2004/2035 and section 15 of, and paragraphs 114 and 133 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4). The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**b**) 2000 c. 23; section 23A was inserted by section 37 of the Protection of Freedoms Act 2012 (c. 9).

(**c**) 2000 c. 23; section 32A was inserted by section 38 of the Protection of Freedoms Act 2012 (c. 9).

(**d**) 2000 c. 23; section 23B was inserted by section 37 and section 32B by section 38 of the Protection of Freedoms Act 2012 (c. 9).

(**e**) 2000 c. 23; sections 23A and 23B were inserted by section 37 of the Protection of Freedoms Act 2012 (c. 9).

(**f**) 2000 c. 23; section 22 was amended by section 112 of, and paragraphs 12 and 13 of Schedule 7 to, the Policing and Crime Act 2009 (c. 26).

(b) under sections 32A and 32B of the Regulation of Investigatory Powers Act 2000(**a**), an authorisation for—

(i) the carrying out of directed surveillance, under section 28 of the 2000 Act, or

(ii) the conduct or use of a covert human intelligence source, under section 29 of the 2000 Act(**b**).

(2) The applicant must—

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

(b) attach the authorisation or notice which the applicant wants the court to approve;

(c) attach such other material (if any) on which the applicant relies to satisfy the court—

(i) as required by section 23A(3) and (4) of the 2000 Act, in relation to communications data,

(ii) as required by section 32A(3) and (4) of the 2000 Act, in relation to directed surveillance, or

(iii) as required by section 32A(5) and (6), and, if relevant, section 43(6A), of the 2000 Act(**c**), in relation to a covert human intelligence source; and

(d) propose the terms of the order.

[Note. See also rule 47.5, under which the court may—

(a) exercise its powers in the parties' absence; and

(b) consider an application made orally.

Under section 23A(3) to (5) of the Regulation of Investigatory Powers Act 2000, on an application for an order approving an authorisation or notice concerning communications data (as defined in section 21 of the Act(**d**)*), the court must be satisfied that—*

(a) the person who granted or renewed the authorisation, or who gave or renewed the notice, was entitled to do so;

(b) the grant, giving or renewal met any prescribed restrictions or conditions;

(c) at the time the authorisation or notice was granted, given or renewed, as the case may be, there were reasonable grounds for believing that to obtain or disclose the data described in the authorisation or notice was—

(i) necessary, for the purpose of preventing or detecting crime or preventing disorder, and

(ii) proportionate to what was sought to be achieved by doing so; and

(d) there remain reasonable grounds for believing those things, at the time the court considers the application.

The Regulation of Investigatory Powers (Communications Data) Order 2010(**e**) *specifies the persons who are entitled to grant, give or renew an authorisation or notice concerning such data, and for what purpose each may do so.*

Under section 32A(3) and (4) of the Regulation of Investigatory Powers Act 2000, on an application for an order approving an authorisation concerning directed surveillance (as defined in section 26 of the Act(**f**)*), the court must be satisfied that—*

(a) the person who granted the authorisation was entitled to do so;

(**a**) 2000 c. 23; sections 32A and 32B were inserted by section 38 of the Protection of Freedoms Act 2012 (c. 9).
(**b**) 2000 c. 23; section 29 was amended by section 8 of the Policing and Crime Act 2009 (c. 26).
(**c**) 2000 c. 23; section 43(6A) was inserted by section 38 of the Protection of Freedoms Act 2012 (c. 9).
(**d**) 2000 c. 23; section 21 was amended by section 88 of, and paragraphs 5 and 7 of Schedule 12 to, the Serious Crime Act 2007 (c. 27).
(**e**) S.I. 2010/480.
(**f**) 2000 c. 23; section 26 was amended by section 406 of, and paragraph 161 of Schedule 17 to, the Communications Act 2003 (c. 21).

(b) the grant met any prescribed restrictions or conditions;

(c) at the time the authorisation was granted there were reasonable grounds for believing that the surveillance described in the authorisation was—

(i) necessary, for the purpose of preventing or detecting crime or preventing disorder, and

(ii) proportionate to what was sought to be achieved by it; and

(d) there remain reasonable grounds for believing those things, at the time the court considers the application.

Under section 32A(5) and (6) of the Regulation of Investigatory Powers Act 2000, on an application for an order approving an authorisation of the conduct or use of a covert human intelligence source (as defined in section 26 of the Act), the court must be satisfied that—

(a) the person who granted the authorisation was entitled to do so;

(b) the grant met any prescribed restrictions or conditions;

(c) at the time the authorisation was granted there were reasonable grounds for believing that the conduct or use of a covert human intelligence source described in the authorisation was—

(i) necessary, for the purpose of preventing or detecting crime or preventing disorder, and

(ii) proportionate to what was sought to be achieved by it; and

(d) there remain reasonable grounds for believing those things, at the time the court considers the application.

Under section 43(6A) of the 2000 Act, on an application to approve the renewal of such an authorisation the court in addition must—

(a) be satisfied that, since the grant or latest renewal of the authorisation, a review has been carried out of the use made of the source, of the tasks given to him or her and of the information obtained; and

(b) consider the results of that review.

The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010(**a**) *specifies the persons who are entitled to grant an authorisation concerning such surveillance or such a source, and for what purpose each may do so.*

Under sections 23B(2) and 32B(2) of the 2000 Act, the applicant is not required to give notice of an application to any person to whom the authorisation or notice relates, or to such a person's legal representatives.]

SECTION 8: ORDERS FOR ACCESS TO DOCUMENTS, ETC. UNDER THE CRIMINAL APPEAL ACT 1995

When this Section applies

47.54. This Section applies where the Crown Court can order a person to give the Criminal Cases Review Commission access to a document or other material under section 18A of the Criminal Appeal Act 1995(**b**).

[Note. Under section 18A of the Criminal Appeal Act 1995, on an application by the Criminal Cases Review Commission the court may order that the Commission be given access to a

(**a**) S.I. 2010/521.
(**b**) 1995 c. 35; section 18A was inserted by section 1 of the Criminal Cases Review Commission (Information) Act 2016 (c. 17).

document or material in a person's possession or control if the court thinks that that document or material may assist the Commission in the exercise of any of their functions.]

Exercise of court's powers

47.55.—(1) Subject to paragraphs (2), (3) and (4), the court may determine an application by the Criminal Cases Review Commission for an order—

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

(b) in the absence of—

(i) the Commission,

(ii) the respondent, and

(iii) any other person affected by the order.

(2) The court must not determine such an application in the Commission's absence if—

(a) the Commission asks for a hearing; or

(b) it appears to the court that the application is so complex or serious as to require the court to hear the Commission.

(3) The court must not determine such an application in the absence of any respondent or 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 Commission cannot identify or contact the absentee,

(ii) it would prejudice the exercise of the Commission's functions to adjourn or postpone the application so as to allow the absentee to attend, or

(iii) the absentee has waived the opportunity to attend.

(4) The court must not determine such an application in the absence of any respondent who, if the order sought by the Commission were made, would be required to produce or give access to journalistic material, unless that respondent has waived the opportunity to attend.

(5) The court officer must arrange for the court to hear such an application no sooner than 2 business days after it was served, unless—

(a) the court directs that no hearing need be arranged; or

(b) the court gives other directions for the hearing.

(6) The court must not determine an application unless satisfied that sufficient time has been allowed for it.

(7) If the court so directs, the parties to an application may attend a hearing by live link.

(8) The court must not make an order unless an officer of the Commission states, in writing or orally, that to the best of that officer's knowledge and belief—

(a) the application discloses all the information that is material to what the court must decide; and

(b) the content of the application is true.

(9) Where the statement required by paragraph (8) is made orally—

(a) the statement must be on oath or affirmation, unless the court otherwise directs; and

(b) the court must arrange for a record of the making of the statement.

(10) The court may shorten or extend (even after it has expired) a time limit under this Section.

Application for an order for access

47.56.—(1) Where the Criminal Cases Review Commission wants the court to make an order for access to a document or other material, the Commission must—

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

(b) give the court an estimate of how long the court should allow—

(i) to read the application and prepare for any hearing, and

(ii) for any hearing of the application;

(c) attach a draft order in the terms proposed by the Commission; and

(d) serve the application and draft order on the respondent.

(2) The application must—

(a) identify the respondent;

(b) describe the document, or documents, or other material sought;

(c) explain the reasons for thinking that—

(i) what is sought is in the respondent's possession or control, and

(ii) access to what is sought may assist the Commission in the exercise of any of their functions; and

(d) explain the Commission's proposals for—

(i) the manner in which the respondent should give access, and

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

(3) The Commission must serve any order made on the respondent.

[Note. Under section 18A(3) of the Criminal Appeal Act 1995, the court may give directions for the manner in which access to a document or other material must be given, and may direct that the Commission must be allowed to take away such a document or material, or to make copies. Under section 18A(4) of the Act, the court may direct that the respondent must not destroy, damage or alter a document or other material before the direction is withdrawn by the court.]

Application containing information withheld from a respondent or other person

47.57.—(1) This rule applies where—

(a) the Criminal Cases Review Commission serves an application under rule 47.56 (Application for an order for access); and

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

(2) The Commission must—

(a) omit that information from the part of the application that is served on that recipient;

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

(c) in that other part, explain why the Commission has withheld it from that recipient.

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

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

(a) the general rule is that the court must consider, in the following sequence—

(i) representations first by the Commission and then by the other parties, in the presence of them all, and then

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

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

Application to punish for contempt of court

47.58.—(1) This rule applies where a person is accused of disobeying an order for access made under section 18A of the Criminal Appeal Act 1995.

(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 48 (Contempt of court).

[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(**a**)*.]*

SECTION 9: ORDERS FOR THE EXTENSION OF A MORATORIUM PERIOD UNDER THE PROCEEDS OF CRIME ACT 2002

When this Section applies

47.59.—(1) This Section applies where the Crown Court can extend a moratorium period under section 336A of the Proceeds of Crime Act 2002(**b**).

(2) In this Section, 'respondent' means, as well as a person within the meaning of rule 47.2(c), an 'interested person' within the meaning of section 336D of the 2002 Act(**c**).

[Note. Under section 336A of the Proceeds of Crime Act 2002, the Crown Court may extend a moratorium period under section 335 or section 336 of the Act(**d**) *by up to 31 days beginning with the day after the day on which the period otherwise would end.*

Under sections 335 and 336 of the 2002 Act, a moratorium period is the period of 31 days starting with the day on which consent to the doing of an act is refused by a constable, a customs officer or the Director General of the National Crime Agency. The act to which those sections refer is one that would be an offence under section 327, 328 or 329 of the 2002 Act (money laundering offences) but for the making of a disclosure within the meaning of section 338 to such an officer in relation to that act. On the expiry of the moratorium period the person who made the disclosure will be treated as having the relevant officer's consent to the doing of the act and so will commit no offence by doing it.

The Crown Court may extend a moratorium period more than once, but the total period of extension may not exceed 186 days beginning with the day after the day on which the first 31 day period ended.

Under section 336D(3) of the 2002 Act, 'interested person' means the person who made the disclosure and any other person who appears to the person making an application under rule 47.61 to have an interest in the property that is the subject of that disclosure.]

Exercise of court's powers

47.60.—(1) The court may determine an application to which rule 47.61 (Application for extension of moratorium period) applies—

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

(b) in the absence of—

(i) the applicant, and

(ii) a respondent.

(**a**) 1981 c. 54. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(**b**) 2002 c. 29; section 336A was inserted by section 10 of the Criminal Finances Act 2017 (c. 22).

(**c**) 2002 c. 29; section 336D was inserted by section 10 of the Criminal Finances Act 2017 (c. 22).

(**d**) 2002 c. 29; section 335 was amended by section 10 of the Criminal Finances Act 2017 (c. 22). Section 336 was amended by paragraphs 168 and 173 of Schedule 4 to the Serious Organised Crime and Police Act 2005 (c. 15), paragraphs 108 and 133 of Schedule 8 to the Crime and Courts Act 2013 (c .22) and section 10 of the Criminal Finances Act 2017 (c. 22).

(2) The court must not determine such an application in the applicant's absence if the applicant asks for a hearing.

(3) The court must not determine such an application in the absence of a respondent 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,

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

(iv) the absentee has waived the opportunity to attend.

(4) The court officer must arrange for the court to hear such an application no sooner than 2 business days after notice of the application was served, unless—

(a) the court directs that no hearing need be arranged; or

(b) the court gives other directions for the hearing.

(5) If the court so directs, the parties to an application may attend a hearing by live link.

(6) The court must not extend a moratorium period unless the applicant states, in writing or orally, that to the best of the applicant's knowledge and belief—

(a) the application discloses all the information that is material to what the court must decide; and

(b) the content of the application is true.

(7) Where the statement required by paragraph (6) is made orally—

(a) the statement must be on oath or affirmation, unless the court otherwise directs; and

(b) the court must arrange for a record of the making of the statement.

(8) The court may—

(a) shorten or extend (even after it has expired) a time limit imposed by this rule;

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

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

Application for extension of moratorium period

47.61.—(1) This rule applies where an applicant wants the court to extend a moratorium period.

(2) The applicant must—

(a) apply in writing before the date on which the moratorium period otherwise would end;

(b) demonstrate that the applicant is entitled to apply as a senior officer within the meaning of section 336D of the Proceeds of Crime Act 2002;

(c) serve the application on the court officer;

(d) serve notice on each respondent that an application has been made; and

(e) serve the application on each respondent to such extent, if any, as the court directs.

(3) The application must specify—

(a) the disclosure in respect of which the application is made;

(b) the date on which the moratorium period began;

(c) the date and period of any previous extension of that period; and

(d) the date on which that period is due to end.

(4) The application must—

(a) describe the investigation being carried out in relation to that disclosure; and

(b) explain the grounds for believing that—

(i) the investigation is being conducted diligently and expeditiously,

(ii) further time is needed for conducting the investigation, and

(iii) it would be reasonable in all the circumstances for the moratorium period to be extended.

(5) A respondent who objects to the application must—

(a) serve notice of the objection on—

(i) the court officer, and

(ii) the applicant

not more than 2 business days after service of notice of the application; and

(b) in that notice explain the grounds of the objection.

(6) The applicant must serve any order made on each respondent.

[Note. Under section 336D of the Proceeds of Crime Act 2002, 'senior officer' means the Director General of the National Crime Agency or an authorised officer of that Agency, a police officer of at least the rank of inspector, an officer of HM Revenue and Customs or an immigration officer of equivalent rank, a senior member of the Financial Conduct Authority, the Director of the Serious Fraud Office or an authorised member of that Office, or an accredited financial investigator.

The time limit for making an application is prescribed by section 336A(3) of the Proceeds of Crime Act 2002. It may be neither extended nor shortened. Under section 336B(2) of the Act(**a**) *the court must determine the application as soon as reasonably practicable. Under section 336C*(**b**)*, where an application is made and not determined before the moratorium period otherwise would expire then that period is extended until (i) the application is determined, or (ii) the expiry of 31 days beginning with the day after the day on which that period expired, whichever occurs first.]*

Application containing information withheld from a respondent

47.62.—(1) This rule applies where an application to extend a moratorium period includes an application to withhold information from a respondent.

(2) The applicant must—

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

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

(c) in that other part, explain the grounds for believing that the disclosure of that information would have one or more of the following results—

(i) evidence of an offence would be interfered with or harmed,

(ii) the gathering of information about the possible commission of an offence would be interfered with,

(iii) a person would be interfered with or physically injured,

(iv) the recovery of property under this Act would be hindered, or

(v) national security would be put at risk.

(3) At any hearing of an application to which this rule applies—

(a) the court must first determine the application to withhold information, in the respondent's absence and that of any legal representative of the respondent; and

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(**a**) 2002 c. 29; section 336B was inserted by section 10 of the Criminal Finances Act 2017 (c. 22).
(**b**) 2002 c. 29; section 336C was inserted by section 10 of the Criminal Finances Act 2017 (c. 22).

(b) if the court allows the application to withhold information, then in the following sequence—

(i) the court must consider representations first by the applicant and then by the respondent, in the presence of both, and

(ii) the court may consider further representations by the applicant in the respondent's absence and that of any legal representative of the respondent.

(4) If the court refuses an application to withhold information from the respondent, the applicant may withdraw the application to extend the moratorium period.

[Note. See section 336B of the Proceeds of Crime Act 2002.]

SECTION 10: ORDERS FOR ACCESS TO ELECTRONIC DATA UNDER THE CRIME (OVERSEAS PRODUCTION ORDERS) ACT 2019

When this Section applies

47.63.—(1) This Section applies where the Crown Court can make an overseas production order under section 1 of the Crime (Overseas Production Orders) Act 2019(**a**).

(2) In this Section, a reference to a person affected by such an order includes a person by whom or on whose behalf there is stored any journalistic data specified or described in the application for that order.

[Note. Under section 1 of the Crime (Overseas Production Orders) Act 2019, on an application by an appropriate officer (defined by section 2 of the Act) a Crown Court judge may order a person (in these rules, 'the respondent') to produce or give access to electronic data (by section 3, 'data stored electronically'), other than excepted such data, where, among other criteria listed in sections 1 and 4 of the Act, the judge is satisfied that—

(a) there are reasonable grounds for believing that—

(i) an indictable offence has been committed and proceedings in respect of the offence have been instituted or the offence is being investigated, or

(ii) the order is sought for the purposes of a terrorist investigation within the meaning of the Terrorism Act 2000; and

(b) there are reasonable grounds for believing that the respondent operates in, or is based in, a country or territory outside the United Kingdom which is a party to, or which participates in, a designated international co-operation arrangement.

Section 3 of the 2019 Act defines 'excepted electronic data' as data stored electronically that is (a) an item subject to legal privilege, or (b) a personal record within the meaning of section 3(7) (medical, etc. records) which (i) was created in circumstances giving rise to a continuing obligation of confidence to an individual who can be identified from that record, or (ii) is held subject to a restriction on disclosure, or an obligation of secrecy, contained in an enactment. Where the respondent against whom an overseas production order is sought is a telecommunications operator, within the meaning of the Investigatory Powers Act 2016, 'excepted electronic data' also includes communications data within the meaning of the 2016 Act unless that communications data is comprised in, included as part of, attached to or logically associated with the electronic data sought. Where the investigation in aid of which an overseas production order is sought is a terrorist investigation other than a terrorist financing investigation within the meaning of the Terrorism Act 2000, 'excepted electronic data' does not include a confidential personal record.

Section 12 of the Act defines 'journalistic data' as electronic data that (a) was created or acquired for the purposes of journalism and (b) is stored by or on behalf of a person who created or acquired it for those purposes.]

(**a**) 2019 c. 5.

Exercise of court's powers

47.64.—(1) Subject to paragraphs (2), (3) and (4), the court may determine an application under rule 47.65 for an overseas production order, or an application under rule 47.66 to vary or revoke an order—

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

(b) in the absence of—

(i) the applicant,

(ii) the respondent, and

(iii) any other person affected by the order.

(2) The court must not determine such an application in the applicant's absence if—

(a) the applicant asks for a hearing; or

(b) it appears to the court that—

(i) the proposed order may require the production of excepted electronic data, within the meaning of section 3 of the Crime (Overseas Production Orders) Act 2019, or

(ii) for any other reason the application is so complex or serious as to require the court to hear the applicant.

(3) The court must not determine such an application in the absence of any respondent or 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,

(iii) where journalistic data is sought, it would prejudice the investigation of another indictable offence or another terrorist investigation if the absentee were present,

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

(v) the absentee has waived the opportunity to attend.

(4) The court must not determine such an application in the absence of any respondent who, if the order sought by the applicant were made, would be required to produce or give access to journalistic data, unless that respondent has waived the opportunity to attend.

(5) The court officer must arrange for the court to hear such an application no sooner than 2 business days after notice of the application was served, unless—

(a) the court directs that no hearing need be arranged; or

(b) the court gives other directions for the hearing.

(6) The court must not determine an application unless satisfied that sufficient time has been allowed for it.

(7) If the court so directs, the parties to an application may attend a hearing by live link.

(8) The court must not make, vary or revoke an order unless the applicant states, in writing or orally, that to the best of the applicant's knowledge and belief—

(a) the application discloses all the information that is material to what the court must decide; and

(b) the content of the application is true.

(9) Where the statement required by paragraph (8) is made orally—

(a) the statement must be on oath or affirmation, unless the court otherwise directs; and

(b) the court must arrange for a record of the making of the statement.

(10) The court may—

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

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

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

(11) 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.

Application for order

47.65.—(1) An applicant who wants the court to make an overseas production order must—

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

(b) demonstrate that the applicant is entitled to apply;

(c) give the court an estimate of how long the court should allow—

(i) to read the application and prepare for any hearing, and

(ii) for any hearing of the application;

(d) attach a draft order in the terms proposed by the applicant;

(e) serve notice of the application on the respondent and on any other person affected by the order, unless the court otherwise directs; and

(f) serve the application on the respondent and on any such other person to such extent, if any, as the court directs.

(2) A notice served on the respondent and on any other person affected by the order must—

(a) specify or describe the electronic data in respect of which the application is made; and

(b) identify—

(i) the power that the applicant invites the court to exercise, and

(ii) the conditions for the exercise of that power which the applicant asks the court to find are met.

(3) The application must—

(a) specify the designated international co-operation arrangement by reference to which the application is made;

(b) identify the respondent;

(c) explain the grounds for believing that the respondent operates in, or is based in, a country or territory outside the United Kingdom which is a party to, or participates in, that designated international co-operation arrangement;

(d) specify or describe the electronic data in respect of which the order is sought;

(e) explain the grounds for believing that the electronic data sought does not consist of or include excepted electronic data;

(f) briefly describe the investigation for the purposes of which the electronic data is sought and explain—

(i) the grounds for believing that an indictable offence has been committed which is under investigation or in respect of which proceedings have begun, or

(ii) how the investigation constitutes a terrorist investigation within the meaning of the Terrorism Act 2000;

(g) explain the grounds for believing that the respondent has possession or control of all or part of the electronic data sought;

(h) explain the grounds for believing that the electronic data sought is likely to be of substantial value to the investigation, or to the proceedings (as the case may be), whether by itself or together with other material;

(i) where paragraph (3)(f)(i) applies, explain the grounds for believing that all or part of the electronic data sought is likely to be relevant evidence in respect of the offence concerned;

(j) explain the grounds for believing that it is in the public interest for the respondent to produce or give access to the electronic data sought, having regard to—

(i) the benefit likely to accrue to the investigation, or to the proceedings (as the case may be), if that data is obtained, and

(ii) the circumstances under which the respondent has possession or control of any of that data;

(k) specify—

(i) the person, or the description of person, to whom the applicant wants the court to order that electronic data must be produced or made accessible, and

(ii) the period by the end of which the applicant wants the court to order that that electronic data must be produced or made accessible (which must be a period of 7 days beginning with the day on which the order is served on the respondent, unless the court otherwise directs); and

(l) where the applicant wants the court to include a non-disclosure requirement in the order—

(i) explain why such a requirement would be appropriate, and

(ii) specify or describe when the applicant wants that requirement, if ordered, to expire.

(4) In the event that an overseas production order is made, the applicant must serve the order on the Secretary of State, or on a person prescribed by regulations, for service on the respondent.

(5) Where notice of the application was served on a respondent, in the event that the application is dismissed or abandoned the applicant must—

(a) promptly so notify that respondent; and

(b) where the application is dismissed, promptly inform that respondent if the court nonetheless orders that for a period that respondent must not—

(i) conceal, destroy, alter or dispose of any of the electronic data specified or described in the application, or

(ii) disclose the making of the application or its contents to any person.

[Note. See sections 1, 2, 4 and 5 of the Crime (Overseas Production Orders) Act 2019.

Under section 8 of the 2019 Act, an overseas production order may include a non-disclosure requirement obliging the respondent not to disclose the making of the order or its contents to any person except with the court's permission or with the written permission of the applicant (or an equivalent appropriate officer).

Under section 9 of the Act, an overseas production order may be served only by the Secretary of State or by a person prescribed by regulations made by the Secretary of State.

Under section 12 of the Act, if there are reasonable grounds for believing that the electronic data specified or described in the application consists of or includes journalistic data then unless the judge otherwise directs notice of the application must be served on (a) the person against whom the overseas production order is sought and (b) if different, the person by whom, or on whose behalf, the journalistic data is stored. The criteria for making such a direction correspond with those listed in rule 47.64(3)(b).

Under section 13 of the Act, following service of notice of an application for an overseas production order the respondent must not conceal, destroy, alter or dispose of any of the electronic data specified or described in the application, or disclose the making of the application

or its contents to any person, except with the court's permission or with the written permission of the applicant (or an equivalent appropriate officer). Those obligations are superseded if an order is made. If the application is abandoned or dismissed, those obligations cease unless, in the event of dismissal, the court otherwise orders.

Section 14 of the Act provides for the means of service of notices and orders.]

Application to vary or revoke an order

47.66.—(1) The orders to which this rule applies are—

(a) an overseas production order;

(b) an order under section 8(4) of the Crime (Overseas Production Orders) Act 2019 maintaining an unexpired non-disclosure requirement;

(c) an order under section 13(3) of the 2019 Act maintaining a duty not to conceal, destroy, alter or dispose of electronic data, and not to disclose the making or content of an application for an overseas production order; and

(d) an order under section 13(4)(b) of the Act maintaining a duty not to conceal, destroy, alter or dispose of electronic data.

(2) This rule applies where one of the following wants the court to vary, to further vary or to revoke an order listed in paragraph (1)—

(a) the applicant for that order, or an equivalent appropriate officer;

(b) the respondent;

(c) another person affected by the order; or

(d) the Secretary of State.

(3) The applicant for the variation or revocation 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) as applicable, the applicant for the order, the respondent, any other person known to be affected and the Secretary of State;

(c) attach a draft order in the terms proposed by the applicant; and

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

(4) Where the applicant wants the court to vary, or further vary, an overseas production order, the application must—

(a) specify or describe the electronic data in respect of which the varied order is sought (which may include electronic data not specified or described in the original order);

(b) satisfy or, as the case may be, continue to satisfy, the requirements of rule 47.65(3)(a) and (c) to (i) (which may be done by reference to the original application); and

(c) meet the requirements of rule 47.65(3)(j).

(5) Where the applicant wants the court to revoke an overseas production order, the application must—

(a) explain why revocation is appropriate;

(b) if the applicant wants the court, despite revocation, to maintain the requirement that for a period the respondent must not conceal, destroy, alter or dispose of any of the electronic data specified or described in the order—

(i) explain why it would be appropriate to maintain that requirement, and

(ii) specify or describe when the applicant wants that requirement, if maintained, to expire; and

(c) if the order includes an unexpired non-disclosure requirement that the applicant wants the court, despite revocation, to maintain—

(i) explain why it would be appropriate to maintain that requirement, and

(ii) specify or describe when the applicant wants that requirement, if maintained, to expire.

(6) Where the applicant wants the court to vary, to further vary or to revoke an order under section 8(4), section 13(3) or section 13(4)(b) of the 2019 Act the application must—

(a) explain—

(i) what material circumstances have changed since the order was made, and

(ii) why the order should be varied or revoked, as the case may be, as a result; and

(b) if applicable, specify the variation proposed.

(7) The court officer must serve on the applicant for the overseas production order under rule 47.65 any order made on an application under this rule, and—

(a) in the event that the court varies the overseas production order, the applicant under rule 47.65 must serve the order as varied on the Secretary of State, or on a person prescribed by regulations, for service on the respondent on whom the overseas production order first was served;

(b) in any other event, the applicant under rule 47.65 must serve the order made on the application under this rule on every other person served under paragraph (3)(b).

[Note. See sections 7, 9, 11(1) and 18(2) of the Crime (Overseas Production Orders) Act 2019.

Under section 8(4) of the 2019 Act, where the court revokes an overseas production order which includes an unexpired non-disclosure requirement the court may order that the respondent is to remain subject to that requirement for a defined period.

Under section 13(3) of the Act, where the court dismisses an application for an overseas production order then the duty under section 13(1)(a) not to conceal, destroy, alter or dispose of any of the electronic data specified or described in the application, and under section 13(1)(b) not to disclose the making of the application or its contents to any person except with the court's permission or with the written permission of the applicant (or an equivalent appropriate officer), ceases to apply unless the court orders that a person served with notice of the application is to remain subject to that duty for a defined period.

Under section 13(4)(b) of the Act, where the court revokes an overseas production order before it is served then the duty under section 13(1)(a) not to conceal, destroy, alter or dispose of any of the electronic data specified or described in the application for the order ceases to apply unless the court orders that a person served with notice of the application is to remain subject to that duty for a defined period.]

Application containing information withheld from a respondent or other person

47.67.—(1) This rule applies where an application under rule 47.65 or 47.66 includes information that the applicant thinks ought to be revealed only to the court.

(2) The application must—

(a) identify that information; and

(b) explain why that information ought not to be served on the respondent or another person.

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

(a) the general rule is that the court must consider, 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

47.68.—(1) This rule applies where a person is accused of disobeying an order made by the court under the Crime (Overseas Production Orders) Act 2019.

(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 48 (Contempt of court).

[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(**a**)*. Under section 11(4) of the Crime (Overseas Production Orders) Act 2019, an order made by a judge under the Act has effect as if it were an order of the Crown Court.]*

PART 48

CONTEMPT OF COURT

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GENERAL RULES

When this Part applies

48.1.—(1) This Part applies where the court can deal with a person for conduct—

(a) in contempt of court; or

(b) in contravention of the legislation to which rules 48.5 and 48.9 refer.

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

(**a**) 1981 c. 54. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

[Note. For the court's powers to punish for contempt of court, see the notes to rules 48.5 and 48.9.]

Exercise of court's power to deal with contempt of court

48.2.—(1) The court must determine at a hearing—

(a) an enquiry under rule 48.8; and

(b) an allegation under rule 48.9.

(2) The court must not proceed in the respondent's absence unless—

(a) the respondent's behaviour makes it impracticable to proceed otherwise; or

(b) the respondent has had at least 10 business days' notice of the hearing, or was present when the hearing was arranged.

(3) If the court hears part of an enquiry or allegation in private, it must announce at a hearing in public—

(a) the respondent's name;

(b) in general terms, the nature of any conduct that the respondent admits, or the court finds proved; and

(c) any punishment imposed.

(4) Where a respondent admits conduct to which this Part applies or the court finds such conduct proved, the court officer must publish an announcement of the event—

(a) which includes the information listed in paragraph (3) of this rule; and

(b) by such arrangements as the Lord Chief Justice directs.

Notice of suspension of imprisonment by Court of Appeal or Crown Court

48.3.—(1) This rule applies where—

(a) the Court of Appeal or the Crown Court suspends an order of imprisonment for contempt of court; and

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

(2) The respondent must be served with notice of the terms of the court's order—

(a) by any applicant under rule 48.9; or

(b) by the court officer, in any other case.

[Note. By reason of sections 15 and 45 of the Senior Courts Act 1981(**a**)*, the Court of Appeal and the Crown Court each has an inherent power to suspend imprisonment for contempt of court, on conditions, or for a period, or both.]*

Application to discharge an order for imprisonment

48.4.—(1) This rule applies where the court can discharge an order for a respondent's imprisonment for contempt of court.

(2) A respondent who wants the court to discharge such an order must—

(a) apply in writing, unless the court otherwise directs, and serve any written application on—

(i) the court officer, and

(ii) any applicant under rule 48.9 on whose application the respondent was imprisoned;

(b) in the application—

(**a**) 1981 c. 54.

(i) explain why it is appropriate for the order for imprisonment to be discharged, and

(ii) give details of any appeal, and its outcome; and

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

[Note. By reason of sections 15 and 45 of the Senior Courts Act 1981, the Court of Appeal and the Crown Court each has an inherent power to discharge an order for a respondent's imprisonment for contempt of court in failing to comply with a court order.

*Under section 97(4) of the Magistrates' Courts Act 1980(**a**), a magistrates' court can discharge an order for imprisonment if the respondent gives evidence.*

*Under section 12(4) of the Contempt of Court Act 1981(**b**), a magistrates' court can discharge an order for imprisonment made under that section.]*

CONTEMPT OF COURT BY OBSTRUCTION, DISRUPTION, ETC.

Initial procedure on obstruction, disruption, etc.

48.5.—(1) This rule applies where the court observes, or someone reports to the court—

(a) in the Court of Appeal or the Crown Court, obstructive, disruptive, insulting or intimidating conduct, in the courtroom or in its vicinity, or otherwise immediately affecting the proceedings;

(b) in the Crown Court, a contravention of—

(i) section 3 of the Criminal Procedure (Attendance of Witnesses) Act 1965(**c**) (disobeying a witness summons), or

(ii) section 20 of the Juries Act 1974(**d**) (disobeying a jury summons);

(c) in a magistrates' court, a contravention of—

(i) section 97(4) of the Magistrates' Courts Act 1980 (refusing to give evidence), or

(ii) section 12 of the Contempt of Court Act 1981(**e**) (insulting or interrupting the court, etc.);

(d) a contravention of section 9 of the Contempt of Court Act 1981(**f**) (Use of tape recorders);

(e) a contravention of section 41 of the Criminal Justice Act 1925(**g**) (Prohibition on taking photographs, etc, in court); or

(f) any other conduct with which the court can deal as, or as if it were, a criminal contempt of court, except failure to surrender to bail under section 6 of the Bail Act 1976(**h**).

(**a**) 1980 c. 43; section 97(4) was amended by sections 13 and 14 of, and paragraph 7 of Schedule 2 to, the Contempt of Court Act 1981 (c. 47) and section 17 of, and paragraph 6 of Schedule 3 and Part I of Schedule 4 to, the Criminal Justice Act 1991 (c. 53).

(**b**) 1981 c. 49.

(**c**) 1965 c. 69; section 3 was amended by section 56 of, and Part IV of Schedule 11 to, the Courts Act 1971 (c. 23) and sections 65 and 66 of the Criminal Procedure and Investigations Act 1996 (c. 25).

(**d**) 1974 c. 23; section 20 was amended by sections 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48), section 170(1) of, and paragraph 46 of Schedule 15 to, the Criminal Justice Act 1988 (c. 33), paragraph 28 of Schedule 10 to the Criminal Justice and Public Order Act 1994 (c. 33) and paragraphs 1 and 14 of Schedule 33 to the Criminal Justice Act 2003 (c. 44).

(**e**) 1981 c. 49; section 12 was amended by section 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), section 17(3) of, and Part I of Schedule 4 to, the Criminal Justice Act 1991 (c. 53); section 65(3) and (4) of, and paragraph 6(4) of Schedule 3 to, the Criminal Justice Act 1993 (c. 36) and section 165 of, and paragraph 83 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).

(**f**) 1981 c. 49.

(**g**) 1925 c. 86; section 41 was amended by section 56 of, and Schedule 11 to, the Courts Act 1971 (c. 23), sections 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48), section 47 of the Constitutional Reform Act 2005 (c. 4), section 32 of the Crime and Courts Act 2013 (c. 22) and section 198 of the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

(**h**) 1976 c. 63; section 6 was amended by sections 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48), section 109 of, and paragraph 184 of Schedule 8 to, the Courts Act 2003 (c. 39) and section 15 of, and paragraph 48(1), (4) of Schedule 3 to, the Criminal Justice Act 2003 (c. 44).

(2) If it is necessary in the interests of justice to deal there and then with conduct to which this rule applies, the court must—

(a) unless the respondent's behaviour makes it impracticable to do so, explain, in terms the respondent can understand (with help, if necessary)—

(i) the conduct that is in question,

(ii) that the court can impose imprisonment, or a fine, or both, for such conduct,

(iii) (where relevant) that the court has power to order the respondent's immediate temporary detention, if in the court's opinion that is required,

(iv) that the respondent may explain the conduct,

(v) that the respondent may apologise, if the respondent so wishes, which may persuade the court to take no further action, and

(vi) that the respondent may take legal advice; and

(b) allow the respondent a reasonable opportunity to reflect, take advice, explain and, if the respondent so wishes, apologise.

(3) After allowing that opportunity—

(a) the court may enquire into the conduct at once;

(b) the court may postpone the enquiry—

(i) if a magistrates' court, only until later the same day, or

(ii) if the Court of Appeal or the Crown Court, until a date and time fixed by the court for the respondent to surrender to the court's custody;

(c) if the conduct appears to contravene section 9 of the Contempt of Court Act 1981(**a**) (recording) or section 41 of the Criminal Justice Act 1925 (photography), the court may—

(i) at once require the respondent to erase the recording or photograph immediately,

(ii) explain the power of a court security officer to seize an article under section 54 of the Courts Act 2003(**b**) (Surrender and seizure of articles), and

(iii) explain the power of the court to order the forfeiture and disposal of an instrument under section 9(3) of the Contempt of Court Act 1981; or

(d) the court may take no further action in respect of the conduct.

(4) In the Crown Court, if it is not necessary in the interests of justice to deal there and then with the conduct the court must instead—

(a) direct the court officer to report the incident to a Presiding Judge; and

(b) unless the respondent's behaviour makes it impracticable to do so, explain in terms the respondent can understand (with help, if necessary), that—

(i) the incident will be considered by a Presiding Judge,

(ii) the outcome may be prosecution or proceedings for contempt of court, which may lead to imprisonment, or to a fine, or both,

(iii) the respondent may explain the conduct and may apologise, if the respondent so wishes, which may affect the outcome, and

(iv) the respondent may take legal advice.

[Note. The conduct to which this rule applies is sometimes described as 'criminal' contempt of court.

(**a**) 1981 c. 49; section 9 was amended by sections 31 and 32 of the Crime and Courts Act 2013 (c. 22) and section 198 of the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

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

By reason of sections 15 and 45 of the Senior Courts Act 1981, the Court of Appeal and the Crown Court each has an inherent power to imprison (for a maximum of 2 years), or fine (to an unlimited amount), or both, a respondent for contempt of court for the conduct listed in paragraph (1)(a), (b), (d) or (e). See also section 14 of the Contempt of Court Act 1981(**a**)*.*

Under section 97(4) of the Magistrates' Courts Act 1980, and under sections 12 and 14 of the Contempt of Court Act 1981, a magistrates' court can imprison (for a maximum of 1 month), or fine (to a maximum of £2,500), or both, a respondent who contravenes a provision listed in paragraph (1)(c) or (d). Section 12(1) of the 1981 Act allows the court to deal with any person who—

(a) wilfully insults the justice or justices, any witness before or officer of the court or any solicitor or counsel having business in the court, during his or their sitting or attendance in court or in going to or returning from the court; or

(b) wilfully interrupts the proceedings of the court or otherwise misbehaves in court.

Under section 227(2) of the Sentencing Act 2020(**b**)*, the committal to custody of a person aged under 21 is generally prohibited but section 108 of the Powers of Criminal Courts (Sentencing) Act 2000*(**c**) *allows the court to commit to detention a person aged at least 18 but under 21 if it is of the opinion that no other method of dealing with that person is appropriate.*

Under section 258 of the Criminal Justice Act 2003(**d**)*, a respondent who is imprisoned for contempt of court must be released unconditionally after serving half the term.*

Under sections 14, 15 and 16 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**e**)*, the respondent may receive advice and representation in "proceedings for contempt committed, or alleged to have been committed, by an individual in the face of the court".*

By reason of sections 15 and 45 of the Senior Courts Act 1981(**f**)*, the Court of Appeal and the Crown Court each has (i) an inherent power temporarily to detain a respondent, for example to restore order, when dealing with obstructive, disruptive, insulting or intimidating conduct, and (ii) an inherent power to grant bail, subject to the obligation to attend the enquiry and subject to the same principles that apply to bail in a prosecution. Under section 12(2) of the Contempt of Court Act 1981*(**g**)*, a magistrates' court can temporarily detain a respondent until later the same day on a contravention of that section.*

Part 14 contains rules about bail.

Under section 53(2) of the Courts Act 2003(**h**)*, a court security officer may restrain any person in a court building, or exclude or remove any person from a court building, if that is reasonably necessary to enable court business to be carried on without interference or delay, to maintain order, or to secure the safety of any person in the building. Under section 53(4) of that Act a court*

(**a**) 1981 c. 49; section 14 was amended by sections 77 and 78 of, and paragraph 60 of Schedule 14 and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), section 65 of, and paragraphs 59 and 60 of Schedule 3 to, the Mental Health (Amendment) Act 1982 (c. 51), section 148 of, and paragraph 57 of Schedule 4 to, the Mental Health Act 1983 (c. 20), section 1 of the County Courts (Penalties for Contempt) Act 1983 (c. 45), section 17 of, and Parts I and V of Schedule 4 to, the Criminal Justice Act 1991 (c. 53), section 65 of, and paragraph 6 of Schedule 3 to, the Criminal Justice Act 1993 (c. 36), section 165 of, and paragraph 84 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 1 of, and paragraph 19 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 17 of, and paragraph 52 of Schedule 9 and paragraph 53 of Schedule 10 to, the Crime and Courts Act 2013 (c. 22). It is further amended by sections 6 and 149 of, and paragraph 25 of Schedule 4 and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4), with effect from a date to be appointed.

(**b**) 2020 c. 17.

(**c**) 2000 c. 6; section 108 was amended by section 416 of, and paragraph 163 of Schedule 24 to, the Sentencing Act 2020 (c. 17).

(**d**) 2003 c. 44; section 258 was amended by article 3 of S.I. 2005/643, section 34 of the Police and Justice Act 2006 (c. 4) and sections 117 and 121 of, and paragraphs 1 and 5 of Schedule 17 and paragraphs 1 and 8 of Schedule 20 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**e**) 2012 c. 10.

(**f**) 1981 c. 54.

(**g**) 1981 c. 49; section 12(2) was amended by Part I of Schedule 4 to the Criminal Justice Act 1991 (c. 53).

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

security officer acting in the execution of that officer's duty may remove any person from a courtroom at the request of a judge or a justice of the peace.

Under section 54 of the Courts Act 2003, a court security officer must ask a person in a court building to surrender any article that the officer reasonably believes (a) may jeopardise the maintenance of order in the court building or a part of it, (b) may put the safety of any person in the court building at risk, or (c) may be evidence of, or in relation to, an offence. If that person refuses to surrender that article the officer may seize it.

Under section 9(3) of the Contempt of Court Act 1981, the court may order the forfeiture of a recording instrument brought into court without the court's permission, and any recording made with it, and may direct the manner of its disposal. The object forfeited must be disposed of in this manner, unless the court otherwise determines on application by the owner.

Presiding Judges are appointed from among High Court judges under section 72 of the Courts and Legal Services Act 1990(**a**)*.]*

Review after temporary detention

48.6.—(1) This rule applies in a case in which the court has ordered the respondent's immediate temporary detention for conduct to which rule 48.5 applies.

(2) The court must review the case—

(a) if a magistrates' court, later the same day; or

(b) if the Court of Appeal or the Crown Court, no later than the next business day.

(3) On the review, the court must—

(a) unless the respondent is absent, repeat the explanations required by rule 48.5(2)(a); and

(b) allow the respondent a reasonable opportunity to reflect, take advice, explain and, if he or she so wishes, apologise.

(4) The court may then—

(a) take no further action in respect of the conduct;

(b) if a magistrates' court, enquire into the conduct at once; or

(c) if the Court of Appeal or the Crown Court—

(i) enquire into the conduct at once, or

(ii) postpone the enquiry, and order the respondent's release from such detention in the meantime.

Postponement of enquiry

48.7.—(1) This rule applies where the Court of Appeal or the Crown Court postpones the enquiry.

(2) Under the superintendence of the court the court officer must prepare a written statement containing such particulars of the conduct in question as to make clear what the respondent appears to have done.

(3) The court officer must serve on the respondent—

(a) that written statement;

(b) such other evidence, if any, of the conduct which the court will consider at the enquiry;

(c) notice of where and when the postponed enquiry will take place;

(d) a reminder that the court can impose imprisonment, or a fine, or both, for contempt of court; and

(**a**) 1990 c. 41; section 72 was amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(e) a warning that if the respondent fails to attend the enquiry—

(i) the enquiry may take place in the respondent's absence, and

(ii) the respondent may be arrested and punished for failing to attend.

Procedure on enquiry

48.8.—(1) At an enquiry, the court must—

(a) ensure that the respondent understands (with help, if necessary) what is alleged, if the enquiry has been postponed from a previous occasion;

(b) explain what the procedure at the enquiry will be; and

(c) ask whether the respondent admits the conduct in question.

(2) If the respondent admits the conduct, the court need not receive evidence.

(3) If the respondent does not admit the conduct, the court must consider—

(a) any statement served under rule 48.7;

(b) any other evidence of the conduct served under that rule;

(c) any evidence introduced by the respondent; and

(d) any representations by the respondent about the conduct.

(4) If the respondent admits the conduct, or the court finds it proved, the court must—

(a) before imposing any punishment for contempt of court, give the respondent an opportunity to make representations relevant to punishment and a final opportunity to apologise;

(b) in deciding how to deal with the respondent take into account—

(i) the gravity of the contempt,

(ii) the extent of any admission of the conduct and the stage at which that admission was made,

(iii) any apology and the stage at which that apology was offered, and

(iv) any period during which the respondent was detained pending the enquiry;

(c) if imprisonment is imposed, impose the shortest period that is commensurate with the preservation of good order in the administration of justice;

(d) explain, in terms the respondent can understand (with help, if necessary)—

(i) the reasons for its decision, including its findings of fact, and

(ii) the punishment it imposes, and its effect; and

(e) if a magistrates' court, arrange for the preparation of a written record of those findings.

(5) The court that conducts an enquiry—

(a) need not include the same member or members as the court that observed the conduct; but

(b) may do so, unless that would be unfair to the respondent.

CONTEMPT OF COURT BY FAILURE TO COMPLY WITH COURT ORDER, ETC.

Initial procedure on failure to comply with court order, etc.

48.9.—(1) This rule applies where—

(a) a party, or other person directly affected, alleges—

(i) in the Crown Court, a failure to comply with an order to which applies rule 33.64 (compliance order, restraint order or ancillary order), rule 47.9 (certain investigation

orders under the Police and Criminal Evidence Act 1984(**a**), the Terrorism Act 2000(**b**), the Proceeds of Crime Act 2002(**c**), the Proceeds of Crime Act 2002 (External Investigations) Order 2014(**d**) and the Extradition Act 2003(**e**)), rule 47.41 (order for retention or return of property under section 59 of the Criminal Justice and Police Act 2001(**f**)) or rule 47.58 (order for access under section 18A of the Criminal Appeal Act 1995(**g**)),

(ii) in the Court of Appeal or the Crown Court, any other conduct with which that court can deal as a civil contempt of court, or

(iii) in the Crown Court or a magistrates' court, unauthorised use of disclosed prosecution material under section 17 of the Criminal Procedure and Investigations Act 1996(**h**); or

(b) the court deals on its own initiative with conduct to which paragraph (1)(a) applies.

(2) Such a party or person 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 consider the allegation (not less than 10 business days after service).

(3) The application must—

(a) identify the respondent;

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

(c) contain such particulars of the conduct in question as to make clear what is alleged 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.

(4) A court which acts on its own initiative under paragraph (1)(b) must—

(a) arrange for the preparation of a written statement containing the same information as an application; and

(b) arrange for the service on the respondent of—

(i) that written statement, and

(ii) notice of where and when the court will consider the allegation (not less than 10 business days after service).

[Note. The conduct to which this rule applies is sometimes described as 'civil' contempt of court.

By reason of section 45 of the Senior Courts Act 1981(**i**)*, the Crown Court has an inherent power to imprison (for a maximum of 2 years), or fine (to an unlimited amount), or both, a respondent for conduct in contempt of court by failing to comply with a court order or an undertaking given to the court.*

(**a**) 1984 c. 60.
(**b**) 2000 c. 11.
(**c**) 2002 c. 29.
(**d**) S.I. 2014/1893.
(**e**) 2003 c. 41.
(**f**) 2001 c. 16; section 59 was amended by section 82 of the Deregulation Act 2015 (c. 20).
(**g**) 1995 c. 35; section 18A was inserted by section 1 of the Criminal Cases Review Commission (Information) Act 2016 (c. 17).
(**h**) 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).
(**i**) 1981 c. 54.

Under section 18 of the Criminal Procedure and Investigations Act 1996(**a**)—

(a) the Crown Court can imprison (for a maximum of 2 years), or fine (to an unlimited amount), or both;

(b) a magistrates' court can imprison (for a maximum of 6 months), or fine (to a maximum of £5,000), or both,

a person who uses disclosed prosecution material in contravention of section 17 of that Act. See also rule 15.8.

Under section 227(2) of the Sentencing Act 2020(**b**)*, the committal to custody of a person aged under 21 is generally prohibited but section 108 of the Powers of Criminal Courts (Sentencing) Act 2000*(**c**) *allows the court to commit to detention a person aged at least 18 but under 21 if it is of the opinion that no other method of dealing with that person is appropriate.*

Under section 258 of the Criminal Justice Act 2003, a respondent who is imprisoned for contempt of court must be released unconditionally after serving half the term.

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 unless the court otherwise directs.]

Procedure on hearing

48.10.—(1) At the hearing of an allegation under rule 48.9, the court must—

(a) ensure that the respondent understands (with help, if necessary) what is alleged;

(b) explain what the procedure at the hearing will be; and

(c) ask whether the respondent admits the conduct in question.

(2) If the respondent admits the conduct, the court need not receive evidence.

(3) If the respondent does not admit the conduct, the court must consider—

(a) the application or written statement served under rule 48.9;

(b) any other evidence of the conduct;

(c) any evidence introduced by the respondent; and

(d) any representations by the respondent about the conduct.

(4) If the respondent admits the conduct, or the court finds it proved, the court must—

(a) before imposing any punishment for contempt of court, give the respondent an opportunity to make representations relevant to punishment and a final opportunity to apologise;

(b) in deciding how to deal with the respondent take into account—

(i) the gravity of the contempt,

(ii) the extent of any admission of the conduct and the stage at which that admission was made, and

(iii) any apology and the stage at which that apology was offered;

(c) if imprisonment is imposed, impose the shortest period that is commensurate with the preservation of good order in the administration of justice;

(d) explain, in terms the respondent can understand (with help, if necessary)—

(i) the reasons for its decision, including its findings of fact, and

(ii) the punishment it imposes, and its effect; and

(**a**) 1996 c. 25.
(**b**) 2020 c. 17.
(**c**) 2000 c. 6; section 108 was amended by section 416 of, and paragraph 163 of Schedule 24 to, the Sentencing Act 2020 (c. 17).

(e) if a magistrates' court, arrange for the preparation of a written record of those findings.

Introduction of written witness statement or other hearsay

48.11.—(1) Where rule 48.9 applies, an applicant or respondent 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 48.9, in the case of an applicant, or

(ii) not more than 5 business days after service of that application or of the court's written statement, 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.

[Note. On an application under rule 48.9, hearsay evidence is admissible under the Civil Evidence Act 1995. Section 1(2) of the 1995 Act(**a**) *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*(**b**) *defines a statement as meaning 'any representation of fact or opinion, however made'.*

Under section 2 of the 1995 Act(**c**)*, 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

48.12.—(1) This rule applies to a written witness statement served under rule 48.11.

(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.

[Note. By reason of sections 15 and 45 of the Senior Courts Act 1981(**d**)*, the Court of Appeal and the Crown Court each has an inherent power to imprison (for a maximum of 2 years), or fine (to an unlimited amount), or both, for contempt of court a person who, in a written witness statement to which this rule applies, makes, or causes to be made, a false statement without an honest belief in its truth. See also section 14 of the Contempt of Court Act 1981*(**e**)*.]*

Content of notice of other hearsay

48.13.—(1) This rule applies to a notice of hearsay, other than a written witness statement, served under rule 48.11.

(**a**) 1995 c. 38.
(**b**) 1995 c. 38.
(**c**) 1995 c. 38.
(**d**) 1981 c. 54.
(**e**) 1981 c. 49; section 14 was amended by sections 77 and 78 of, and paragraph 60 of Schedule 14 and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), section 65 of, and paragraphs 59 and 60 of Schedule 3 to, the Mental Health (Amendment) Act 1982 (c. 51), section 148 of, and paragraph 57 of Schedule 4 to, the Mental Health Act 1983 (c. 20), section 1 of the County Courts (Penalties for Contempt) Act 1983 (c. 45), section 17 of, and Parts I and V of Schedule 4 to, the Criminal Justice Act 1991 (c. 53), section 65 of, and paragraph 6 of Schedule 3 to, the Criminal Justice Act 1993 (c. 36), section 165 of, and paragraph 84 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 1 of, and paragraph 19 of Schedule 1 to, the Mental Health Act 2007 (c. 12) and section 17 of, and paragraph 52 of Schedule 9 and paragraph 53 of Schedule 10 to, the Crime and Courts Act 2013 (c. 22). It is further amended by sections 6 and 149 of, and paragraph 25 of Schedule 4 and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4), with effect from a date to be appointed.

(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

48.14.—(1) This rule applies where a party wants the court's permission to cross-examine a person who made a statement which another party wants to introduce as hearsay.

(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 5 business 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 business 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

48.15.—(1) This rule applies where a party wants to challenge the credibility or consistency of a person who made a statement which another party wants to introduce as hearsay.

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

(a) serve 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 5 business 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 business 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 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).

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

[Note. Section 5(2) of the Civil Evidence Act 1995(**a**) *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*(**b**).

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**).*]*

Magistrates' courts' powers to adjourn, etc.

48.16.—(1) This rule applies where a magistrates' court deals with unauthorised disclosure of prosecution material under sections 17 and 18 of the Criminal Procedure and Investigations Act 1996(**d**).

(2) The sections of the Magistrates' Courts Act 1980 listed in paragraph (3) apply as if in those sections—

(a) 'complaint' and 'summons' each referred to an application or written statement under rule 48.9;

(b) 'complainant' meant an applicant; and

(c) 'defendant' meant the respondent.

(3) Those sections are—

(a) section 51(**e**) (issue of summons on complaint);

(b) section 54(**f**) (adjournment);

(c) section 55(**g**) (non-appearance of defendant);

(d) section 97(1)(**h**) (summons to witness);

(e) section 121(1)(**i**) (constitution and place of sitting of court); and

(f) section 123(**j**) (defect in process).

(4) Section 127 of the 1980 Act(**k**) (limitation of time) does not apply.

[Note. Under section 19(3) of the Criminal Procedure and Investigations Act 1996(**l**)*, Criminal Procedure Rules may contain provisions equivalent to those contained in Schedule 3 to the Contempt of Court Act 1981*(**m**) *(which allows magistrates' courts in cases of contempt of court to use certain powers such courts possess in other cases).]*

Court's power to vary requirements

48.17.—(1) The court may shorten or extend (even after it has expired) a time limit under rule 48.11, 48.14 or 48.15.

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

(**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 paragraph 79 of Schedule 36 and Schedule 37 to the Criminal Justice Act 2003 (c. 44).
(**d**) 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).
(**e**) 1980 c. 43; section 51 was substituted by section 47(1) of the Courts Act 2003 (c. 39).
(**f**) 1980 c. 43.
(**g**) 1980 c. 43.
(**h**) 1980 c. 43; section 97(1) was substituted by section 169(2) of the Serious Organised Crime and Police Act 2005 (c. 15).
(**i**) 1980 c. 43.
(**j**) 1980 c. 43.
(**k**) 1980 c. 43.
(**l**) 1996 c. 25; section 19(3) was amended by section 109 of, and paragraph 377 of Schedule 8 to, the Courts Act 2003 (c. 39) and section 15 of, and paragraph 251 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).
(**m**) 1981 c. 49; Schedule 3 has been amended but the amendment is not relevant to this rule.

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

(b) explain the delay.

PART 49

INTERNATIONAL CO-OPERATION

Contents of this Part

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Notice required to accompany process served outside the United Kingdom and translations

49.1.—(1) The notice which by virtue of section 3(4)(b) of the Crime (International Co-operation) Act 2003(**a**) (general requirements for service of process) must accompany any process served outside the United Kingdom must give the information specified in paragraphs (2) and (4) below.

(2) The notice must—

(a) state that the person required by the process to appear as a party or attend as a witness can obtain information about his rights in connection therewith from the relevant authority; and

(b) give the particulars specified in paragraph (4) about that authority.

(3) The relevant authority where the process is served—

(a) at the request of the prosecuting authority, is that authority; or

(b) at the request of the defendant or the prosecutor in the case of a private prosecution, is the court by which the process is served.

(4) The particulars referred to in paragraph (2) are—

(a) the name and address of the relevant authority, together with its telephone and fax numbers and e-mail address; and

(b) the name of a person at the relevant authority who can provide the information referred to in paragraph (2)(a), together with his telephone and fax numbers and e-mail address.

(5) The magistrates' court or Crown Court officer must send, together with any process served outside the United Kingdom—

(a) any translation which is provided under section 3(3)(b) of the 2003 Act; and

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(**a**) 2003 c. 32.

(b) any translation of the information required to be given by this rule which is provided to him.

(6) In this rule, 'process' has the same meaning as in section 51(3) of the 2003 Act.

Proof of service outside the United Kingdom

49.2.—(1) A statement in a certificate given by or on behalf of the Secretary of State—

(a) that process has been served on any person under section 4(1) of the Crime (International Co-operation) Act 2003(service of process otherwise than by post);

(b) of the manner in which service was effected; and

(c) of the date on which process was served;

shall be admissible as evidence of any facts so stated.

(2) In this rule, 'process' has the same meaning as in section 51(3) of the 2003 Act.

Supply of copy of notice of request for assistance abroad

49.3. Where a request for assistance under section 7 of the Crime (International Co-operation) Act 2003 is made by a justice of the peace or a judge exercising the jurisdiction of the Crown Court and is sent in accordance with section 8(1) of the 2003 Act, the magistrates' court or Crown Court officer shall send a copy of the letter of request to the Secretary of State as soon as practicable after the request has been made.

Persons entitled to appear and take part in proceedings before a nominated court, and exclusion of the public

49.4. A court nominated under section 15(1) of the Crime (International Co-operation) Act 2003 (nominating a court to receive evidence) may—

(a) determine who may appear or take part in the proceedings under Schedule 1 to the 2003 Act before the court and whether a party to the proceedings is entitled to be legally represented; and

(b) direct that the public be excluded from those proceedings if it thinks it necessary to do so in the interests of justice.

Record of proceedings to receive evidence before a nominated court

49.5.—(1) Where a court is nominated under section 15(1) of the Crime (International Co-operation) Act 2003 the magistrates' court or Crown Court officer shall enter in an overseas record—

(a) details of the request in respect of which the notice under section 15(1) of the 2003 Act was given;

(b) the date on which, and place at which, the proceedings under Schedule 1 to the 2003 Act in respect of that request took place;

(c) the name of any witness who gave evidence at the proceedings in question;

(d) the name of any person who took part in the proceedings as a legal representative or an interpreter;

(e) whether a witness was required to give evidence on oath or (by virtue of section 5 of the Oaths Act 1978(**a**)) after making a solemn affirmation; and

(f) whether the opportunity to cross-examine any witness was refused.

(**a**) 1978 c. 19.

(2) When the court gives the evidence received by it under paragraph 6(1) of Schedule 1 to the 2003 Act to the court or authority that made the request or to the territorial authority for forwarding to the court or authority that made the request, the magistrates' court or Crown Court officer shall send to the court, authority or territorial authority (as the case may be) a copy of an extract of so much of the overseas record as relates to the proceedings in respect of that request.

[Note. As to the keeping of an overseas record, see rule 49.9.]

Interpreter for the purposes of proceedings involving a television or telephone link

49.6.—(1) This rule applies where a court is nominated under section 30(3) (hearing witnesses in the UK through television links) or section 31(4) (hearing witnesses in the UK by telephone) of the Crime (International Co-operation) Act 2003.

(2) Where it appears to the justices' legal adviser or the Crown Court officer that the witness to be heard in the proceedings under Part 1 or 2 of Schedule 2 to the 2003 Act ('the relevant proceedings') is likely to give evidence in a language other than English, he shall make arrangements for an interpreter to be present at the proceedings to translate what is said into English.

(3) Where it appears to the justices' legal adviser or the Crown Court officer that the witness to be heard in the relevant proceedings is likely to give evidence in a language other than that in which the proceedings of the court referred to in section 30(1) or, as the case may be, 31(1) of the 2003 Act ('the external court') will be conducted, he shall make arrangements for an interpreter to be present at the relevant proceedings to translate what is said into the language in which the proceedings of the external court will be conducted.

(4) Where the evidence in the relevant proceedings is either given in a language other than English or is not translated into English by an interpreter, the court shall adjourn the proceedings until such time as an interpreter can be present to provide a translation into English.

(5) Where a court in Wales understands Welsh—

(a) paragraph (2) does not apply where it appears to the justices' legal adviser or Crown Court officer that the witness in question is likely to give evidence in Welsh;

(b) paragraph (4) does not apply where the evidence is given in Welsh; and

(c) any translation which is provided pursuant to paragraph (2) or (4) may be into Welsh instead of English.

Record of television link hearing before a nominated court

49.7.—(1) This rule applies where a court is nominated under section 30(3) of the Crime (International Co-operation) Act 2003.

(2) The magistrates' court or Crown Court officer shall enter in an overseas record—

(a) details of the request in respect of which the notice under section 30(3) of the 2003 Act was given;

(b) the date on which, and place at which, the proceedings under Part 1 of Schedule 2 to that Act in respect of that request took place;

(c) the technical conditions, such as the type of equipment used, under which the proceedings took place;

(d) the name of the witness who gave evidence;

(e) the name of any person who took part in the proceedings as a legal representative or an interpreter; and

(f) the language in which the evidence was given.

(3) As soon as practicable after the proceedings under Part 1 of Schedule 2 to the 2003 Act took place, the magistrates' court or Crown Court officer shall send to the external authority that made the request a copy of an extract of so much of the overseas record as relates to the proceedings in respect of that request.

[Note. As to the keeping of an overseas record, see rule 49.9.]

Record of telephone link hearing before a nominated court

49.8.—(1) This rule applies where a court is nominated under section 31(4) of the Crime (International Co-operation) Act 2003.

(2) The magistrates' court or Crown Court officer shall enter in an overseas record—

(a) details of the request in respect of which the notice under section 31(4) of the 2003 Act was given;

(b) the date, time and place at which the proceedings under Part 2 of Schedule 2 to the 2003 Act took place;

(c) the name of the witness who gave evidence;

(d) the name of any interpreter who acted at the proceedings; and

(e) the language in which the evidence was given.

[Note. As to the keeping of an overseas record, see rule 49.9.]

Overseas record

49.9.—(1) The overseas records of a magistrates' court shall be part of the register (within the meaning of section 150(1) of the Magistrates' Courts Act 1980(**a**)).

(2) The overseas records of any court shall not be open to inspection by any person except—

(a) as authorised by the Secretary of State; or

(b) with the leave of the court.

[Note. As to the making of court records, see rule 5.4.]

Overseas freezing orders

49.10.—(1) This rule applies where a court is nominated under section 21(1) of the Crime (International Co-operation) Act 2003(**b**) 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 must consider the order no later than the next business day; but

(b) exceptionally, the court may consider the order later than that, though 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.

[Note. Under sections 20, 21 and 22 of the Crime (International Co-operation) Act 2003, a court nominated by the Secretary of State must consider an order, made by a court or other authority in a country outside the United Kingdom, the purpose of which is to protect evidence in the United

(**a**) 1980 c. 43; a relevant amendment was made to section 150(1) by paragraph 250 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c. 39).
(**b**) 2003 c. 32.

Kingdom which may be used in proceedings or an investigation in that other country pending the transfer of that evidence to that country. The court may decide not to give effect to such an order only if—

(a) were the person whose conduct is in question to be charged with the offence to which the order relates, a previous conviction or acquittal would entitle that person to be discharged; or

(b) giving effect to the order would be incompatible with a Convention right, within the meaning of the Human Rights Act 1998.]

Overseas forfeiture orders

49.11.—(1) This rule applies where—

(a) the Crown Court can—

(i) make a restraint order under article 5 of the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 2005(**a**), or

(ii) give effect to an external forfeiture order under article 19 of that Order;

(b) the Director of Public Prosecutions or the Director of the Serious Fraud Office receives—

(i) a request for the restraint of property to which article 3 of the 2005 Order applies, or

(ii) a request to give effect to an external forfeiture order to which article 15 of the Order applies; and

(c) the Director wants the Crown Court to—

(i) make such a restraint order, or

(ii) give effect to such a forfeiture order.

(2) The Director must—

(a) apply in writing;

(b) serve the application on the court officer; and

(c) serve the application on the defendant and on any other person affected by the order, unless the court is satisfied that—

(i) the application is urgent, or

(ii) there are reasonable grounds for believing that to give notice of the application would cause the dissipation of the property which is the subject of the application.

(3) The application must—

(a) identify the property the subject of the application;

(b) identify the person who is or who may become the subject of such a forfeiture order;

(c) explain how the requirements of the 2005 Order are satisfied, as the case may be—

(i) for making a restraint order, or

(ii) for giving effect to a forfeiture order;

(d) where the application is to give effect to a forfeiture order, include an application to appoint the Director as the enforcement authority; and

(e) propose the terms of the Crown Court order.

(4) If the court allows the application, it must—

(a) where it decides to make a restraint order—

(i) specify the property the subject of the order,

(ii) specify the person or persons who are prohibited from dealing with that property,

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(**a**) S.I. 2005/3180.

(iii) specify any exception to that prohibition, and

(iv) include any ancillary order that the court believes is appropriate to ensure that the restraint order is effective; and

(b) where it decides to give effect to a forfeiture order, exercise its power to—

(i) direct the registration of the order as an order of the Crown Court,

(ii) give directions for notice of the order to be given to any person affected by it, and

(iii) appoint the applicant Director as the enforcement authority.

(5) Paragraph (6) applies where a person affected by an order, or the Director, wants the court to vary or discharge a restraint order or cancel the registration of a forfeiture order.

(6) Such a person must—

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

(b) serve the application on the court officer and, as applicable—

(i) the other party, and

(ii) any other person who will or may be affected;

(c) explain why it is appropriate, as the case may be—

(i) for the restraint order to be varied or discharged, or

(ii) for the registration of the forfeiture order to be cancelled;

(d) propose the terms of any variation; and

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

(7) The court may—

(a) consider an application

(i) at a hearing, which must be in private unless the court otherwise directs, or

(ii) without a hearing; and

(b) allow an application to be made orally.

[Note. Under article 19 of the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 2005, on the application of the Director of Public Prosecutions or the Director of the Serious Fraud Office the Crown Court may give effect to an order made by a court in a country outside the United Kingdom for the forfeiture and destruction, or other disposal, of any property in respect of which an offence has been committed in that country, or which was used or intended for use in connection with the commission of such an offence (described in the Order as an 'external forfeiture order').

Under article 5 of the 2005 Order, on the application of the Director of Public Prosecutions or the Director of the Serious Fraud Office the Crown Court may make a restraint order prohibiting any specified person from dealing with property, for the purpose of facilitating the enforcement of such a forfeiture order which has yet to be made.]

PART 50

EXTRADITION

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SECTION 1: GENERAL RULES

When this Part applies

50.1.—(1) This Part applies to extradition under Part 1 or Part 2 of the Extradition Act 2003(**a**).

(2) Section 2 of this Part applies to proceedings in a magistrates' court, and in that Section—

(**a**) 2003 c. 41.

(a) rules 50.3 to 50.7, 50.15 and 50.16 apply to extradition under Part 1 of the Act; and

(b) rules 50.3, 50.4 and 50.8 to 50.16 apply to extradition under Part 2 of the Act.

(3) Section 3 of this Part applies where—

(a) a party wants to appeal to the High Court against an order by the magistrates' court or by the Secretary of State; and

(b) a party to an appeal to the High Court wants to appeal further to the Supreme Court under—

(i) section 32 of the Act (appeal under Part 1 of the Act), or

(ii) section 114 of the Act (appeal under Part 2 of the Act).

(4) Section 4 of this Part applies to proceedings in a magistrates' court under—

(a) sections 54 and 55 of the Act (Request for consent to other offence being dealt with; Questions for decision at consent hearing); and

(b) sections 56 and 57 of the Act (Request for consent to further extradition to category 1 territory; Questions for decision at consent hearing).

(5) In this Part, and for the purposes of this Part in other rules—

(a) 'magistrates' court' means a District Judge (Magistrates' Courts) exercising the powers to which Section 2 of this Part applies;

(b) 'presenting officer' means an officer of the National Crime Agency, a police officer, a prosecutor or other person representing an authority or territory seeking the extradition of a defendant; and

(c) 'defendant' means a person arrested under Part 1 or Part 2 of the Extradition Act 2003.

[Note. The Extradition Act 2003 provides for the extradition of a person accused or convicted of a crime to the territory within which that person is accused, was convicted or is to serve a sentence.

Under Part 1 of the Act (sections 1 to 68), the magistrates' court may give effect to a warrant for arrest issued by an authority in a territory designated for the purposes of that Part.

Under Part 2 of the Act (sections 69 to 141), the magistrates' court and the Secretary of State may give effect to a request for extradition made under a treaty between the United Kingdom and the requesting territory.

Under sections 67 and 139 of the Extradition Act 2003(**a**)*, a District Judge (Magistrates' Courts) must be designated for the purposes of the Act to exercise the powers to which Section 2 of this Part applies.*

There are rights of appeal to the High Court from decisions of the magistrates' court and of the Secretary of State: see Section 3 of this Part.]

Special objective in extradition proceedings

50.2. When exercising a power to which this Part applies, as well as furthering the overriding objective, in accordance with rule 1.3, the court must have regard to the importance of—

(a) mutual confidence and recognition between judicial authorities in the United Kingdom and in requesting territories; and

(b) the conduct of extradition proceedings in accordance with international obligations, including obligations to deal swiftly with extradition requests.

(**a**) 2003 c. 41; sections 67 and 139 were amended by section 15 of, and paragraphs 352 and 353 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4) and section 42 of, and paragraph 15 of Schedule 13 to, the Police and Justice Act 2006 (c. 48).

Exercise of magistrates' court's powers

50.3.—(1) The general rule is that the magistrates' court must exercise its powers at a hearing in public, but—

(a) that is subject to any power the court has to—

(i) impose reporting restrictions,

(ii) withhold information from the public, or

(iii) order a hearing in private; and

(b) despite the general rule the court may, without a hearing—

(i) give any directions to which rule 50.4 applies (Case management in the magistrates' court and duty of court officer), or

(ii) determine an application which these Rules allow to be determined by a magistrates' court without a hearing in a case to which this Part does not apply.

(2) If the court so directs, a person must attend a hearing by live link.

(3) Where the defendant is absent from a hearing—

(a) the general rule is that the court must proceed as if the defendant—

(i) were present, and

(ii) opposed extradition on any ground of which the court has been made aware;

(b) the general rule does not apply if the defendant is under 18;

(c) the general rule is subject to the court being satisfied that—

(i) the defendant had reasonable notice of where and when the hearing would take place,

(ii) the defendant has been made aware that the hearing might proceed in his or her absence, and

(iii) there is no good reason for the defendant's absence; and

(d) the general rule does not apply but the court may exercise its powers in the defendant's absence where—

(i) the court discharges the defendant,

(ii) the defendant is represented and the defendant's presence is impracticable by reason of his or her ill health or disorderly conduct, or

(iii) on an application under rule 50.32 (Application for consent to deal with another offence or for consent to further extradition), the defendant is represented or the defendant's presence is impracticable by reason of his or her detention in the territory to which he or she has been extradited.

(4) The court may exercise its power to adjourn—

(a) if either party asks, or on its own initiative; and

(b) in particular—

(i) to allow there to be obtained information that the court requires,

(ii) following a provisional arrest under Part 1 of the Extradition Act 2003, pending receipt of the warrant,

(iii) following a provisional arrest with a warrant under Part 2 of the Act, pending receipt of the extradition request,

(iv) following a provisional arrest without a warrant under Part 2 of the Act, pending receipt of evidence or information required by the court,

(v) if the court is informed that the defendant is serving a custodial sentence in the United Kingdom,

(vi) if it appears to the court that the defendant is not fit to be extradited, unless the court discharges the defendant for that reason,

(vii) where a court dealing with a warrant to which Part 1 of the Act applies is informed that another such warrant has been received in the United Kingdom,

(viii) where a court dealing with a warrant to which Part 1 of the Act applies is informed of a request for the temporary transfer of the defendant to the territory to which the defendant's extradition is sought, or a request for the defendant to speak to the authorities of that territory, or

(ix) during a hearing to which rule 50.32 applies (Application for consent to deal with another offence or for consent to further extradition).

(5) The court must exercise its power to adjourn if informed that the defendant has been charged with an offence in the United Kingdom.

(6) The general rule is that, before exercising a power to which this Part applies, the court must give each party an opportunity to make representations, unless that party is absent without good reason.

(7) The court may—

(a) shorten a time limit or extend it (even after it has expired), unless that is inconsistent with other legislation;

(b) direct that a notice or application be served on any person; and

(c) allow a notice or application to be in a different form to one issued under the Practice Direction, or to be presented orally.

(8) A party who wants an extension of time within which to serve a notice or make an application must—

(a) apply for that extension of time when serving that notice or making that application; and

(b) give the reasons for the application for an extension of time.

[Note. See sections 8A, 8B, 9, 21B, 22, 23, 25 and 44 of the Extradition Act 2003(**a**) *(powers in relation to extradition under Part 1 of the Act) and sections 76A, 76B, 77, 88, 89 and 91 of the Act*(**b**) *(powers in relation to extradition under Part 2 of the Act). Under sections 9 and 77 of the Act, at the extradition hearing the court has the same powers (as nearly as may be) as a magistrates' court would have if the proceedings were the summary trial of an allegation against the defendant: see also rule 24.12(3) (Trial and sentence in a magistrates' court; procedure where the defendant is absent).*

Under sections 206A to 206C of the 2003 Act(**c**)*, the court may require a person to attend a hearing by live link. See also rules 3.35 to 3.39 about live links.*

Part 6 contains rules about reporting and access restrictions.

Part 14 contains rules about bail. Rules 14.2(3) and 14.7(7)(c) allow an application to be determined without a hearing in the circumstances to which those rules apply.

The principal time limits are prescribed by the Extradition Act 2003: see rule 50.16.]

(**a**) 2003 c. 41; sections 8A and 8B were inserted by section 69 of the Policing and Crime Act 2009 (c. 26). Sections 9 and 44 were amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48). Section 21B was inserted by section 159 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12). Section 22 was amended by section 71 of the Policing and Crime Act 2009 (c. 26). Section 23 was amended by paragraph 7 of Schedule 13 to the Police and Justice Act 2006 (c. 48) and section 71 of the Policing and Crime Act 2009 (c. 26).

(**b**) 2003 c. 41; sections 76A and 76B were inserted by section 70 of the Policing and Crime Act 2009 (c. 26). Section 77 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48). Section 88 was amended by section 71 of the Policing and Crime Act 2009 (c. 26). Section 89 was amended by paragraph 7 of Schedule 13 to the Police and Justice Act 2006 (c. 48) and section 71 of the Policing and Crime Act 2009 (c. 26).

(**c**) 2003 c. 41; sections 206A, 206B and 206C were inserted by section 78 of the Policing and Crime Act 2009 (c. 26). Sections 206A and 206C were amended by section 208 of, and paragraph 2 of Schedule 20 to, the Police, Crime Sentencing and Courts Act 2022 (c. 32).

Case management in the magistrates' court and duty of court officer

50.4.—(1) The magistrates' court and the parties have the same duties and powers as under Part 3 (Case management), subject to—

(a) rule 50.2 (Special objective in extradition proceedings); and

(b) paragraph (2) of this rule.

(2) Rule 3.6 (Application to vary a direction) does not apply to a decision to extradite or discharge.

(3) Where this rule applies, active case management by the court includes—

(a) if the court requires information from the authorities in the requesting territory—

(i) nominating a court officer, the designated authority which certified the arrest warrant where Part 1 of the Extradition Act 2003 Act applies, a party or other person to convey that request to those authorities, and

(ii) in a case in which the terms of that request need to be prepared in accordance with directions by the court, giving such directions accordingly; and

(b) giving such directions as are required where, under section 21B of the Extradition Act 2003(**a**), the parties agree—

(i) to the temporary transfer of the defendant to the requesting territory, or

(ii) that the defendant should speak with representatives of an authority in that territory.

(4) Where this rule applies, active assistance by the parties includes—

(a) applying for any direction needed as soon as reasonably practicable; and

(b) concisely explaining the reasons for any application for the court to direct—

(i) the preparation of a request to which paragraph (3)(a) applies, or

(ii) the making of arrangements to which paragraph (3)(b) applies.

(5) Where this rule applies, active assistance by the presenting officer includes—

(a) taking reasonable steps to ensure that the defendant will be able to understand (with help, if necessary)—

(i) what is alleged by the warrant, if Part 1 of the 2003 Act applies, or

(ii) the content of the extradition request, if Part 2 of the Act applies; and

(b) providing in writing identification of the equivalent offence or offences under the law of England and Wales for the conduct being relied on if—

(i) this is raised for the defence as an issue and the court considers it necessary to identify the equivalent offence or offences in writing, or

(ii) the defendant is not represented.

(6) The court officer must—

(a) as soon as practicable, serve notice of the court's decision to extradite or discharge—

(i) on the defendant,

(ii) on the designated authority which certified the arrest warrant, where Part 1 of the 2003 Act applies, and

(iii) on the Secretary of State, where Part 2 of the Act applies; and

(b) give the court such assistance as it requires.

[Note. Part 3 contains rules about case management which apply at an extradition hearing and during preparation for that hearing. This rule must be read in conjunction with those rules.

(**a**) 2003 c. 41; section 21B was inserted by section 159 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

Under section 21B of the Extradition Act 2003 (Request for temporary transfer etc.), where Part 1 of the Act applies, and in the circumstances described in that section, the parties may agree to the defendant's temporary transfer to the requesting territory, or may agree that the defendant will speak to representatives of an investigating, prosecuting or judicial authority in that territory. On the making by a party of a request to such effect the court must if necessary adjourn the proceedings for 7 days while the other party considers it. If the parties then agree to proceed with the proposed transfer or discussion the court must adjourn the proceedings for however long seems necessary.]

EXTRADITION UNDER PART 1 OF THE EXTRADITION ACT 2003

Preliminary hearing after arrest

50.5.—(1) This rule applies where the defendant is first brought before the court after—

(a) arrest under a warrant to which Part 1 of the Extradition Act 2003 applies; or

(b) provisional arrest under Part 1 of the Act.

(2) The presenting officer must—

(a) serve on the court officer—

(i) the arrest warrant, and

(ii) a certificate, given by the authority designated by the Secretary of State, that the warrant was issued by an authority having the function of issuing such warrants in the territory to which the defendant's extradition is sought; or

(b) apply at once for an extension of time within which to serve that warrant and that certificate.

(3) An application under paragraph (2)(b) must—

(a) explain why the requirement to serve the warrant and certificate at once could not reasonably be complied with; and

(b) include—

(i) any written material in support of that explanation, and

(ii) representations about bail pending service of those documents.

(4) When the presenting officer serves the warrant and certificate, in the following sequence the court must—

(a) decide whether the defendant is the person in respect of whom the warrant was issued;

(b) explain, in terms the defendant can understand (with help, if necessary)—

(i) the allegation made in the warrant, and

(ii) that the defendant may consent to extradition, and how that may be done and with what effect;

(c) give directions for an extradition hearing to begin—

(i) no more than 21 days after the defendant's arrest, or

(ii) if either party so applies, at such a later date as the court decides is in the interests of justice;

(d) consider any ancillary application, including an application about bail pending the extradition hearing; and

(e) give such directions as are required for the preparation and conduct of the extradition hearing.

[Note. See sections 4, 6, 7 and 8 of the Extradition Act 2003(**a**)*.*

Under section 6 of the Act, following a provisional arrest pending receipt of a warrant the defendant must be brought before the court within 48 hours, and the warrant and certificate must be served within that same period. If they are not so served, the court may extend the time for service by a further 48 hours.

Under section 45 of the Act(**b**)*, a defendant's consent to extradition must be given before the court, must be recorded in writing, and is irrevocable. Consent may not be given unless the defendant has a legal representative with him or her when giving consent, or the defendant has failed or refused to apply for legal aid, or legal aid has been refused or withdrawn.*

Part 14 contains rules about bail.]

Extradition hearing

50.6.—(1) This rule applies at the extradition hearing arranged by the court under rule 50.5.

(2) In the following sequence, the court must decide—

(a) whether the offence specified in the warrant is an extradition offence;

(b) whether a bar to extradition applies, namely—

(i) the rule against double jeopardy,

(ii) absence of prosecution decision,

(iii) extraneous considerations,

(iv) the passage of time,

(v) the defendant's age,

(vi) speciality,

(vii) earlier extradition or transfer to the United Kingdom, or

(viii) forum;

(c) where the warrant alleges that the defendant is unlawfully at large after conviction, whether conviction was in the defendant's presence and if not—

(i) whether the defendant was absent deliberately, and

(ii) if the defendant was not absent deliberately, whether the defendant would be entitled to a retrial (or to a review of the conviction, amounting to a retrial);

(d) whether extradition would be—

(i) compatible with the defendant's human rights, and

(ii) proportionate;

(e) whether it would be unjust or oppressive to extradite the defendant because of his or her physical or mental condition;

(f) after deciding each of (a) to (e) above, before progressing to the next, whether to order the defendant's discharge; and

(g) whether to order the temporary transfer of the defendant to the territory to which the defendant's extradition is sought.

(3) If the court discharges the defendant, the court must consider any ancillary application, including an application about—

(**a**) 2003 c. 41; section 6 was amended by section 77 of the Policing and Crime Act 2009 (c. 26). Section 7 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48) and section 77 of the Policing and Crime Act 2009 (c. 26). Section 8 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48) and section 155 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

(**b**) 2003 c. 41; section 45 was amended by paragraphs 62 and 63 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and section 163 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

(a) reporting restrictions; or

(b) costs.

(4) If the court does not discharge the defendant, the court must—

(a) exercise its power to order the defendant's extradition;

(b) explain, in terms the defendant can understand (with help, if necessary), that the defendant may appeal to the High Court within the next 7 days; and

(c) consider any ancillary application, including an application about—

(i) bail pending extradition,

(ii) reporting restrictions, or

(iii) costs.

(5) If the court orders the defendant's extradition, the court must order its postponement where—

(a) the defendant has been charged with an offence in the United Kingdom; or

(b) the defendant has been sentenced to imprisonment or detention in the United Kingdom.

[Note. See sections 10, 11, 20, 21, 21B, 25, 26, 36A, 36B, 64 and 65 of the Extradition Act 2003(**a**)*.*

Part 6 contains rules about reporting restrictions. Part 45 contains rules about costs.]

Discharge where warrant withdrawn

50.7.—(1) This rule applies where the authority that certified the warrant gives the court officer notice that the warrant has been withdrawn—

(a) after the start of the hearing under rule 50.5; and

(b) before the court orders the defendant's extradition or discharge.

(2) The court must exercise its power to discharge the defendant.

[Note. See section 41 of the Extradition Act 2003.]

EXTRADITION UNDER PART 2 OF THE EXTRADITION ACT 2003

Issue of arrest warrant

50.8.—(1) This rule applies where the Secretary of State serves on the court officer—

(a) an extradition request to which Part 2 of the Extradition Act 2003 applies;

(b) a certificate given by the Secretary of State that the request was received in the way approved for the request; and

(c) a copy of any Order in Council which applies to the request.

(2) In the following sequence, the court must decide—

(a) whether the offence in respect of which extradition is requested is an extradition offence; and

(b) whether there is sufficient evidence, or (where the Secretary of State has so ordered, for this purpose) information, to justify the issue of a warrant of arrest.

(**a**) 2003 c. 41; section 11 was amended by paragraphs 3 and 4 of Schedule 13 to the Police and Justice Act 2006 (c. 48), paragraphs 1 and 2 of Schedule 20 to the Crime and Courts Act 2013 (c. 22) and sections 156, 157, 158 and 181 of, and paragraph 104 of Schedule 11 to, the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12). Section 21 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48). Section 21B was inserted by section 159 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), section 26 was amended by section 160 of that Act, sections 36A and 36B were inserted by section 161 of that Act and sections 64 and 65 were substituted by section 164 of that Act.

(3) The court may issue an arrest warrant—

(a) without giving the parties an opportunity to make representations; and

(b) without a hearing, or at a hearing in public or in private.

[Note. See sections 70, 71, 137 and 138 of the Extradition Act 2003(**a**)*.]*

Preliminary hearing after arrest

50.9.—(1) This rule applies where a defendant is first brought before the court after arrest under a warrant to which rule 50.8 applies.

(2) In the following sequence, the court must—

(a) explain, in terms the defendant can understand (with help, if necessary)—

(i) the content of the extradition request, and

(ii) that the defendant may consent to extradition, and how that may be done and with what effect;

(b) arrange for an extradition hearing to begin—

(i) no more than 2 months later, or

(ii) if either party so applies, at such a later date as the court decides is in the interests of justice;

(c) consider any ancillary application, including an application about bail pending the extradition hearing; and

(d) give any direction as is appropriate to the needs of the case about the introduction of evidence at the extradition hearing.

[Note. See sections 72 and 75 of the Extradition Act 2003(**b**)*.*

Under section 127 of the 2003 Act(**c**) *a defendant's consent to extradition must be given before the court, must be recorded in writing, and is irrevocable. Consent may not be given unless the defendant has a legal representative with him or her when giving consent, or the defendant has failed or refused to apply for legal aid, or legal aid has been refused or withdrawn.*

Part 14 contains rules about bail.]

Issue of provisional arrest warrant

50.10.—(1) This rule applies where a presenting officer wants a justice of the peace to issue a provisional arrest warrant under Part 2 of the Extradition Act 2003, pending receipt of an extradition request.

(2) The presenting officer must—

(a) serve an application for a warrant on the court officer; and

(b) verify that application on oath or affirmation.

(3) In the following sequence, the justice must decide—

(a) whether the alleged offence is an extradition offence; and

(b) whether there is sufficient evidence, or (where the Secretary of State has so ordered, for this purpose) information, to justify the issue of a warrant of arrest.

(**a**) 2003 c. 41; section 70 was amended by paragraphs 1 and 17 of Schedule 13 to the Police and Justice Act 2006 (c. 48). Section 71 was amended by paragraph 202 of Schedule 16 to the Armed Forces Act 2006 (c. 52). Section 137 was amended by sections 164 and 181 of, and paragraph 117 of Schedule 11 to, the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12). Section 138 was amended by sections 164 and 181 of, and paragraph 118 of Schedule 11 to, the 2014 Act.

(**b**) 2003 c. 41; section 72 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48).

(**c**) 2003 c. 41; section 127 was amended by paragraphs 62 and 64 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

[Note. See sections 73, 137 and 138 of the Extradition Act 2003(**a**)*.]*

Preliminary hearing after provisional arrest

50.11.—(1) This rule applies where a defendant is first brought before the court after arrest—

(a) under a provisional arrest warrant to which rule 50.10 applies; or

(b) under section 74A of the Extradition Act 2003(**b**), without a warrant.

(2) Where paragraph (1)(b) applies the court must first—

(a) on the basis of such evidence or information as is produced to the court, decide whether a warrant to which rule 50.10 applies would be issued if the defendant were not already under arrest; and

(b) if no such warrant would be issued, order the defendant's discharge.

(3) Unless the court orders the defendant's discharge under paragraph (2), the court must—

(a) explain, in terms the defendant can understand (with help, if necessary)—

(i) the allegation in respect of which the defendant has been arrested, and

(ii) that the defendant may consent to extradition, and how that may be done and with what effect; and

(b) consider any ancillary application, including an application about bail pending receipt of the extradition request.

[Note. See sections 74, 74A, 74B, 74C, 74D and 74E of the Extradition Act 2003(**c**)*. Under section 127 of the Act, a defendant's consent to extradition must be given before the court, must be recorded in writing, and is irrevocable. Consent may not be given unless the defendant has a legal representative with him or her when giving consent, or the defendant has failed or refused to apply for legal aid, or legal aid has been refused or withdrawn.]*

Arrangement of extradition hearing after provisional arrest

50.12.—(1) This rule applies when the Secretary of State serves on the court officer—

(a) a request for extradition in respect of which a defendant has been arrested—

(i) under a provisional arrest warrant to which rule 50.10 applies, or

(ii) under section 74A of the Extradition Act 2003, without a warrant;

(b) a certificate given by the Secretary of State that the request was received in the way approved for the request; and

(c) a copy of any Order in Council which applies to the request.

(2) Unless a time limit for service of the request has expired, the court must—

(a) give directions for an extradition hearing to begin—

(i) no more than 2 months after service of the request, or

(ii) if either party so applies, at such a later date as the court decides is in the interests of justice;

(b) consider any ancillary application, including an application about bail pending the extradition hearing; and

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(**a**) 2003 c. 41; section 73 was amended by paragraph 203 of Schedule 16 to the Armed Forces Act 2006 (c. 52). Section 137 was amended by sections 164 and 181 of, and paragraph 117 of Schedule 11 to, the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12). Section 138 was amended by sections 164 and 181 of, and paragraph 118 of Schedule 11 to, the 2014 Act.

(**b**) 2003 c. 41; section 74A was inserted by paragraphs 1 and 2 of the Schedule to the Extradition (Provisional Arrest) Act 2020 (c. 18).

(**c**) 2003 c. 41; sections 74B, 74C, 74D and 74E were inserted by paragraphs 1 and 2 of the Schedule to the Extradition (Provisional Arrest) Act 2020 (c. 18).

(c) give such directions as are required for the preparation and conduct of the extradition hearing.

[Note. See section 76 of the Extradition Act 2003.]

Extradition hearing

50.13.—(1) This rule applies at the extradition hearing directed under rule 50.9 or rule 50.12.

(2) In the following sequence, the court must decide—

(a) whether the documents served on the court officer by the Secretary of State include—

(i) those listed in rule 50.8(1) or rule 50.12(1), as the case may be,

(ii) particulars of the person whose extradition is requested,

(iii) particulars of the offence specified in the request, and

(iv) as the case may be, a warrant for the defendant's arrest, or a certificate of the defendant's conviction and (if applicable) sentence, issued in the requesting territory;

(b) whether the defendant is the person whose extradition is requested;

(c) whether the offence specified in the request is an extradition offence;

(d) whether the documents served on the court officer by the Secretary of State have been served also on the defendant;

(e) whether a bar to extradition applies, namely—

(i) the rule against double jeopardy,

(ii) extraneous considerations,

(iii) the passage of time,

(iv) hostage-taking considerations, or

(v) forum;

(f) where the request accuses the defendant of an offence, whether there is evidence which would be sufficient to make a case requiring an answer by the defendant if the extradition proceedings were a trial (unless the Secretary of State has otherwise ordered, for this purpose);

(g) where the request accuses the defendant of being unlawfully at large after conviction, whether the defendant was—

(i) convicted in his or her presence, or

(ii) absent deliberately;

(h) where the request accuses the defendant of being unlawfully at large after conviction, and the defendant was absent but not deliberately—

(i) whether the defendant would be entitled to a retrial (or to a review of the conviction amounting to a retrial), and

(ii) if so, whether there is evidence which would be sufficient to make a case requiring an answer by the defendant if the extradition proceedings were a trial (unless the Secretary of State has otherwise ordered, for this purpose);

(i) whether extradition would be compatible with the defendant's human rights;

(j) whether it would be unjust or oppressive to extradite the defendant because of his or her physical or mental condition; and

(k) after deciding each of (a) to (j) above, before progressing to the next, whether to order the defendant's discharge.

(3) If the court discharges the defendant, the court must consider any ancillary application, including an application about—

(a) reporting restrictions; or

(b) costs.

(4) If the court does not discharge the defendant, the court must—

(a) exercise its power to send the case to the Secretary of State to decide whether to extradite the defendant;

(b) explain, in terms the defendant can understand (with help, if necessary), that—

(i) the defendant may appeal to the High Court not more than 14 days after being informed of the Secretary of State's decision, and

(ii) any such appeal brought before the Secretary of State's decision has been made will not be heard until after that decision; and

(c) consider any ancillary application, including an application about—

(i) bail pending extradition,

(ii) reporting restrictions, or

(iii) costs.

(5) If the Secretary of State orders the defendant's extradition, the court must order its postponement where—

(a) the defendant has been charged with an offence in the United Kingdom; or

(b) the defendant has been sentenced to imprisonment or detention in the United Kingdom.

[Note. See sections 78, 79, 84, 85, 86, 87, 91, 92, 137 and 138 of the Extradition Act 2003(**a**)*.*

Part 6 contains rules about reporting restrictions. Part 45 contains rules about costs.]

Discharge where extradition request withdrawn

50.14.—(1) This rule applies where the Secretary of State gives the court officer notice that the extradition request has been withdrawn—

(a) after the start of the hearing under rule 50.9 or 50.11; and

(b) before the court—

(i) sends the case to the Secretary of State to decide whether to extradite the defendant, or

(ii) discharges the defendant.

(2) The court must exercise its power to discharge the defendant.

[Note. See section 122 of the Extradition Act 2003.]

EVIDENCE AT EXTRADITION HEARING

Introduction of additional evidence

50.15.—(1) Where a party wants to introduce evidence at an extradition hearing under the law that would apply if that hearing were a trial, the relevant Part of these Rules applies with such adaptations as the court directs.

(2) If the court admits as evidence the written statement of a witness—

(a) each relevant part of the statement must be read or summarised aloud; or

(b) the court must read the statement and its gist must be summarised aloud.

(**a**) 2003 c. 41; section 79 was amended by paragraphs 4 and 5 of Schedule 20 to the Crime and Courts Act 2013 (c. 22). Section 103 was amended by section 160 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12). Section 118A and 118B were inserted by section 161 of the 2014 Act. Section 137 was amended by sections 164 and 181 of, and paragraph 117 of Schedule 11 to, the 2014 Act. Section 138 was amended by sections 164 and 181 of, and paragraph 118 of Schedule 11 to, the 2014 Act.

(3) If a party introduces in evidence a fact admitted by another party, or the parties jointly admit a fact, a written record must be made of the admission.

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

Under section 202 of the Extradition Act 2003(**a**)*, the court may receive in evidence—*

(a) a warrant to which Part 1 of the Act applies;

(b) any other document issued in a territory to which Part 1 of the Act applies, if the document is authenticated as required by the Act;

(c) a document issued in a territory to which Part 2 of the Act applies, if the document is authenticated as required by the Act.

Under sections 84 and 86 of the Act, which apply to evidence, if required, at an extradition hearing to which Part 2 of the Act applies, the court may accept as evidence of a fact a statement by a person in a document if oral evidence by that person of that fact would be admissible, and the statement was made to a police officer, or to someone else responsible for investigating offences or charging offenders.

Under section 205 of the Act, section 9 (proof by written witness statement) and section 10 (proof by formal admission) of the Criminal Justice Act 1967(**b**) *apply to extradition proceedings as they apply in relation to proceedings for an offence.]*

DISCHARGE AFTER FAILURE TO COMPLY WITH A TIME LIMIT, ETC.

Defendant's application to be discharged

50.16.—(1) This rule applies where a defendant wants to be discharged—

(a) because of a failure—

(i) to give the defendant a copy of any warrant under which the defendant is arrested as soon as practicable after arrest,

(ii) to bring the defendant before the court as soon as practicable after arrest under a warrant,

(iii) to bring the defendant before the court no more than 48 hours after provisional arrest under Part 1 of the Extradition Act 2003,

(iv) to give the defendant a copy of any certificate enabling provisional arrest without a warrant under section 74A of the 2003 Act as soon as practicable after arrest, or

(v) to bring the defendant before the court as soon as practicable after arrest under that section;

(b) because of a defect in a certificate enabling arrest without a warrant under section 74A of the 2003 Act;

(c) because there were no reasonable grounds on which there could have been issued a certificate enabling arrest without a warrant under section 74A of the 2003 Act;

(d) following the expiry of a time limit for—

(**a**) 2003 c. 41; section 202 was amended by paragraph 26 of Schedule 13 to the Police and Justice Act 2006 (c. 48).

(**b**) 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), regulation 9 of, and paragraph 4 of Schedule 5 to, S.I. 2001/1090, paragraph 43 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), section 26 of, and paragraph 7 of Schedule 2 to, the Armed Forces Act 2011 (c. 18) and section 80 of the Deregulation Act 2015 (c. 20). It is further amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54) and section 65 of, and paragraph 1 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from dates to be appointed.

(i) service of a warrant to which Part 1 of the 2003 Act applies, after provisional arrest under that Part of the Act (48 hours, under section 6 of the Act(**a**), unless the court otherwise directs),

(ii) service of an extradition request to which Part 2 of the Act applies, after provisional arrest under that Part of the Act (45 days, under section 74 of the Act(**b**), unless the Secretary of State has otherwise ordered for this purpose),

(iii) receipt of an undertaking that the defendant will be returned to complete a sentence in the United Kingdom, where the court required such an undertaking (21 days, under section 37 of the Act(**c**)),

(iv) making an extradition order, after the defendant has consented to extradition under Part 1 of the Act (10 days, under section 46 of the Act(**d**)),

(v) extradition, where an extradition order has been made under Part 1 of the Act and any appeal by the defendant has failed (10 days, under sections 35, 36 and 47 of the Act(**e**), unless the court otherwise directs),

(vi) extradition, where an extradition order has been made under Part 2 of the Act and any appeal by the defendant has failed (28 days, under sections 117 and 118 of the Act(**f**)),

(vii) the resumption of extradition proceedings, where those proceedings were adjourned pending disposal of another extradition claim which has concluded (21 days, under section 180 of the Act),

(viii) extradition, where extradition has been deferred pending the disposal of another extradition claim which has concluded (21 days, under section 181 of the Act), or

(ix) re-extradition, where the defendant has been returned to the United Kingdom to serve a sentence before serving a sentence overseas (as soon as practicable, under section 187 of the Act(**g**)); or

(e) because an extradition hearing does not begin on the date arranged by the court.

(2) Unless the court otherwise directs—

(a) such a defendant must apply in writing and serve the application on—

(i) the magistrates' court officer,

(ii) the High Court officer, where paragraph (1)(d)(v) applies, and

(iii) the prosecutor;

(b) the application must explain the grounds on which it is made; and

(c) the court officer must arrange a hearing as soon as practicable, and in any event no later than the second business day after an application is served.

[Note. See sections 4(4) & (5), 6(6) & (7), 8(7) & (8)(**h**)*, 35(5), 36(8), 37(7), 46(8)*(**i**)*, 47(4), 72(5) & (6), 74(5), (6) & (10), 74D(10), 75(4),76(5), 117(3), 118(7), 180(4) & (5), 181(4) & (5) and 187(3) of the Extradition Act 2003.]*

SECTION 3: APPEAL TO THE HIGH COURT

[Note. Under Part 1 of the Extradition Act 2003—

(**a**) 2003 c. 41; section 6 was amended by section 77 of the Policing and Crime Act 2009 (c. 26).
(**b**) 2003 c. 41; section 74 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48).
(**c**) 2003 c. 41; section 37 was amended by paragraphs 9 and 10 of Schedule 13 to the Police and Justice Act 2006 (c. 48).
(**d**) 2003 c. 41; section 46 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48).
(**e**) 2003 c. 41; section 35 was amended by paragraph 9 of Schedule 13 to the Police and Justice Act 2006 (c. 48). Section 36 was amended by section 40 of, and paragraph 81 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).
(**f**) 2003 c. 41; section 118 was amended by section 40 of, and paragraph 81 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).
(**g**) 2003 c. 41; section 187 was amended by paragraph 15 of Schedule 13 to the Police and Justice Act 2006 (c. 48).
(**h**) 2003 c. 41; section 8 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48).
(**i**) 2003 c. 41; section 46 was amended by paragraph 16 of Schedule 13 to the Police and Justice Act 2006 (c. 48).

(a) a defendant may appeal to the High Court against an order for extradition made by the magistrates' court; and

(b) the authority requesting the defendant's extradition may appeal to the High Court against an order for the defendant's discharge,

(see sections 26 and 28 of the Act(**a**)*).*

Under Part 2 of the 2003 Act—

(a) a defendant may appeal to the High Court against an order by the magistrates' court sending a case to the Secretary of State for a decision whether to extradite the defendant;

(b) a defendant may appeal to the High Court against an order for extradition made by the Secretary of State; and

(c) the territory requesting the defendant's extradition may appeal to the High Court against an order for the defendant's discharge by the magistrates' court or by the Secretary of State,

(see sections 103, 105, 108 and 110 of the Act(**b**)*).*

In each case the appellant needs the High Court's permission to appeal (in the 2003 Act, described as 'leave to appeal').]

Exercise of the High Court's powers

50.17.—(1) The general rule is that the High Court must exercise its powers at a hearing in public, but—

(a) that is subject to any power the court has to—

(i) impose reporting restrictions,

(ii) withhold information from the public, or

(iii) order a hearing in private;

(b) despite the general rule, the court may determine without a hearing—

(i) an application for the court to consider out of time an application for permission to appeal to the High Court,

(ii) an application for permission to appeal to the High Court (but a renewed such application must be determined at a hearing),

(iii) an application for permission to appeal from the High Court to the Supreme Court,

(iv) an application for permission to reopen a decision under rule 50.27 (Reopening the determination of an appeal), or

(v) an application concerning bail; and

(c) despite the general rule the court may, without a hearing—

(i) give case management directions,

(ii) reject a notice or application and, if applicable, dismiss an application for permission to appeal, where rule 50.31 (Payment of High Court fees) applies and the party who served the notice or application fails to comply with that rule, or

(iii) make a determination to which the parties have agreed in writing.

(2) If the High Court so directs, a party may attend a hearing by live link.

(**a**) 2003 c. 41; sections 26 and 28 were amended by section 160 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

(**b**) 2003 c. 41; section 108 was amended by paragraphs 10 and 12 of Schedule 20 to the Crime and Courts Act 2013 (c. 22). Section 108 was further amended, and sections 103, 105 and 110 were amended, by section 160 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

(3) The general rule is that where the High Court exercises its powers at a hearing it may do so only if the defendant attends, in person or by live link, but, despite the general rule, the court may exercise its powers in the defendant's absence if—

(a) the defendant waives the right to attend;

(b) subject to any appeal to the Supreme Court, the result of the court's order would be the discharge of the defendant; or

(c) the defendant is represented and—

(i) the defendant is in custody, or

(ii) the defendant's presence is impracticable by reason of his or her ill health or disorderly conduct.

(4) If the High Court gives permission to appeal to the High Court—

(a) unless the court otherwise directs, the decision indicates that the appellant has permission to appeal on every ground identified by the appeal notice;

(b) unless the court otherwise directs, the decision indicates that the court finds reasonably arguable each ground on which the appellant has permission to appeal; and

(c) the court must give such directions as are required for the preparation and conduct of the appeal, including a direction as to whether the appeal must be heard by a single judge of the High Court or by a divisional court.

(5) If the High Court decides without a hearing an application for permission to appeal from the High Court to the Supreme Court, the High Court must announce its decision at a hearing in public.

(6) The High Court may—

(a) shorten a time limit or extend it (even after it has expired), unless that is inconsistent with other legislation;

(b) allow or require a party to vary or supplement a notice that that party has served;

(c) direct that a notice or application be served on any person; and

(d) allow a notice or application to be in a different form to one issued under the Practice Direction, or to be presented orally.

(7) A party who wants an extension of time within which to serve a notice or make an application must—

(a) apply for that extension of time when serving that notice or making that application; and

(b) give the reasons for the application for an extension of time.

[Note. The time limits for serving an appeal notice are prescribed by the Extradition Act 2003: see rule 50.19.]

Case management in the High Court

50.18.—(1) The High Court and the parties have the same duties and powers as under Part 3 (Case management), subject to—

(a) rule 50.2 (Special objective in extradition proceedings); and

(b) paragraph (3) of this rule.

(2) A master of the High Court, a deputy master, or a court officer nominated for the purpose by the Lord Chief Justice—

(a) must fulfil the duty of active case management under rule 3.2, and in fulfilling that duty may exercise any of the powers of case management under—

(i) rule 3.5 (the court's general powers of case management),

(ii) rule 3.12(3) (requiring a certificate of readiness), and

(iii) rule 3.13 (requiring a party to identify intentions and anticipated requirements),

subject to the directions of a judge of the High Court; and

(b) must nominate a case progression officer under rule 3.4.

(3) Rule 3.6 (Application to vary a direction) does not apply to a decision to give or to refuse—

(a) permission to appeal; or

(b) permission to reopen a decision under rule 50.27 (Reopening the determination of an appeal).

Service of appeal notice

50.19.—(1) A party who wants to appeal to the High Court must serve an appeal notice on—

(a) in every case—

(i) the High Court officer,

(ii) the other party, and

(iii) the Director of Public Prosecutions, unless the Director already has the conduct of the proceedings;

(b) the designated authority which certified the arrest warrant, where Part 1 of the Extradition Act 2003 applies; and

(c) the Secretary of State, where the appeal is against—

(i) an order by the Secretary of State, or

(ii) an order by the magistrates' court sending a case to the Secretary of State.

(2) A defendant who wants to appeal must serve the appeal notice—

(a) not more than 7 days after the day on which the magistrates' court makes an order for the defendant's extradition, starting with that day, where that order is under Part 1 of the Extradition Act 2003; or

(b) not more than 14 days after the day on which the Secretary of State informs the defendant of the Secretary of State's decision, starting with that day, where under Part 2 of the Act—

(i) the magistrates' court sends the case to the Secretary of State for a decision whether to extradite the defendant, or

(ii) the Secretary of State orders the defendant's extradition.

(3) An authority or territory seeking the defendant's extradition which wants to appeal against an order for the defendant's discharge must serve the appeal notice—

(a) not more than 7 days after the day on which the magistrates' court makes that order, starting with that day, if the order is under Part 1 of the Extradition Act 2003;

(b) not more than 14 days after the day on which the magistrates' court makes that order, starting with that day, if the order is under Part 2 of the Act; or

(c) not more than 14 days after the day on which the Secretary of State informs the territory's representative of the Secretary of State's order, starting with that day, where the order is under Part 2 of the Act.

[Note. See sections 26, 28, 103, 105, 108 and 110 of the Extradition Act 2003(**a**)*. The time limits for serving an appeal notice are prescribed by those sections. They may be neither shortened nor extended, but—*

(a) if a defendant applies out of time for permission to appeal to the High Court the court must not for that reason refuse to consider the application if the defendant did everything reasonably possible to ensure that the notice was given as soon as it could be;

(**a**) 2003 c. 41; section 108 was amended by paragraphs 10 and 12 of Schedule 20 to the Crime and Courts Act 2013 (c. 22). Section 108 was further amended, and sections 26, 28, 103, 105 and 110 were amended, by section 160 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

(b) a defendant may apply out of time for permission to appeal to the High Court on human rights grounds against an order for extradition made by the Secretary of State; and

(c) where the time for appeal otherwise would expire at a weekend or on a public holiday it is treated as expiring at the end of the next business day.

Under section 3 of the Prosecution of Offences Act 1985(**a**)*, the Director of Public Prosecutions may conduct extradition proceedings (but need not do so).]*

Form of appeal notice

50.20.—(1) An appeal notice constitutes—

(a) an application to the High Court for permission to appeal to that court; and

(b) an appeal to that court, if the court gives permission.

(2) In every case, the appeal notice must—

(a) specify—

(i) the date of the defendant's arrest under Part 1 or Part 2 of the Extradition Act 2003, and

(ii) the decision about which the appellant wants to appeal, including the date of that decision;

(b) identify each ground of appeal on which the appellant relies;

(c) summarise the relevant facts;

(d) include or attach a copy of—

(i) the warrant or the request for the defendant's extradition,

(ii) any material served by the authority or territory requesting the defendant's extradition in support of the warrant or the request,

(iii) the reasons for the decision about which the appellant wants to appeal, or a note of those reasons agreed between the parties and approved by the magistrates' court, and

(iv) any other document or material on which the appellant relies; and

(e) include or attach a list of those on whom the appellant has served the appeal notice.

(3) If an appeal notice omits information, a document or material required by paragraph (2), then unless the High Court otherwise directs—

(a) the High Court officer must serve on the appellant a notice—

(i) identifying the omission or omissions, and

(ii) requiring the supply of the missing information, document or material within a period specified in the notice;

(b) the appellant must comply with that requirement; and

(c) if within the period specified in the notice the missing information, document or material has not been supplied, the High Court may exercise its power—

(i) to reject the appeal notice, and

(ii) to dismiss the application for permission to appeal in consequence of that rejection.

(**a**) 1985 c. 23; section 3 was amended by section 15 of, and paragraph 13 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), paragraph 39 of Schedule 7 to the Police Act 1996 (c. 16), section 134 of, and paragraph 48 of Schedule 9 to, the Police Act 1997 (c. 50), section 164 of the Immigration and Asylum Act 1999 (c. 33), paragraph 10 of Schedule 7 to the Police Reform Act 2002 (c. 30), sections 86 and 92 of, and Schedule 3 to, the Anti-social Behaviour Act 2003 (c. 38), section 190 of the Extradition Act 2003 (c. 41), section 7 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), sections 59, 140 and 174 of, and paragraph 47 of Schedule 4 and Part 2 of Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c. 15), sections 7, 8 and 52 of, and paragraph 15 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38), section 74 of, and paragraph 149 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), paragraph 171 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13), section 15 of, and paragraph 30 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22) and article 3 of, and paragraphs 1 and 2 of the Schedule to, S.I. 2014/834.

(4) If a defendant serves an appeal notice after the expiry of the time limit specified in rule 50.19 (Service of appeal notice)—

(a) the notice must—

(i) explain what the defendant did to ensure that it was served as soon as it could be, and

(ii) include or attach such evidence as the defendant relies upon to support that explanation; and

(b) where the appeal is on human rights grounds against an order for extradition made by the Secretary of State, the notice must explain why—

(i) the appeal is necessary to avoid real injustice, and

(ii) the circumstances are exceptional and make it appropriate to consider the appeal.

(5) Unless the High Court otherwise directs, the appellant may amend the appeal notice—

(a) by serving on those listed in rule 50.19(1) the appeal notice as so amended; and

(b) not more than 10 business days after service of the appeal notice.

(6) Where the appeal is against an order by the magistrates' court—

(a) if the grounds of appeal are that the magistrates' court ought to have decided differently a question of fact or law at the extradition hearing, the appeal notice must—

(i) identify that question,

(ii) explain what decision the magistrates' court should have made, and why, and

(iii) explain why the magistrates' court would have been required not to make the order under appeal, if that question had been decided differently; and

(b) if the grounds of appeal are that there is an issue which was not raised at the extradition hearing, or that evidence is available which was not available at the extradition hearing, the appeal notice must—

(i) identify that issue or evidence,

(ii) explain why it was not then raised or available,

(iii) explain why that issue or evidence would have resulted in the magistrates' court deciding a question differently at the extradition hearing, and

(iv) explain why, if the court had decided that question differently, the court would have been required not to make the order it made.

(7) Where the appeal is against an order by the Secretary of State—

(a) if the grounds of appeal are that the Secretary of State ought to have decided differently a question of fact or law, the appeal notice must—

(i) identify that question,

(ii) explain what decision the Secretary of State should have made, and why, and

(iii) explain why the Secretary of State would have been required not to make the order under appeal, if that question had been decided differently; and

(b) if the grounds of appeal are that there is an issue which was not raised when the case was being considered by the Secretary of State, or that information is available which was not then available, the appeal notice must—

(i) identify that issue or information,

(ii) explain why it was not then raised or available,

(iii) explain why that issue or information would have resulted in the Secretary of State deciding a question differently, and

(iv) explain why, if the Secretary of State had decided that question differently, the order under appeal would not have been made.

Respondent's notice

50.21.—(1) A party on whom an appellant serves an appeal notice under rule 50.19 may serve a respondent's notice, and must do so if—

(a) that party wants to make representations to the High Court; or

(b) the court so directs.

(2) Such a party must serve any such notice on—

(a) the High Court officer;

(b) the appellant;

(c) the Director of Public Prosecutions, unless the Director already has the conduct of the proceedings; and

(d) any other person on whom the appellant served the appeal notice.

(3) Such a party must serve any such notice, as appropriate—

(a) not more than 10 business days after—

(i) service on that party of an amended appeal notice under rule 50.20(5) (Form of appeal notice), or

(ii) the expiry of the time for service of any such amended appeal notice

whichever of those events happens first; and

(b) not more than 5 business days after service on that party of—

(i) an appellant's notice renewing an application for permission to appeal, or

(ii) a direction to serve a respondent's notice.

(4) A respondent's notice must—

(a) give the date or dates on which the respondent was served with, as appropriate—

(i) the appeal notice,

(ii) the appellant's notice renewing the application for permission to appeal, or

(iii) the direction to serve a respondent's notice;

(b) identify each ground of opposition on which the respondent relies and the ground of appeal to which each such ground of opposition relates;

(c) summarise any relevant facts not already summarised in the appeal notice; and

(d) identify any document or other material that the respondent thinks the court will need to decide the appeal.

[Note. Under rule 50.17, the High Court may extend or shorten the time limit under this rule.]

Renewing an application for permission to appeal, restoring excluded grounds, etc.

50.22.—(1) This rule—

(a) applies where the High Court—

(i) refuses permission to appeal to the High Court, or

(ii) gives permission to appeal to the High Court but not on every ground identified by the appeal notice; but

(b) does not apply where—

(i) a defendant applies out of time for permission to appeal to the High Court, and

(ii) the court for that reason refuses to consider that application.

(2) Unless the court refuses permission to appeal at a hearing, the appellant may renew the application for permission by serving notice on—

(a) the High Court officer;

(b) the respondent; and

(c) any other person on whom the appellant served the appeal notice,

not more than 5 business days after service of notice of the court's decision on the appellant.

(3) If the court refuses permission to appeal, the renewal notice must explain the grounds for the renewal.

(4) If the court gives permission to appeal but not on every ground identified by the appeal notice the decision indicates that—

(a) at the hearing of the appeal the court will not consider representations that address any ground thus excluded from argument; and

(b) an appellant who wants to rely on such an excluded ground needs the court's permission to do so.

(5) An appellant who wants to rely at the hearing of an appeal on a ground of appeal excluded from argument must—

(a) apply in writing, with reasons, and identify each such ground;

(b) serve the application on—

(i) the High Court officer, and

(ii) the respondent; and

(c) serve the application not more than 5 business days after—

(i) the giving of permission to appeal, or

(ii) the High Court officer serves notice of that decision on the applicant, if the applicant was not present in person or by live link when permission to appeal was given.

(6) Paragraph (7) applies where a party wants to abandon—

(a) a ground of appeal on which that party has permission to appeal; or

(b) a ground of opposition identified in a respondent's notice.

(7) Such a party must serve notice on—

(a) the High Court officer; and

(b) each other party,

before any hearing at which that ground will be considered by the court.

[Note. Under rule 50.17 (Exercise of the High Court's powers), the High Court may extend or shorten the time limits under this rule.

Rule 50.19 (Service of appeal notice) and the note to that rule set out the time limits for appeal.]

Appeal hearing

50.23.—(1) Unless the High Court otherwise directs, where the appeal to the High Court is under Part 1 of the Extradition Act 2003 the hearing of the appeal must begin no more than 40 days after the defendant's arrest.

(2) Unless the High Court otherwise directs, where the appeal to the High Court is under Part 2 of the 2003 Act the hearing of the appeal must begin no more than 76 days after the later of—

(a) service of the appeal notice; or

(b) the day on which the Secretary of State informs the defendant of the Secretary of State's order, in a case in which—

(i) the appeal is by the defendant against an order by the magistrates' court sending the case to the Secretary of State, and

(ii) the appeal notice is served before the Secretary of State decides whether the defendant should be extradited.

(3) If the effect of the decision of the High Court on the appeal is that the defendant is to be extradited—

(a) the High Court must consider any ancillary application, including an application about—

(i) bail pending extradition,

(ii) reporting restrictions, or

(iii) costs; and

(b) the High Court is the appropriate court to order a postponement of the defendant's extradition where—

(i) the defendant has been charged with an offence in the United Kingdom, or

(ii) the defendant has been sentenced to imprisonment or detention in the United Kingdom.

(4) If the effect of the decision of the High Court on the appeal is that the defendant is discharged, the High Court must consider any ancillary application, including an application about—

(a) reporting restrictions; or

(b) costs.

[Note. Under sections 31 and 113 of the Extradition Act 2003(**a**)*, if the appeal hearing does not begin within the period prescribed by this rule or ordered by the High Court the appeal must be taken to have been dismissed by decision of the High Court.*

Under section 103 of the Extradition Act 2003(**b**)*, a defendant's appeal against an order by the magistrates' court sending the case to the Secretary of State must not be heard until after the Secretary of State has decided whether to order the defendant's extradition.*

Part 6 contains rules about reporting restrictions. Part 45 contains rules about costs.

See sections 36A, 36B, 118A and 118B Extradition Act 2003(**c**)*. Where there is an appeal against an order for extradition, rules may provide that the appeal court may exercise the power under those sections to postpone the extradition.]*

Early termination of appeal: order by consent, etc.

50.24.—(1) This rule applies where—

(a) an appellant has served an appeal notice under rule 50.19; and

(b) the High Court—

(i) has not determined the application for permission to appeal, or

(ii) where the court has given permission to appeal, has not determined the appeal.

(2) Where the warrant or extradition request with which the appeal is concerned is withdrawn—

(a) the party or person so informing the court must serve on the High Court officer—

(i) notice to that effect by the authority or territory requesting the defendant's extradition,

(ii) details of how much of the warrant or extradition request remains outstanding, if any, and of any other warrant or extradition request outstanding in respect of the defendant,

(iii) details of any bail condition to which the defendant is subject, if the defendant is on bail, and

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(**a**) 2003 c. 41.
(**b**) 2003 c. 41; section 103 was amended by section 160 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).
(**c**) 2003 c. 41; sections 36A, 36B, 118A and 118B were inserted by section 161 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

(iv) details sufficient to locate the defendant, including details of the custodian and of the defendant's date of birth and custody reference, if the defendant is in custody; and

(b) paragraph (5) applies but only to the extent that the parties want the court to deal with an ancillary matter.

(3) Where a defendant with whose discharge the appeal is concerned consents to extradition, paragraph (5) applies but only to the extent that the parties want the court to—

(a) give directions for that consent to be given to the magistrates' court or to the Secretary of State, as the case may be; or

(b) deal with an ancillary matter.

(4) Paragraph (5) applies where the parties want the court to make a decision on which they are agreed—

(a) determining the application for permission to appeal or the appeal, as the case may be;

(b) specifying the date on which that application or appeal is to be treated as discontinued; and

(c) determining an ancillary matter, including costs, if applicable.

(5) The parties must serve on the High Court officer, in one or more documents—

(a) a draft order in the terms proposed;

(b) evidence of each party's agreement to those terms; and

(c) concise reasons for the request that the court make the proposed order.

[Note. Under sections 42 and 124 of the Extradition Act 2003(**a**)*, where an appeal is pending in the High Court and the court is informed that the relevant warrant or extradition request has been withdrawn the court must—*

(a) order the defendant's discharge and quash the extradition order or decision, where the defendant has appealed against extradition;

(b) dismiss the application for permission to appeal or the appeal, as the case may be, where the authority or territory requesting the defendant's extradition has appealed against the defendant's discharge.

Under sections 45 and 127 of the 2003 Act(**b**)*, a defendant in respect of whom no extradition order or decision has been made may give consent to extradition in the magistrates' court, or may give such consent to the Secretary of State if the case has been sent there.*

Where the effect of the High Court's decision is that the defendant is to be extradited, sections 36 and 118 of the Act(**c**) *set time limits for extradition after the end of the case.*

Part 45 contains rules about costs.]

Application for permission to appeal to the Supreme Court

50.25.—(1) This rule applies where a party to an appeal to the High Court wants to appeal to the Supreme Court.

(2) Such a party must—

(a) apply orally to the High Court for permission to appeal immediately after the court's decision; or

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(**a**) 2003 c. 41; sections 42 and 124 were amended by article 3 of S.I. 2015/992.

(**b**) 2003 c. 41; section 45 was amended by section 39 of, and paragraphs 62 and 63 of Schedule 5 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and section 163 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12). Section 127 was amended by section 39 of, and paragraphs 62 and 64 of Schedule 5 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**c**) 2003 c. 41; sections 36 and 118 were amended by section 40 of, and paragraph 81 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(b) apply in writing and serve the application on the High Court officer and every other party not more than 14 days after that decision.

(3) Such a party must—

(a) identify the point of law of general public importance that the appellant wants the High Court to certify is involved in the decision;

(b) serve on the High Court officer a statement of that point of law; and

(c) give reasons why—

(i) that point of law ought to be considered by the Supreme Court, and

(ii) the High Court ought to give permission to appeal.

(4) As well as complying with paragraph (3), a defendant's application for permission to appeal to the Supreme Court must include or attach any application for the following, with reasons—

(a) bail pending appeal; or

(b) permission to attend any hearing in the Supreme Court, if the appellant is in custody.

[Note. See sections 32 and 114 of the Extradition Act 2003(**a**)*. Those sections prescribe the time limit for serving an application for permission to appeal to the Supreme Court. It may be neither shortened nor extended.]*

Determination of detention pending appeal to the Supreme Court against discharge

50.26. On an application for permission to appeal to the Supreme Court against a decision of the High Court which, but for that appeal, would have resulted in the defendant's discharge, the High Court must—

(a) decide whether to order the detention of the defendant; and

(b) determine any application for—

(i) bail pending appeal,

(ii) permission to attend any hearing in the Supreme Court, or

(iii) a representation order.

[Note. See sections 33A and 115A of the Extradition Act 2003(**b**)*.*

For the grant of legal aid for proceedings in the Supreme Court, see sections 14, 16 and 19 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**c**)*.]*

Reopening the determination of an appeal

50.27.—(1) This rule applies where a party wants the High Court to reopen a decision of that court which determines an appeal or an application for permission to appeal.

(2) Such a party must—

(a) apply in writing for permission to reopen that decision, as soon as practicable after becoming aware of the grounds for doing so; and

(b) serve the application on the High Court officer and every other party.

(3) The application must—

(a) specify the decision which the applicant wants the court to reopen; and

(b) give reasons why—

(**a**) 2003 c. 41; sections 32 and 114 were amended by paragraph 81 of Schedule 9 to the Constitutional Reform Act 2005 (c. 4) and section 42 of, and paragraph 8 of Schedule 13 to, the Police and Justice Act 2006 (c. 48).

(**b**) 2003 c. 41; sections 33A and 115A were inserted by section 42 of, and paragraphs 8 and 35 of Schedule 13 to, the Police and Justice Act 2006 (c. 48).

(**c**) 2012 c. 10.

(i) it is necessary for the court to reopen that decision in order to avoid real injustice,

(ii) the circumstances are exceptional and make it appropriate to reopen the decision, and

(iii) there is no alternative effective remedy.

(4) The court must not give permission to reopen a decision unless each other party has had an opportunity to make representations.

Declaration of incompatibility with a Convention right

50.28.—(1) This rule applies where a party—

(a) wants the High Court to make a declaration of incompatibility with a Convention right under section 4 of the Human Rights Act 1998(**a**); or

(b) raises an issue that appears to the High Court may lead to the court making such a declaration.

(2) If the High Court so directs, the High Court officer must serve notice on—

(a) the relevant person named in the list published under section 17(1) of the Crown Proceedings Act 1947(**b**); or

(b) the Treasury Solicitor, if it is not clear who is the relevant person.

(3) That notice must include or attach details of—

(a) the legislation affected and the Convention right concerned;

(b) the parties to the appeal; and

(c) any other information or document that the High Court thinks relevant.

(4) A person who has a right under the 1998 Act to become a party to the appeal must—

(a) serve notice on—

(i) the High Court officer, and

(ii) the other parties,

if that person wants to exercise that right; and

(b) in that notice—

(i) indicate the conclusion that that person invites the High Court to reach on the question of incompatibility, and

(ii) identify each ground for that invitation, concisely outlining the arguments in support.

(5) The High Court must not make a declaration of incompatibility—

(a) less than 15 business days after the High Court officer serves notice under paragraph (2); and

(b) without giving any person who serves a notice under paragraph (4) an opportunity to make representations at a hearing.

Duties of court officers

50.29.—(1) The magistrates' court officer must—

(a) keep any document or object exhibited in the proceedings in the magistrates' court, or arrange for it to be kept by some other appropriate person, until—

(i) 6 weeks after the conclusion of those proceedings, or

(ii) the conclusion of any proceedings in the High Court that begin within that 6 weeks;

(**a**) 1998 c. 42; section 4 was amended by section 40 of, and paragraph 66 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and section 67 of, and paragraph 43 of Schedule 6 to, the Mental Capacity Act 2005 (c. 9).

(**b**) 1947 c. 44; section 17 was amended by article 3(2) of S.I. 1968/1656.

(b) provide the High Court with any document, object or information for which the High Court officer asks, within such period as the High Court officer may require; and

(c) arrange for the magistrates' court to hear as soon as practicable any application to that court for bail pending appeal.

(2) A person who, under arrangements made by the magistrates' court officer, keeps a document or object exhibited in the proceedings in the magistrates' court must—

(a) keep that exhibit until—

(i) 6 weeks after the conclusion of those proceedings, or

(ii) the conclusion of any proceedings in the High Court that begin within that 6 weeks,

unless the magistrates' court or the High Court otherwise directs; and

(b) provide the High Court with any such document or object for which the High Court officer asks, within such period as the High Court officer may require.

(3) The High Court officer must—

(a) give as much notice as reasonably practicable of each hearing to—

(i) the parties,

(ii) the defendant's custodian, if any, and

(iii) any other person whom the High Court requires to be notified;

(b) serve a record of each order or direction of the High Court on—

(i) the parties,

(ii) any other person whom the High Court requires to be notified;

(c) if the High Court's decision determines an appeal or application for permission to appeal, serve a record of that decision on—

(i) the defendant's custodian, if any,

(ii) the magistrates' court officer, and

(iii) the designated authority which certified the arrest warrant, where Part 1 of the Extradition Act 2003 applies;

(d) where rule 50.24 applies (Early termination of appeal: order by consent, etc.), arrange for the High Court to consider the document or documents served under that rule; and

(e) treat the appeal as if it had been dismissed by the High Court where—

(i) the hearing of the appeal does not begin within the period required by rule 50.23 (Appeal hearing) or ordered by the High Court, or

(ii) on an appeal by a requesting territory under section 105 of the Extradition Act 2003(**a**), the High Court directs the magistrates' court to decide a question again and the magistrates' court comes to the same conclusion as it had done before.

[Note. See section 106 of the Extradition Act 2003(**b**)*.]*

Constitution of the High Court

50.30.—(1) A master of the High Court or a deputy master may exercise any power of the High Court to which the rules in this Section apply, except the power to—

(a) give or refuse permission to appeal;

(b) determine an appeal;

(c) reopen a decision which determines an appeal or an application for permission to appeal;

(**a**) 2003 c. 41; section 105 was amended by section 160 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).
(**b**) 2003 c. 41; section 106 was amended by section 42 of, and paragraph 8 of Schedule 13 to, the Police and Justice Act 2006 (c. 48).

(d) grant or withhold bail; or

(e) impose or vary a condition of bail.

(2) Despite paragraph (1), such a master or deputy master may exercise one of the powers listed in paragraph (1)(a), (b), (d) or (e) if making a decision to which the parties have agreed in writing.

(3) A renewed application for permission to appeal to the High Court may be determined by—

(a) a single judge of the High Court other than the judge who first refused permission, or

(b) a divisional court.

(4) An appeal may be determined by—

(a) a single judge of the High Court; or

(b) a divisional court.

[Note. See sections 19 and 66 of the Senior Courts Act 1981(**a**)*.]*

Payment of High Court fees

50.31.—(1) This rule applies where a party serves on the High Court officer a notice or application in respect of which a court fee is payable under legislation that requires the payment of such a fee.

(2) Such a party must pay the fee, or satisfy the conditions for any remission of the fee, when so serving the notice or application.

(3) If such a party fails to comply with paragraph (2), then unless the High Court otherwise directs—

(a) the High Court officer must serve on that party a notice requiring payment of the fee due, or satisfaction of the conditions for any remission of that fee, within a period specified in the notice;

(b) that party must comply with such a requirement; and

(c) until the expiry of the period specified in the notice, the High Court must not exercise its power—

(i) to reject the notice or application in respect of which the fee is payable, or

(ii) to dismiss an application for permission to appeal, in consequence of rejecting an appeal notice.

[Note. Section 92 of the Courts Act 2003(**b**) *and the Civil Proceedings Fees Order 2008*(**c**) *require the payment of High Court fees in cases to which this Section of this Part applies. Article 5 and Schedule 2 to the 2008 Order provide for the remission of such fees in some cases.]*

SECTION 4: POST-EXTRADITION PROCEEDINGS

Application for consent to deal with another offence or for consent to further extradition

50.32.—(1) This rule applies where—

(a) a defendant has been extradited to a territory under Part 1 of the Extradition Act 2003(**d**); and

(b) the court officer receives from the authority designated by the Secretary of State a request for the court's consent to—

(**a**) 1981 c. 54.

(**b**) 2003 c. 39; section 92 was amended by sections 15 and 59 of, and paragraphs 308 and 345 of Schedule 4 and paragraph 4 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and section 17 of, and paragraph 40 of Schedule 9 and paragraphs 83 and 95 of Schedule 10 to, the Crime and Courts Act 2013.

(**c**) S.I. 2008/1053; amended by S.I. 2013/1410, 2013/2302, 2014/874.

(**d**) 2003 c. 41.

(i) the defendant being dealt with in that territory for an offence other than one in respect of which the extradition there took place, or

(ii) the defendant's further extradition from there to another such territory for an offence.

(2) The presenting officer must serve on the court officer—

(a) the request; and

(b) a certificate given by the designated authority that the request was made by a judicial authority with the function of making such requests in the territory to which the defendant was extradited.

(3) The court must—

(a) give directions for service by a party or other person on the defendant of notice that the request for consent has been received, unless satisfied that it would not be practicable for such notice to be served;

(b) give directions for a hearing to consider the request to begin—

(i) no more than 21 days after the request was received by the designated authority, or

(ii) at such a later date as the court decides is in the interests of justice; and

(c) give such directions as are required for the preparation and conduct of that hearing.

(4) At the hearing directed under paragraph (3), in the following sequence the court must decide—

(a) whether the consent requested is required, having regard to—

(i) any opportunity given for the defendant to leave the requesting territory after extradition which the defendant did not take within 45 days of arrival there,

(ii) if the defendant did not take such an opportunity, any requirements for consent imposed by the law of the requesting territory or by arrangements between that territory and the United Kingdom where the request is for consent to deal with the defendant in that territory for another offence, and

(iii) if the defendant did not take such an opportunity, any requirements for consent imposed by arrangements between the requesting territory and the United Kingdom where the request is for consent to extradite the defendant to another territory for an offence; and

(b) if such consent is required, then—

(i) whether the offence in respect of which consent is requested is an extradition offence, and

(ii) if it is, whether the court would order the defendant's extradition under sections 11 to 25 of the Extradition Act 2003 (bars to extradition and other considerations) were the defendant in the United Kingdom and the court was considering extradition for that offence.

(5) The court must give directions for notice of its decision to be conveyed to the authority which made the request.

(6) Rules 50.3 (Exercise of magistrates' court's powers) and 50.4 (Case management in the magistrates' court and duty of court officer) apply on an application under this rule.

[Note. See sections 54, 55, 56 and 57 of the Extradition Act 2003(**a**)*.]*

Carr of Walton-on-the-Hill, C.J.
Holroyde, L.J.
Foster, J.
Patrick Field
Heather Norton

(**a**) 2003 c. 41.

Michael Oliver
David Barrand
Amy McEvoy
Stephen Parkinson
Jacob Hallam
Paul Jarvis
Folashade Abiodun
Edmund Smyth
Rebecca White
Robert Thomas

I allow these Rules, which shall come into force on 6th October 2025.

Shabana Mahmood
15th July 2025 Lord Chancellor
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

The Criminal Procedure Rules 2025:

(a) revoke the Criminal Procedure Rules 2020, S.I. 2020/759, with the amendments made to those Rules by S.I. 2021/40, 2021/849, 2022/45, 2022/815, 2023/44, 2023/786, 2024/62, 2024/842 and 2025/60;

(b) consolidate and replace the provision made by those rules; and

(c) include the further rule amendments listed beneath.

Rule	*Amendment*
Part 2	Rule 2.1 is amended to provide for the transition from the Criminal Procedure Rules 2020 to the Criminal Procedure Rules 2025. Transitional provisions for some applications to authorise extensions of pre-charge bail that were included in the Criminal Procedure Rules 2020 are omitted. Rule 2.7 is amended to allow an authorised court officer in the Crown Court to amend a community order or a suspended sentence order where a probation officer has allowed an offender to change the local justice area in which they reside.
Part 3	Rule 3.2 is amended to remove the implication that the court may direct a reporting or access restriction only on an application. Rules 3.16 and 3.21 are amended to require routine consideration of reporting and comparable restrictions during preparation for trial.
Part 5	Rules 5.8 and 5.11 are amended to remove the implication that the court may withhold information only by reason of a reporting restriction.
Part 6	Rule 6.2 is amended to ensure that a prospective court reporter is recognised as a person directly affected by a reporting restriction. Rules 6.4 and 6.5 are amended to accommodate arrangements that facilitate notice to such a reporter of an application for a reporting restriction.
Part 17	The notes to rules 17.1 and 17.2 are rearranged and expanded to refer to every statutory provision to which those rules now refer. Rule 17.2 is amended to refer to each statutory provision under which a proposed witness may be summoned or brought to court to give evidence. Rule 17.3 is amended to apply to the issue of a summons or warrant requiring a proposed witness to attend court to make a deposition under the Crime and Disorder Act 1998. Rule 17.8 is added to provide for the taking of such a deposition.
Part 24	Rule 24.2 is amended to require magistrates' courts, immediately before proceeding to trial, to review (i) the need for reporting or comparable directions, and (ii) arrangements for public observation and reporting.
Part 25	Rule 25.2 is amended to require the Crown Court, immediately before proceeding to trial, to review (i) the need for reporting or comparable directions, and (ii) arrangements for public observation and reporting.
Part 42	Rules 42.11 and 42.15 are amended to require service of a notice of appeal in confiscation proceedings on the Registrar of Criminal Appeals, not on the Crown Court officer. Rule 42.20 is amended to apply to all the appeals to which Part 42 applies. Rules 42.5, 42.11, 42.12, 42.13, 42.15, 42.16 and 42.21 are amended to correspond with comparable rules in Parts 36 to 40, which govern other types of appeal to the Court of Appeal.
Glossary	The glossary that was contained in the Criminal Procedure Rules 2020 is omitted.

Rule 17.8 of the Criminal Procedure Rules 2020 is renumbered rule 17.9 to accommodate new rule 17.8 (described above).

Rules 18.14 to 18.17 of the Criminal Procedure Rules 2020 were revoked by the Criminal Procedure (Amendment) Rules 2024, S.I. 2024/62. To accommodate their omission, in the Criminal Procedure Rules 2025 rules 18.18 to 18.28 of the Criminal Procedure Rules 2020 become rules 18.14 to 18.24 respectively.

Rules 33.2, 33.3, 33.47, 33.48, 33.49 and 33.50 of the Criminal Procedure Rules 2020 were revoked by the Criminal Procedure (Amendment) Rules 2024, S.I. 2024/62. To accommodate their omission, in the Criminal Procedure Rules 2025:

(a) rules 33.4 to 33.46 of the Criminal Procedure Rules 2020 become rules 33.2 to 33.44 respectively; and

(b) rules 33.51 to 33.70 of the Criminal Procedure Rules 2020 become rules 33.45 to 33.64 respectively.

Amendments to cross-references. The following rules, and notes to rules ('n'), are amended to bring up to date the cross-references that they contain, both generally and in consequence of the re-numbering of rules in Parts 18 and 33: 3.8, 3.8(n), 3.9, 9.5, 9.10(n), 18.3, 18.4(n), 18.5, 18.5(n), 18.20, Part 18 Summary of eligibility for measures to which the Part applies, 22.3, 22.3(n), 25.16(n), 33.11(n), 33.24, 33.25, 33.28, 33.29, 33.31, 33.44, 33.45, 33.48, 33.50, 33.51, 36.8, 36.14, 39.3, 40.3, 40.6, 42.2, 45.1(n), 45.11, 48.5(n), 48.9 and 48.9(n).

Amendments for consistency of expression. Rules 33.2(3) and 33.48(3) are amended for consistency of the possessive of "witness" with other instances of that word in these Rules. Rules 34.4(4) and 36.8(2) are amended for consistency of expression with amended rule 42.5(2).

These Rules come into force on 6th October 2025.

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