STATUTORY INSTRUMENTS

1973 No. 790 (L.11)

MAGISTRATES' COURTS

PROCEDURE

The Magistrates' Courts (Amendment) Rules 1973

Made - - - -	18*th April* 1973
Laid before Parliament	3*rd May* 1973
Coming into Operation	28*th May* 1973

The Lord Chancellor, in exercise of the power conferred on him by section 15 of the Justices of the Peace Act 1949**(a)**, as extended by section 122 of the Magistrates' Courts Act 1952**(b)**, after consultation with the Rule Committee appointed under the said section 15, hereby makes the following Rules:—

1.—(1) These Rules may be cited as the Magistrates' Courts (Amendment) Rules 1973 and shall come into operation on 28th May 1973.

(2) The Interpretation Act 1889**(c)** shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

2. The Magistrates' Courts Rules 1968**(d)**, as amended**(e)**, shall have effect subject to the amendments specified in the Schedule to these Rules.

Dated 18th April 1973.

Hailsham of St. Marylebone, C.

(a) 1949 c. 101.
(b) 1952 c. 55.
(c) 1889 c. 63.
(d) S.I. 1968/1920 (1968 III, p. 5175).
(e) S.I. 1969/1711, 1970/1004, 1791 (1969 III, p. 5385; 1970 II, p. 3145; III, p. 5801).

SCHEDULE Rule 2

AMENDMENTS TO MAGISTRATES' COURTS RULES 1968

1. In Rule 2 at the beginning of paragraph (1) there shall be inserted the words—

"Except in a case where evidence is, with the consent of the accused, to be given in his absence under paragraph (*b*) of section 45 of the Criminal Justice Act 1972**(a)** (absence caused by ill health),".

2. In Rule 4 for paragraphs (2), (4) and (6) there shall be substituted respectively the following paragraphs:—

"(2) A magistrates' court inquiring into an offence as examining justices shall cause the evidence of each witness, including the evidence of the accused, but not including any witness of his merely to his character, to be put into writing; and as soon as may be after the examination of such a witness shall cause his deposition to be read to him in the presence and hearing of the accused, and shall require the witness to sign the deposition:

Provided that where the evidence has been given in the absence of the accused under section 45 of the Criminal Justice Act 1972 this shall be recorded on the deposition of the witness and the deposition need not be read in the presence and hearing of the accused.".

"(4) Where the accused is not represented by counsel or a solicitor, before a statement made in writing by or taken in writing from a child is received in evidence under section 27(1) of the Children and Young Persons Act 1963**(b)** the court shall cause the effect of that subsection to be explained to the accused in ordinary language and, if the defence does not object to the application of that sub-section, shall inform him that he may ask questions about the circumstances in which the statement was made or taken.".

"(6) After the evidence for the prosecution (including any statements tendered under section 2 of the Criminal Justice Act 1967**(c)**) has been given and after hearing any submission, if any is made, the court shall, unless it then decides not to commit for trial, cause the charge to be written down, if this has not already been done, and, if the accused is not represented by counsel or a solicitor, shall read the charge to him and explain it in ordinary language.".

3. In Rule 5 paragraph (3) shall be omitted.

4. Rules 6 and 7 shall be omitted.

5. In Rule 10—

(*a*) in paragraph (2) for the words "before the first day of sitting of the court to which he is committed" there shall be substituted the words "within four days from the date of his committal (not counting Sundays, Good Friday, Christmas Day or Bank holidays)" and for the words "the proper officer of the court of trial" there shall be substituted the words "the appropriate officer of the Crown Court";

(*b*) paragraphs (3) and (4) shall be omitted;

(*c*) for paragraphs (6) to (10) there shall be substituted the following paragraph—

"(6) The period of four days specified in paragraph (2) of this Rule may be extended in relation to any committal for so long as the appropriate officer of the Crown Court directs, having regard to the length of any document mentioned in that paragraph or any other relevant circumstances.".

6. Rule 11 shall be omitted.

(a) 1972 c. 71. **(b)** 1963 c. 37. **(c)** 1967 c. 80.

7. After Rule 14 there shall be inserted the following Rule:—

"*Adjournment of trial of information*

14A.—(1) Where in the absence of the accused a magistrates' court adjourns the trial of an information, the clerk of the court shall give to the accused notice in writing of the time and place at which the trial is to be resumed.

(2) Service of the notice required to be given by paragraph (1) of this Rule may be effected in any manner in which service of a summons may be effected under paragraph (1) or (3) of Rule 82 and paragraph (2) of that Rule shall apply to the proof of service of the notice as it applies to the proof of service of a summons in respect of the offence charged in the information.".

8. In Rule 16 for the words "a court of assize or quarter sessions" and "the proper officer of the court to which the offender is committed" wherever they occur there shall be substituted respectively the words "the Crown Court" and "the appropriate officer of the Crown Court".

9. In Rule 17 for the words "a court of quarter sessions" and "the clerk of the peace" there shall be substituted respectively the words "the Crown Court" and "the appropriate officer of the Crown Court"; and in the heading to that Rule for the words "quarter sessions" there shall be substituted the words "Crown Court".

10. After Rule 24 there shall be inserted the following Rule:—

"DEFERMENT OF SENTENCE

Notification of conviction before expiration of period of deferment

24A. Where under section 22 of the Criminal Justice Act 1972 a court has deferred passing sentence on an offender and before the expiration of the period of deferment he is convicted of any offence by a magistrates' court, the clerk of the court shall, if the court which deferred passing sentence on the earlier occasion was another magistrates' court or the Crown Court, give notice of the conviction to the clerk of that magistrates' court or the appropriate officer of the Crown Court, as the case may be.".

11. In Rule 25—

(*a*) for paragraph (1) there shall be substituted the following paragraph:—

"(1) Where a magistrates' court discharges a probation order or makes an order under section 53 of the Criminal Justice Act 1967 substituting an order for conditional discharge for a probation order and, in either case, the probation order was not made by that court, the clerk of the court shall—

(*a*) if the probation order was made by another magistrates' court, notify the clerk of that court; or

(*b*) if the probation order was made by the Crown Court, notify the appropriate officer of the Crown Court'.';

(*b*) paragraph (3) shall be omitted.

12. In Rule 26 paragraph (1) shall be omitted.

13. After Rule 26 there shall be inserted the following Rule:—

"*Suspended sentence supervision orders*

26A.—(1) Where a magistrates' court makes an order under section 40(1)(*a*) or (*b*) of the Criminal Justice Act 1967 in respect of a person who is subject to a suspended sentence supervision order, the clerk of the court shall note this in the register against the original entry in respect of the suspended sentence supervision order, or where that order was not made by that court, shall—

(*a*) if the order was made by another magistrates' court, notify the clerk of that court who shall note the court register accordingly; or

(*b*) if the order was made by the Crown Court, notify the appropriate officer of the Crown Court.

(2) Where a magistrates' court discharges a suspended sentence supervision order under section 12(9) of the Criminal Justice Act 1972, the clerk of the court shall note

this in the register against the original entry in respect of that order, or where that order was not made by that court, shall—

(*a*) if the order was made by another magistrates' court, notify the clerk of that court who shall note the court register accordingly; or

(*b*) if the order was made by the Crown Court, notify the appropriate officer of the Crown Court.

(3) Where a magistrates' court fines a person under section 13 of the Criminal Justice Act 1972 for breach of the requirements of a suspended sentence supervision order which was not made by that court, the clerk of the court shall—

(*a*) if the order was made by another magistrates' court, notify the clerk of that court; or

(*b*) if the order was made by the Crown Court, notify the appropriate officer of the Crown Court.".

14. In Rule 27, paragraph (3), for the words "quarter sessions" there shall be substituted the words "the Crown Court".

15. In Rule 29 for paragraph (3) there shall be substituted the following paragraph:—

"(3) The justice shall send the deposition, with the statement, to the clerk to the justices for the petty sessions area for which the justice acts and the clerk shall—

(*a*) if the deposition relates to an offence for which a person has been committed for trial, send the deposition and statement to the appropriate officer of the Crown Court;

(*b*) if the deposition relates to proceedings which are pending before a magistrates' court acting for another area, send the deposition and statement to the clerk of that court.".

16. In Rule 32 for paragraphs (1) and (2) there shall be substituted the following paragraphs:—

"(1) A magistrates' court ordering periodical payments to be made through a clerk of a magistrates' court under section 52 of the Act shall notify the person required to make the payments of the hours during which, and the place at which, payments are to be made.

(2) A clerk of a magistrates' court shall send by post any periodical payments to the person entitled to them:

Provided that the clerk may, at the request of the person entitled to the payments, make other arrangements for making the payments.".

17. In Rule 38, paragraph (1), for the words "a court of assize or quarter sessions" there shall be substituted the words "the Crown Court".

18. In Rule 44, paragraph (1), there shall be substituted for sub-paragraph (*b*) the following sub-paragraph:—

"(*b*) shall be directed to the constables of the police area in which the warrant is issued or to the authorised persons for the police area specified in the warrant, or to a person named in the warrant and shall, subject to, and in accordance with, the provisions of this Rule, require them to levy the said sum by distress and sale of the goods belonging to the said person;".

19. For Rule 47 there shall be substituted the following Rule:—

"47.—(1) The clerk of a magistrates' court which has made a transfer of fine order under section 72, section 72A or section 72A as applied by section 72B of the Act shall send to the clerk of the court having jurisdiction under the order a copy of the order with a statement of the offence and the steps, if any, taken to recover the sum adjudged to be paid, and with such further information as is available and is in the opinion of the first-mentioned clerk likely to assist the last-mentioned court.

(2) Where a magistrates' court has made a transfer of fine order in respect of a

sum adjudged to be paid by a court in Scotland the clerk of the magistrates' court shall send a copy of the order to the clerk of the Scottish court.

(3) Where the clerk of a magistrates' court receives a copy of a transfer of fine order (whether made in England and Wales or in Scotland) specifying that court as the court by which payment of the sum in question is to be enforceable, he shall thereupon, if possible, deliver or send by post to the offender notice in writing in the prescribed form.

(4) Where under a transfer of fine order a sum adjudged to be paid by a Scottish court is enforceable by a magistrates' court—

(*a*) if the sum is paid, the clerk of the magistrates' court shall send it to the clerk of the Scottish court;

(*b*) if the sum is not paid, the clerk of the magistrates' court shall inform the clerk of the Scottish court of the manner in which the adjudication has been satisfied or that the sum, or any balance thereof, appears to be irrecoverable.".

20. In Rule 53, paragraph (2)(*m*), for the words "a court of assize or quarter sessions" there shall be substituted the words "the Crown Court".

21. In Rule 55—

(*a*) in paragraph (1) the words "clerk of the peace" shall be omitted;

(*b*) paragraph (4) shall be omitted.

22. In Rule 58, paragraph (9), for the words "a court of assize or quarter sessions" there shall be substituted the words "the Crown Court".

23. In Rule 62 and in the heading to that Rule for the words "the clerk of the peace" and "quarter sessions" wherever they appear there shall be substituted respectively the words "the appropriate officer of the Crown Court" and "the Crown Court".

24. Rule 63 shall be omitted.

25. In Rule 64 paragraph (1) shall be omitted.

26. In Rule 72, paragraph (4), for the words "a court of assize or quarter sessions" and "the proper officer of the court before which the first-mentioned person is to be tried" there shall be substituted respectively the words "the Crown Court" and "the appropriate officer of the Crown Court".

27. For Rules 75 and 76 there shall be substituted the following Rule:—

"*Procedure under s.*13(7) *of the Courts Act* 1971

75. Where under subsection (7) of section 13 of the Courts Act 1971**(a)** a magistrates' court commits to custody or releases on bail a witness or other person who has been arrested in pursuance of a warrant issued by the Crown Court, or the officer in charge of a police station releases such a witness or other person on bail under subsection (6) of that section, the clerk of the magistrates' court or the officer, as the case may be, shall forthwith notify the appropriate officer of the Crown Court of the action which has been taken and shall transmit to him as soon as practicable the recognizance of the witness or other person if he has been released.".

28. In Rule 79 there shall be substituted for paragraph (1) the following paragraph:—

"(1) A warrant issued by a justice of the peace for the arrest of any person shall require the persons to whom it is directed, that is to say, the constables of the police area in which the warrant is issued, or the authorised persons for the police area specified in the warrant, or any persons named in that behalf in the warrant, to arrest the person against whom the warrant is issued.".

29. In Rule 80, paragraph (1), there shall be substituted for sub-paragraph (*c*) the following sub-paragraph:—

"(*c*) shall be directed to a person named in the warrant or to the constables of the police area in which the warrant is issued or to the authorised persons for the

(a) 1971 c. 23.

police area specified in the warrant and to the governor or keeper of the prison or place of detention specified in the warrant, and shall require—

(i) the named person or the constables or authorised persons to arrest the person committed, if he is at large, and convey him to that prison or place and deliver him with the warrant to the governor or keeper;

(ii) the governor or keeper to keep in his custody the person committed until that person be delivered in due course of law, or until the happening of an event specified in the warrant, or for the period specified in the warrant, as the case may be.".

30. After Rule 86 there shall be inserted the following Rule:—

"*Application for review of compensation order*

86A.—(1) An application under section 3 of the Criminal Justice Act 1972 for the review of a compensation order shall be by complaint.

(2) The justice to whom the complaint is made shall issue a summons directed to the person for whose benefit the compensation order was made, requiring him to show cause why the order should not be amended or revoked.".

31. In Rule 94 there shall be inserted after paragraph (1) the following paragraph:—

"(1A) In these Rules a reference to "the authorised persons for the police area" is a reference to the persons employed by a local authority in that area or by the chief officer of police or the police authority for that area who are authorised by the chief officer of police to execute warrants.".

EXPLANATORY NOTE

(*This Note is not part of the Rules.*)

These Rules make a number of amendments to the Magistrates' Courts Rules 1968. The majority of these amendments are consequential upon the Courts Act 1971 and do not involve changes of substance, or are consequential upon the Criminal Justice Act 1972. The principal changes of substance are:—

(*a*) amendments to Rules 2 and 4 to regulate the procedure where, under section 45 of the Act of 1972, examining justices hear evidence in the absence of the accused;

(*b*) an amendment to Rule 32 requiring the clerk of a magistrates' court to remit periodical payments by post unless some other arrangement has been made at the request of the person entitled to the payments; and

(*c*) amendments to Rules 44, 79, 80 and 94 about the execution of warrants by civilian process servers.

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