

## PART 3

### CASE MANAGEMENT

#### Contents of this Part

##### General rules

When this Part applies	rule 3.1
The duty of the court	rule 3.2
The duty of the parties	rule 3.3
Case progression officers and their duties	rule 3.4
The court's case management powers	rule 3.5
Application to vary a direction	rule 3.6
Agreement to vary a time limit fixed by a direction	rule 3.7
Court's power to vary requirements under this Part	rule 3.8
Case preparation and progression	rule 3.9
Readiness for trial or appeal	rule 3.10
Conduct of a trial or an appeal	rule 3.11
Case management forms and records	rule 3.12

##### Preparation for trial in the Crown Court

Pre-trial hearings	rule 3.13
Preparatory hearing	rule 3.14
Application for preparatory hearing	rule 3.15
Application for non-jury trial containing information withheld from a defendant	rule 3.16
Representations in response to application for preparatory hearing	rule 3.17
Commencement of preparatory hearing	rule 3.18
Defence trial advocate	rule 3.19
Application to stay case for abuse of process	rule 3.20
Application for joint or separate trials, etc.	rule 3.21
Order for joint or separate trials, or amendment of the indictment	rule 3.22
Application for indication of sentence	rule 3.23
Arraigning the defendant on the indictment	rule 3.24
Place of trial	rule 3.25
Use of Welsh language at trial	rule 3.26

#### GENERAL RULES

##### When this Part applies

**3.1.**—(1) Rules 3.1 to 3.12 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 3.13 to 3.26 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.

*[Note. Rules that apply to procedure in the Court of Appeal are in Parts 65 to 73 of these Rules.]*

*A magistrates' court may send a defendant for trial in the Crown Court under section 51 or 51A of the Crime and Disorder Act 1998(a). See Part 9 for the procedure on allocation and sending for trial.*

*Under paragraph 2(1) of Schedule 17 to the Crime and Courts Act 2013(b) and section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933(c), the Crown Court may give permission to serve a draft indictment where it approves a deferred prosecution agreement. See Part 12 for the rules about that procedure and Part 14 for the rules about indictments.*

*The procedure for applying for the permission of a High Court judge to serve a draft indictment is in rules 6 to 10 of the Indictments (Procedure) Rules 1971(d). See also the Practice Direction.*

*The Court of Appeal may order a retrial under section 8 of the Criminal Appeal Act 1968(e) (on a defendant's appeal against conviction) or under section 77 of the Criminal Justice Act 2003(f) (on a prosecutor's application for the retrial of a serious offence after acquittal). Section 8 of the 1968 Act, and rules 41.14 and 41.15, 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.

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(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) 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, 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) and paragraph 32 of Schedule 17 to the Crime and Courts Act 2013 (c. 22).

(d) S. I. 1971/2084; amended by S.I. 1997/711, 2000/3360.

(e) 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).

(f) 2003 c. 44.

**The duty of the parties**

**3.3.** 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.

**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) for the purpose of giving directions, receive applications and representations by letter, by telephone or by any other means of electronic communication, and conduct a hearing by such 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; and
- (i) specify the consequences of failing to comply with a direction.

(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.

*[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 3.9 (Case preparation and progression).*

*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 33, 34 and 35 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);*

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- (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) and 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). It is further amended by 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), with effect from a date to be appointed.
  - (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).

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

#### **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.

#### **Court's power to vary requirements under this Part**

**3.8.**—(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.

#### **Case preparation and progression**

**3.9.**—(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

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(a) 2003 c. 44.

- (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 impediment.
- (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 impediment, 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;
  - (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 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 directions for appropriate treatment and questioning are required, the court must—
- (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) where there is more than one defendant, the allocation among them of the topics about which a witness may be asked, and
    - (vi) directions about the use of models, plans, body maps or similar aids to help communicate a question or an answer.

*[Note. Part 29 (Measures to assist a witness or defendant to give evidence) contains rules about an application for a defendant's evidence direction under (among other provisions) sections 33BA and 33BB of the Youth Justice and Criminal Evidence Act 1999(a).*

*See also Directive 2010/64/EU of the European Parliament and of the Council of 20<sup>th</sup> October, 2010, on the right to interpretation and translation in criminal proceedings(b).*

*Where a trial in the Crown Court will take place in Wales and a participant wishes to use the Welsh language, see rule 3.26. Where a trial in a magistrates' court will take place in Wales, a participant may use the Welsh language: see rule 37.14.]*

### Readiness for trial or appeal

**3.10.**—(1) This rule applies to a party's preparation for trial or appeal, and in this rule and rule 3.11 '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

**3.11.** 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

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(a) 1999 c. 23; sections 33BA and 33BB are inserted by section 104 of the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed.

(b) OJ L 280, 26.10.2010, p.1.

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

*[Note. See also rules 3.5 (The court's case management powers) and 3.9 (Case preparation and progression).]*

### Case management forms and records

**3.12.**—(1) The case management forms set out in the Practice Direction must be used, and where there is no form then no specific formality is required.

- (2) The court must make available to the parties a record of directions given.

(3) Where a person is entitled or required to attend a hearing, the court officer must give as much notice as reasonably practicable to—

- (a) that person; and
- (b) that person's custodian (if any).

## PREPARATION FOR TRIAL IN THE CROWN COURT

### Pre-trial hearings: general rules

**3.13.**—(1) The Crown Court—

- (a) may, and in some cases must, conduct a preparatory hearing where rule 3.14 applies;
- (b) must conduct a plea and case management hearing unless the circumstances make that unnecessary;
- (c) may conduct any other pre-trial hearing 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) A pre-trial 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).

(3) 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 3.12) and the other rules in this section.*

*The Practice Direction lists the circumstances in which the Crown Court should conduct a plea and case management hearing.*

*There are rules relevant to applications which may be made at a pre-trial hearing in Part 16 (Reporting, etc. restrictions), Part 19 (Bail and custody time limits), Part 22 (Disclosure), Part 28 (Witness summonses, warrants and orders), Part 29 (Measures to assist a witness or defendant to give evidence), Part 33 (Expert evidence), Part 34 (Hearsay evidence), Part 35 (Evidence of bad character) and Part 36 (Evidence of a complainant's previous sexual behaviour).*

*On an application to which Part 19 (Bail and custody time limits) applies, rule 19.2 (exercise of court's powers under that Part) may require the defendant's presence, which may be by live link. Where rule 19.10 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

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

- (a) can order a preparatory hearing, under—
  - (i) section 7 of the Criminal Justice Act 1987(b) (cases of serious or complex fraud), or
  - (ii) section 29 of the Criminal Procedure and Investigations Act 1996(c) (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(d) (danger of jury tampering), or
  - (ii) section 17 of the Domestic Violence, Crime and Victims Act 2004(e) (trial of sample counts by jury, and others by judge alone);
- (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;
- (c) in a party's absence, if that party—
  - (i) applied for the order, or
  - (ii) has had at least 14 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(f), and under section 34 of the 1996 Act(g), 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.]*

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(a) 1996 c. 25.

(b) 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).

(c) 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).

(d) 2003 c. 44.

(e) 2004 c. 28.

(f) 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).

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

**Application for preparatory hearing**

- 3.15.**—(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 14 days after the defendant pleads not guilty;
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) each other party.
- (2) The applicant must—
- (a) if relevant, explain what legislation requires the court to order a preparatory hearing;
  - (b) otherwise, 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**

- 3.16.**—(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

- 3.17.**—(1) This rule applies where a party wants to make representations about—
- (a) an application for a preparatory hearing;
  - (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 14 days after service of the application;
  - (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

- 3.18.** 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 3.24 (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

- 3.19.**—(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 case management hearing;

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(a) 1987 c. 38.

(b) 1996 c. 25.

(b) in writing, or orally at the plea and case management 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**

**3.20.**—(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—

- (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 14 days after service of the application.

**Application for joint or separate trials, etc.**

**3.21.**—(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 14 days after service of the application.

*[Note. See section 5 of the Indictments Act 1915. Rule 14.2 governs the form and content of an indictment.]*

#### **Order for joint or separate trials, or amendment of the indictment**

**3.22.**—(1) This rule applies where the Crown Court makes an order—

- (a) on an application under rule 3.21 applies (Application for joint or separate trials, etc.); 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**

**3.23.**—(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,
  - (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;

- (b) must be attended by—
  - (i) the applicant defendant's legal representatives (if any), and
  - (ii) the prosecution advocate.

### Arraigning the defendant on the indictment

**3.24.**—(1) In order to take the defendant's plea, the Crown Court must—

- (a) ensure that the defendant is correctly identified by the indictment;
- (b) in respect of each count in the indictment—
  - (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 the indictment—

- (a) if the defendant declines to enter a plea, the court must treat that as a not guilty plea unless rule 38.11 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;
- (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.

*[Note. See section 6 of the Criminal Law Act 1967(a) and section 122 of the Criminal Justice Act 1988(b).]*

*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 trial

**3.25.**—(1) Unless the court otherwise directs, the court officer must arrange for the trial to take place in a courtroom provided by the Lord Chancellor.

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(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) 1988 c. 33.

(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(a) and section 14 of the Juries Act 1974(b).*

*In some circumstances the court may conduct all or part of the hearing outside a courtroom.]*

### **Use of Welsh language at trial**

**3.26.** Where the trial will take place in Wales and a participant wishes to use the Welsh language—

- (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 case management hearing (if there is one), or
  - (ii) if there is no such hearing, then 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 the hearing.

*[Note. See section 22 of the Welsh Language Act 1993(c).]*

### **Other provisions affecting case management**

*Case management may be affected by the following other rules and legislation:*

#### **Criminal Procedure Rules**

*Part 9: allocation and sending for trial*

*Part 10: initial details of the prosecution case*

*Part 14: the indictment*

*Part 22: disclosure*

*Parts 27 – 36: the rules that deal with evidence*

*Part 37: trial and sentence in a magistrates’ court*

*Part 38: trial and sentence in the Crown Court*

#### **Regulations**

*The Prosecution of Offences (Custody Time Limits) Regulations 1987(d)*

*The Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2005(e)*

*The Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 2011(f)*

#### **Acts of Parliament**

*Sections 10 and 18, Magistrates’ Courts Act 1980(g): powers to adjourn hearings*

(a) 2003 c. 39.

(b) 1974 c. 23; section 14 was amended by paragraph 173 of Schedule 8 to the Courts Act 2003 (c. 39).

(c) 1993 c. 38.

(d) 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.

(e) S.I. 2005/902; amended by S.I. 2012/1345.

(f) S.I. 2011/209.

(g) 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 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).

*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.]*

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- (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, 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) and paragraph 32 of Schedule 17 to the Crime and Courts Act 2013 (c. 22).
- (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 SI 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) and section 26 of, and paragraph 7 of Schedule 2 to, the Armed Forces Act 2011 (c. 18). 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.