

PART 3

CASE MANAGEMENT

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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.

(3) Rule 3.27 applies in a magistrates' court unless—

(a) the court sends the defendant for trial in the Crown Court; or

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

(4) Rule 3.28 applies in a magistrates' court and in the Crown Court (including on an appeal to the Crown Court).

[Note. Rules that apply to procedure in the Court of Appeal are in Parts 36 to 42 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 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 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, section 84 of the 2003 Act and rules 27.6 and 39.14 require the arraignment of a defendant within 2 months.

The circumstances in which the court may commission a medical examination of a defendant and a report, other than for sentencing purposes, are listed in rule 3.28.]

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;

(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), paragraph 32 of Schedule 17 to the Crime and Courts Act 2013 (c. 22) and section 82 of the Deregulation Act 2015 (c. 20).

(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.

- (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 directing the use of such facilities, whether an application for such a direction is made or not—

- (a) for the conduct of a pre-trial hearing, including a pre-trial case management hearing;
- (b) for the defendant's attendance at such a hearing—
 - (i) where the defendant is in custody, or where the defendant is not in custody and wants to attend by live link, but
 - (ii) only if the court is satisfied that the defendant can participate effectively by such means, having regard to all the circumstances including whether the defendant is represented or not; and
- (c) for receiving evidence under one of the powers to which the rules in Part 18 apply (Measures to assist a witness or defendant to give evidence).

(5) Where appropriate telephone facilities are available, making use of technology for the purposes of this rule includes directing the use of such facilities, whether an application for such a direction is made or not, for the conduct of a pre-trial case management hearing—

- (a) if telephone facilities are more convenient for that purpose than live links;
- (b) unless at that hearing the court expects to take the defendant's plea; and
- (c) only if—
 - (i) the defendant is represented, or
 - (ii) exceptionally, the court is satisfied that the defendant can participate effectively by such means without a representative.

[Note. In relation to the defendant's attendance by live link at a pre-trial hearing, see sections 46ZA and 47 of the Police and Criminal Evidence Act 1984(a) and sections 57A to 57D and 57F of the Crime and Disorder Act 1998(b).

In relation to the giving of evidence by a witness and the giving of evidence by the defendant, see section 32 of the Criminal Justice Act 1988(a), sections 19, 24 and 33A of the Youth Justice and

(a) 1984 c. 60; section 46ZA was inserted by section 46 of the Police and Justice Act 2006 (c. 48) and amended by section 107 of the Coroners and Justice Act 2009 (c. 25). Section 47 was amended by sections 27, 29 and 168 of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 46 of the Crime and Disorder Act 1998 (c. 37), section 109 of, and paragraph 283 of Schedule 8 to, the Courts Act 2003 (c. 39), sections 12 and 28 of, and paragraphs 1 and 10 of Schedule 1 and paragraphs 1 and 6 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44), sections 10 and 46 of, and paragraphs 1, 6 and 11 of Schedule 6 to, the Police and Justice Act 2006 (c. 48) and section 1 of the Police (Detention and Bail) Act 2011 (c. 9).

(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). Section 57A was amended by section 109 of the Coroners and Justice Act 2009 (c. 25) and section 105 of, and paragraphs 36 and 39 of Schedule 12 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Sections 57B, 57C and 57D were amended by section 106 of the Coroners and Justice Act 2009 (c. 25). Section 57F was inserted by section 109 of the Coroners and Justice Act 2009 (c. 25).

Criminal Evidence Act 1999(b) and section 51 of the Criminal Justice Act 2003(c). Part 18 (Measures to assist a witness or defendant to give evidence) contains relevant rules.]

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);
- (d) reporting on that communication to the court—
 - (i) at the first hearing, and
 - (ii) after that, as directed by the court; and
- (e) alerting the court to any reason why—
 - (i) a direction should not be made in any of the circumstances listed in rule 3.2(4) or (5) (The duty of the court: use of live link or telephone facilities), or
 - (ii) such a direction should be varied or revoked.

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;

(a) 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 article 3 of, and paragraphs 24 and 26 of the Schedule to S.I. 2004/2035.

(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). Section 33A was inserted by section 47 of the Police and Justice Act 2006 (c. 48).

(c) 2003 c. 44.

- (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 telephone, by live link, by email or by any other means of electronic communication, and conduct a hearing by live link, telephone 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; 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 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).]*

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.

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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), 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.

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
- (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 18 (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 20th 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 24.14.]

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

(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.

- (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
 - (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).]

Duty of court officer

3.12. 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);
- (b) where the court gives directions, promptly make a record available to the parties.

[Note. See also rule 5.7 (Supply to a party of information or documents from records or case materials).]

PREPARATION FOR TRIAL IN THE CROWN COURT

Pre-trial hearings in the Crown Court: 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 trial preparation hearing;
 - (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;
 - (b) 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;
 - (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; and
 - (d) give directions for an effective trial.
- (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.
- (5) The court—
- (a) at the first hearing in the Crown Court must require a defendant who is present—
 - (i) to provide, in writing or orally, his or her name, date of birth and nationality, or
 - (ii) to confirm that information by those means, where the information was given to the magistrates’ court which sent the defendant for trial; and
 - (b) at any subsequent hearing may require such a defendant to provide or confirm that information by those means.

[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 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.

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 listed in rule 3.13(5). 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.]

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(c) (cases of serious or complex fraud), or
 - (ii) section 29 of the Criminal Procedure and Investigations Act 1996(d) (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(e) (danger of jury tampering), or
 - (ii) section 17 of the Domestic Violence, Crime and Victims Act 2004(f) (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—

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- (a) 1996 c. 25.
 - (b) 2003 c. 39; section 86A is inserted by section 162 of the Policing and Crime Act 2017 (c. 3), with effect from a date to be appointed.
 - (c) 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).
 - (d) 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).
 - (e) 2003 c. 44.
 - (f) 2004 c. 28.

- (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(a), and under section 34 of the 1996 Act(b), 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

3.15.—(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

(a) 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).

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

- (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 trial preparation hearing;
- (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

3.20.—(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) 1987 c. 38.
(b) 1996 c. 25.

- (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.
- (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

3.22.—(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

(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).

(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) obtain the prosecutor's confirmation, in writing or orally—
 - (i) that the indictment (or draft indictment, as the case may be) 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 the indictment, if the prosecutor proposes that more than one defendant should be tried at the same time;

- (b) ensure that the defendant is correctly identified by the indictment or draft indictment;
- (c) in respect of each count—
 - (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 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;
- (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 2 weeks after the date on which that sending takes place, unless the parties otherwise agree; and
- (b) not more than 16 weeks after that date, unless the court otherwise directs (either before or after that period expires).

[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 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.]*

(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, SI 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.

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.

(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 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(c).]

PREPARATION FOR TRIAL IN A MAGISTRATES’ COURT

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

3.27.—(1) A magistrates’ court—

- (a) must conduct a preparation for trial hearing unless—
 - (i) the court sends the defendant for trial in the Crown Court, 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);
- (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 give directions for an effective trial.

(3) At a preparation for trial hearing, if the defendant is present 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;
- (b) 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

(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.

- (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 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.
- (5) The court—
- (a) at the first hearing in the case must require a defendant who is present to provide, in writing or orally, his or her name, date of birth and nationality; and
 - (b) at any subsequent hearing may require such a defendant to provide that information by those means.

[Note. At the first hearing in a magistrates' court the court may, and in some cases must, send the defendant to the Crown Court for trial, depending upon (i) the classification of the offence, (ii) the defendant's age, (iii) whether the defendant is awaiting Crown Court trial for another offence, (iv) whether another defendant charged with the same offence is awaiting Crown Court trial, and (v) in some cases, the value of property involved. See also Part 9 (Allocation and sending for trial).

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.

Under section 86A of the Courts Act 2003(c), Criminal Procedure Rules must specify stages of proceedings at which the court must require the information listed in rule 3.27(5) and may specify other stages of proceedings when such requirements may be imposed. 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.]

MEDICAL REPORTS

Directions for commissioning medical reports, other than for sentencing purposes

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

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- (a) 1980 c. 43; 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), paragraphs 25 and 26 of Schedule 32 to the Criminal Justice Act 2003 (c. 44), section 54 of the Criminal Justice and Immigration Act 2008 (c. 4) and sections 48 and 50 of, and paragraphs 2 and 4 of Schedule 11 to, the Criminal Justice and Courts Act 2015 (c. 2).
 - (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 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).
 - (c) 2003 c. 39; section 86A is inserted by section 162 of the Policing and Crime Act 2016 (c. 3), with effect from a date to be appointed.

- (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
 - (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.

(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).

- (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;*
- (d) *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);*
- (e) *section 38 of the 1983 Act(d), 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(e), 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;*

(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) 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).

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

(g) section 207 of the 2003 Act(a) (in the case of a defendant aged 18 or over), or section 1(1)(k) of the Criminal Justice and Immigration Act 2008(b) (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(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.]

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

(a) 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) and section 73 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 62 of, and paragraph 48 of Schedule 5 to, the Children and Social Work Act 2017 (c. 16), with effect from a date to be appointed.

(b) 2008 c. 4.

(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.

The Criminal Procedure Rules **October 2015**
as amended April 2016, October 2016, October 2017, November 2017, April 2018
& October 2018

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

Sections 128 and 129, Magistrates' Courts Act 1980(e): remand in custody by magistrates' courts

Sections 19 and 24A, Magistrates' Courts Act 1980(f) and sections 51 and 51A, Crime and Disorder Act 1998(g): allocation and sending for trial

Section 2, Administration of Justice (Miscellaneous Provisions) Act 1933(h): procedural conditions for trial in the Crown Court

Sections 8A and 8B, Magistrates' Courts Act 1980(i): pre-trial hearings in magistrates' courts

Section 7, Criminal Justice Act 1987(j); 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(a): proof by written witness statement

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- (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 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).
- (e) 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).
- (f) 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).
- (g) 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).
- (h) 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), paragraph 32 of Schedule 17 to the Crime and Courts Act 2013 (c. 22) and section 82 of the Deregulation Act 2015 (c. 20).
- (i) 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).
- (j) 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.

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- (a) 1967 c. 80; section 9 was amended by section 56 of, and paragraph 49 of Schedule 8 to, the Courts Act 1971 (c. 23), section 168 of, and paragraph 6 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 69 of the Criminal Procedure and Investigations Act 1996 (c. 25), 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) 1996 c. 25.