

PART 10

THE INDICTMENT

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When this Part applies**10.1.** This Part applies where—

- (a) a magistrates' court sends a defendant to the Crown Court for trial under section 51 or section 51A of the Crime and Disorder Act 1998(a);
- (b) a prosecutor wants a High Court judge's permission to serve a draft indictment;
- (c) the Crown Court approves a proposed indictment under paragraph 2 of Schedule 17 to the Crime and Courts Act 2013(b) and rule 11.4 (Deferred prosecution agreements: Application to approve the terms of an agreement);
- (d) a prosecutor wants to re-institute proceedings in the Crown Court under section 22B of the Prosecution of Offences Act 1985(c);
- (e) the Court of Appeal orders a retrial, under section 8 of the Criminal Appeal Act 1968(d) or under section 77 of the Criminal Justice Act 2003(e).

[Note. See also sections 3, 4 and 5 of the Indictments Act 1915(f) and section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933(g). Under section 2(1) of the 1933

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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) 1985 c. 23; section 22B was inserted by section 45 of the Crime and Disorder Act 1998 (c. 37) and amended by paragraph 17 of Schedule 36 to the Criminal Justice Act 2003 (c. 44) and section 112 of, and Part 13 of Schedule 8 to, the Policing and Crime Act 2009 (c. 26).
 - (d) 1968 c. 19; section 8 was amended by Section 12 of, and paragraph 38 of Schedule 2 to, the Bail Act 1976 (c. 63), section 56 of, and Part IV of Schedule 11 to, the Courts Act 1971 (c. 23), section 65 of, and paragraph 36 of Schedule 3 to, the Mental Health (Amendment) Act 1982 (c. 51), section 148 of, and paragraph 23 of Schedule 4 to, the Mental Health Act 1983 (c. 20), section 43 of the Criminal Justice Act 1988 (c. 33), section 168 of, and paragraph 19 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 58 of the Access to Justice Act 1999 (c. 22), sections 41 and 332 of, and paragraph 43 of Schedule 3 to, and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and section 32 of, and paragraph 2 of Schedule 4 to, the Mental Health Act 2007 (c. 12).
 - (e) 2003 c. 44.
 - (f) 1915 c. 90; section 4 was amended by section 83 of, and Part I of Schedule 10 to, the Criminal Justice Act 1948 (c. 58) and section 10 of, and Part III of Schedule 3 to, the Criminal Law Act 1967 (c. 58). Section 5 was amended by section 12 of, and paragraph 8 of Schedule 2 to, the Bail Act 1976 (c. 63), section 31 of, and Schedule 2 to, the Prosecution of Offences Act 1985 (c. 23) and section 331 of, and paragraph 40 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).
 - (g) 1933 c. 36; section 2 was amended by Part IV of Schedule 11 to, the Courts Act 1971 (c. 23), Schedule 5 to, the Senior Courts Act 1981 (c. 54), Schedule 2 to the Prosecution of Offences Act 1985 (c. 23), paragraph 1 of Schedule 2 to the Criminal Justice Act 1987 (c. 38), paragraph 10 of Schedule 15 to the Criminal Justice Act 1988 (c. 33), paragraph 8 of Schedule 6 to the Criminal Justice Act 1991 (c. 53), Schedule 1 to the Statute Law (Repeals) Act 1993, 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),

Act, a draft indictment (in the Act, a 'bill of indictment') becomes an indictment when it is 'preferred' in accordance with these rules. See rule 10.2.

Part 3 contains rules about the court's general powers of case management, including power to consider applications and give directions for (among other things) the amendment of an indictment and for separate trials under section 5 of the Indictments Act 1915. See in particular rule 3.21 (Application for joint or separate trials, etc.).

Under section 51D of the Crime and Disorder Act 1998(a), the magistrates' court must notify the Crown Court of the offence or offences for which the defendant is sent for trial. Part 9 (Allocation and sending for trial) contains relevant rules.

A Crown Court judge may approve a proposed indictment on approving a deferred prosecution agreement. Part 11 (Deferred prosecution agreements) contains relevant rules.

A prosecutor may apply to a High Court judge for permission to serve a draft indictment under rule 10.9.

Under section 22B of the Prosecution of Offences Act 1985, one of the prosecutors listed in that section may re-institute proceedings that have been stayed under section 22(4) of that Act(b) on the expiry of an overall time limit (where such a time limit has been prescribed). Section 22B(2) requires the service of a draft indictment within 3 months of the date on which the Crown Court ordered the stay, or within such longer period as the court allows.

The Court of Appeal may order a retrial under section 8 of the Criminal Appeal Act 1968 (on a defendant's appeal against conviction) or under section 77 of the Criminal Justice Act 2003 (on a prosecutor's application for the retrial of a serious offence after acquittal). Section 8 of the 1968 Act and section 84 of the 2003 Act require the arraignment of a defendant within 2 months. See also rules 27.7 and 39.14.

With effect from 30th August 2013, Schedule 3 to the Criminal Justice Act 2003 abolished committal for trial under section 6 of the Magistrates' Courts Act 1980(c), and transfer for trial under section 4 of the Criminal Justice Act 1987(d) (serious fraud cases) or under section 53 of the Criminal Justice Act 1991(e) (certain cases involving children).

Where a magistrates' court sends a defendant to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998, in some circumstances the Crown Court may try the defendant for other offences: see section 2(2) of the Administration of Justice (Miscellaneous Provisions) Act 1933 (indictable offences founded on the prosecution evidence), section 40 of the Criminal Justice Act 1988(f) (specified summary offences founded on that evidence) and

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).

- (a) 1998 c. 37; section 51D was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).
- (b) 1985 c. 23; section 22 was amended by paragraph 104 of Schedule 15 to the Criminal Justice Act 1988 (c. 33), section 43 of the Crime and Disorder Act 1998 (c. 37), paragraph 36 of Schedule 11 to the Criminal Justice Act 1991 (c. 53), paragraph 27 of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c. 33), section 71 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 67(3) of the Access to Justice Act 1999 (c. 22), section 70 of, and paragraph 57 of Schedule 3 and paragraphs 49 and 51 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and paragraph 22 of Schedule 12 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
- (c) 1980 c. 43; section 6 was repealed by paragraph 51 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).
- (d) 1987 c. 38; section 4 was repealed by paragraph 58 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).
- (e) 1991 c. 53; section 53 was repealed by Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).
- (f) 1988 c. 33; section 40 was amended by section 4 of, and paragraph 39 of Schedule 3 to, the Road Traffic (Consequential Provisions) Act 1988 (c. 54), section 168 of, and paragraph 35 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 47 of, and paragraph 34 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25), section 119 of, and paragraph 66 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) and paragraph 60 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).

paragraph 6 of Schedule 3 to the Crime and Disorder Act 1998 (power of Crown Court to deal with related summary offence sent to that court).]

The indictment: general rules

10.2.—(1) The indictment on which the defendant is arraigned under rule 3.24 (Arraigning the defendant on the indictment) must be in writing and must contain, in a paragraph called a ‘count’—

- (a) a statement of the offence charged that—
 - (i) describes the offence in ordinary language, and
 - (ii) identifies any legislation that creates it; and
- (b) such particulars of the conduct constituting the commission of the offence as to make clear what the prosecutor alleges against the defendant.

(2) More than one incident of the commission of the offence may be included in a count if those incidents taken together amount to a course of conduct having regard to the time, place or purpose of commission.

(3) The counts must be numbered consecutively.

(4) An indictment may contain—

- (a) any count charging substantially the same offence as one for which the defendant was sent for trial;
- (b) any count contained in a draft indictment served with the permission of a High Court judge or at the direction of the Court of Appeal; and
- (c) any other count charging an offence that the Crown Court can try and which is based on the prosecution evidence that has been served.

(5) For the purposes of section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933—

- (a) a draft indictment constitutes a bill of indictment;
- (b) the draft, or bill, is preferred before the Crown Court and becomes the indictment—
 - (i) where rule 10.3 applies (Draft indictment generated electronically on sending for trial), immediately before the first count (or the only count, if there is only one) is read to or placed before the defendant to take the defendant’s plea under rule 3.24(1)(c),
 - (ii) when the prosecutor serves the draft indictment on the Crown Court officer, where rule 10.4 (Draft indictment served by the prosecutor after sending for trial), rule 10.5 (Draft indictment served by the prosecutor with a High Court judge’s permission), rule 10.7 (Draft indictment served by the prosecutor on re-instituting proceedings) or rule 10.8 (Draft indictment served by the prosecutor at the direction of the Court of Appeal) applies,
 - (iii) when the Crown Court approves the proposed indictment, where rule 10.6 applies (Draft indictment approved by the Crown Court with deferred prosecution agreement).

(6) An indictment must be in one of the forms set out in the Practice Direction unless—

- (a) rule 10.3 applies; or
- (b) the Crown Court otherwise directs.

(7) Unless the Crown Court otherwise directs, the court officer must—

- (a) endorse any paper copy of the indictment made for the court with—
 - (i) a note to identify it as a copy of the indictment, and
 - (ii) the date on which the draft indictment became the indictment under paragraph (5); and

(b) where rule 10.4, 10.5, 10.7 or 10.8 applies, serve a copy of the indictment on all parties.

(8) The Crown Court may extend the time limit under rule 10.4, 10.5, 10.7 or 10.8, even after it has expired.

[Note. Under section 2(6) of the Administration of Justice (Miscellaneous Provisions) Act 1933, Criminal Procedure Rules may provide for the manner in which and the time at which ‘bills of indictment’ are to be ‘preferred’.

Under rule 3.21 (Application for joint or separate trials, etc.), the court may order separate trials of counts in the circumstances listed in that rule.]

Draft indictment generated electronically on sending for trial

10.3.—(1) Unless the Crown Court otherwise directs before the defendant is arraigned, this rule applies where—

- (a) a magistrates’ court sends a defendant to the Crown Court for trial;
- (b) the magistrates’ court officer serves on the Crown Court officer the notice required by rule 9.5 (Duty of magistrates’ court officer); and
- (c) by means of such electronic arrangements as the court officer may make for the purpose, there is presented to the Crown Court as a count—
 - (i) each allegation of an indictable offence specified in the notice, and
 - (ii) each allegation specified in the notice to which section 40 of the Criminal Justice Act 1988 applies (specified summary offences founded on the prosecution evidence).

(2) Where this rule applies—

- (a) each such allegation constitutes a count;
- (b) the allegation or allegations so specified together constitute a draft indictment;
- (c) before the draft indictment so constituted is preferred before the Crown Court under rule 10.2(5)(b)(i) the prosecutor may substitute for any count an amended count to the same effect and charging the same offence;
- (d) if under rule 9.15 (Service of prosecution evidence) the prosecutor has served copies of the documents containing the evidence on which the prosecution case relies then, before the draft indictment is preferred before the Crown Court under rule 10.2(5)(b)(i), the prosecutor may substitute or add—
 - (i) any count charging substantially the same offence as one specified in the notice, and
 - (ii) any other count charging an offence which the Crown Court can try and which is based on the prosecution evidence so served; and
- (e) a prosecutor who substitutes or adds a count under paragraph (2)(c) or (d) must serve that count on the Crown Court officer and the defendant.

[Note. An ‘indictable offence’ is (i) an offence classified as triable on indictment exclusively, or (ii) an offence classified as triable either on indictment or summarily. See also the note to rule 9.1 (Allocation and sending for trial: When this Part applies).

Section 40 of the Criminal Justice Act 1988 lists summary offences which may be included in an indictment if the charge—

- (a) *is founded on the same facts or evidence as a count charging an indictable offence; or*
- (b) *is part of a series of offences of the same or similar character as an indictable offence which is also charged.]*

Draft indictment served by the prosecutor after sending for trial

10.4.—(1) This rule applies where—

- (a) a magistrates’ court sends a defendant to the Crown Court for trial; and

(b) rule 10.3 (Draft indictment generated electronically on sending for trial) does not apply.

(2) The prosecutor must serve a draft indictment on the Crown Court officer not more than 28 days after serving under rule 9.15 (Service of prosecution evidence) copies of the documents containing the evidence on which the prosecution case relies.

Draft indictment served by the prosecutor with a High Court judge’s permission

10.5.—(1) This rule applies where—

- (a) the prosecutor applies to a High Court judge under rule 10.9 (Application to a High Court judge for permission to serve a draft indictment); and
- (b) the judge gives permission to serve a proposed indictment.

(2) Where this rule applies—

- (a) that proposed indictment constitutes the draft indictment; and
- (b) the prosecutor must serve the draft indictment on the Crown Court officer not more than 28 days after the High Court judge’s decision.

Draft indictment approved with deferred prosecution agreement

10.6.—(1) This rule applies where—

- (a) the prosecutor applies to the Crown Court under rule 11.4 (Deferred prosecution agreements: Application to approve the terms of an agreement); and
- (b) the Crown Court approves the proposed indictment served with that application.

(2) Where this rule applies, that proposed indictment constitutes the draft indictment.

Draft indictment served by the prosecutor on re-instituting proceedings

10.7.—(1) This rule applies where the prosecutor wants to re-institute proceedings in the Crown Court under section 22B of the Prosecution of Offences Act 1985.

(2) The prosecutor must serve a draft indictment on the Crown Court officer not more than 3 months after the proceedings were stayed under section 22(4) of that Act(a).

Draft indictment served by the prosecutor at the direction of the Court of Appeal

10.8.—(1) This rule applies where the Court of Appeal orders a retrial.

(2) The prosecutor must serve a draft indictment on the Crown Court officer not more than 28 days after that order.

Application to a High Court judge for permission to serve a draft indictment

10.9.—(1) This rule applies where a prosecutor wants a High Court judge’s permission to serve a draft indictment.

(2) Such a prosecutor must—

- (a) apply in writing;
- (b) serve the application on—
 - (i) the court officer, and
 - (ii) the proposed defendant, unless the judge otherwise directs; and
- (c) ask for a hearing, if the prosecutor wants one, and explain why it is needed.

(3) The application must—

(a) 1985 c. 23; section 22(4) was amended by section 43 of the Crime and Disorder Act 1998 (c. 37).

- (a) attach—
 - (i) the proposed indictment,
 - (ii) copies of the documents containing the evidence on which the prosecutor relies, including any written witness statement or statements complying with rule 16.2 (Content of written witness statement) and any documentary exhibit to any such statement,
 - (iii) a copy of any indictment on which the defendant already has been arraigned, and
 - (iv) if not contained in such an indictment, a list of any offence or offences for which the defendant already has been sent for trial;
 - (b) include—
 - (i) a concise statement of the circumstances in which, and the reasons why, the application is made, and
 - (ii) a concise summary of the evidence contained in the documents accompanying the application, identifying each passage in those documents said to evidence each offence alleged by the prosecutor and relating that evidence to each count in the proposed indictment; and
 - (c) contain a statement that, to the best of the prosecutor’s knowledge, information and belief—
 - (i) the evidence on which the prosecutor relies will be available at the trial, and
 - (ii) the allegations contained in the application are substantially true
 unless the application is made by or on behalf of the Director of Public Prosecutions or the Director of the Serious Fraud Office.
- (4) A proposed defendant served with an application who wants to make representations to the judge must—
- (a) serve the representations on the court officer and on the prosecutor;
 - (b) do so as soon as practicable, and in any event within such period as the judge directs; and
 - (c) ask for a hearing, if the proposed defendant wants one, and explain why it is needed.
- (5) The judge may determine the application—
- (a) without a hearing, or at a hearing in public or in private;
 - (b) with or without receiving the oral evidence of any proposed witness.
- (6) At any hearing, if the judge so directs a statement required by paragraph (3)(c) must be repeated on oath or affirmation.
- (7) If the judge gives permission to serve a draft indictment, the decision must be recorded in writing and endorsed on, or annexed to, the proposed indictment.

[Note. See section 2(6) of the Administration of Justice (Miscellaneous Provisions) Act 1933(a).]

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