

## PART 28

## SENTENCING PROCEDURES IN SPECIAL CASES

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[*Note. See also—*

- (a) *Part 24, which contains rules about the general procedure on sentencing in a magistrates' court;*
- (b) *Part 25, which contains rules about the general procedure on sentencing in the Crown Court;*
- (c) *Part 29 (Road traffic penalties);*
- (d) *Part 30 (Enforcement of fines and other orders for payment); and*
- (e) *Part 32 (Breach, revocation and amendment of community and other orders).]*

**Reasons for not following usual sentencing requirements**

**28.1.**—(1) This rule applies where the court decides—

- (a) not to follow a relevant sentencing guideline;
- (b) not to make, where it could—
  - (i) a reparation order (unless it passes a custodial or community sentence),
  - (ii) a compensation order,
  - (iii) a slavery and trafficking reparation order, or
  - (iv) a travel restriction order;
- (c) not to order, where it could—
  - (i) that a suspended sentence of imprisonment is to take effect,
  - (ii) the endorsement of the defendant's driving record, or
  - (iii) the defendant's disqualification from driving, for the usual minimum period or at all;
- (d) to pass a lesser sentence than it otherwise would have passed because the defendant has assisted, or has agreed to assist, an investigator or prosecutor in relation to an offence.

(2) The court must explain why it has so decided, when it explains the sentence that it has passed.

(3) Where paragraph (1)(d) applies, the court must arrange for such an explanation to be given to the defendant and to the prosecutor in writing, if the court thinks that it would not be in the public interest to explain in public.

*[Note. See section 174 of the Criminal Justice Act 2003(a); section 73(8) of the Powers of Criminal Courts (Sentencing) Act 2000(b); section 130(3) of the 2000 Act(c); section 8(7) of the Modern Slavery Act 2015(d); section 33(2) of the Criminal Justice and Police Act 2001(e); paragraph 8(3) of Schedule 12 to the 2003 Act(f); section 47(1) of the Road Traffic Offenders Act 1988(g); and section 73 of the Serious Organised Crime and Police Act 2005(h).*

*For the duty to explain the sentence the court has passed, see section 174(1) of the 2003 Act and rules 24.11(9) (procedure where a magistrates' court convicts) and 25.16(7) (procedure where the Crown Court convicts).*

*Under section 125 of the Coroners and Justice Act 2009(i), the court when sentencing must follow any relevant sentencing guideline unless satisfied that to do so would be contrary to the interests of justice.*

*For the circumstances in which the court may make—*

- (a) a reparation or compensation order, see sections 73(j) and 130(k) of the 2000 Act;*
- (b) a slavery and trafficking reparation order, see section 8 of the 2015 Act;*
- (c) a travel restriction order against a defendant convicted of drug trafficking, see sections 33 and 34 of the 2001 Act(l).]*

### **Notice of requirements of suspended sentence and community, etc. orders**

**28.2.**—(1) This rule applies where the court—

- (a) makes a suspended sentence order;
- (b) imposes a requirement under—
  - (i) a community order,
  - (ii) a youth rehabilitation order, or
  - (iii) a suspended sentence order; or
- (c) orders the defendant to attend meetings with a supervisor.

(2) The court officer must notify—

- (a) the defendant of—
  - (i) the length of the sentence suspended by a suspended sentence order, and
  - (ii) the period of the suspension;
- (b) the defendant and, where the defendant is under 14, an appropriate adult, of—
  - (i) any requirement or requirements imposed, and

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(a) 2003 c. 44; section 174 was substituted by section 64 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(b) 2000 c. 6.

(c) 2000 c. 6.

(d) 2015 c. 30; section 8 comes into force on a date to be appointed.

(e) 2001 c. 16.

(f) 2003 c. 44.

(g) 1988 c. 53.

(h) 2005 c. 15.

(i) 2009 c. 25.

(j) 2000 c. 6; section 73 was amended by section 74 of, and paragraph 4(1)(a) and (2) of Schedule 7 to, the Criminal Justice and Court Services Act 2000 (c. 43), sections 304 and 332 of, and paragraphs 90 and 106 of Schedule 32 and Part 37 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), section 64 of, and Part 4 of Schedule 5 to, the Children Act 2004 (c. 31), article 3 and paragraph 14 (1) and (14) of Schedule 1 to S.I. 2008/912 and section 6(2) of, and paragraphs 51 and 53 of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(k) 2000 c. 6; section 130 was amended by paragraphs 90 and 117 of Schedule 32 to the Criminal Justice Act 2003 (c. 44), section 14(1) of, and paragraph 29 of Schedule 1 to, the Fraud Act 2006 (c. 35), section 49 of, and paragraph 6(b) of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38), section 148(1) of, and paragraphs 40 and 46 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4) and section 63 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(l) 2001 c. 16; section 33 was amended by sections 39(3) and 39(4) of the Identity Cards Act 2006 (c. 15).

- (ii) the identity of any responsible officer or supervisor, and the means by which that person may be contacted;
  - (c) any responsible officer or supervisor, and, where the defendant is under 14, the appropriate qualifying officer (if that is not the responsible officer), of—
    - (i) the defendant’s name, address and telephone number (if available),
    - (ii) the offence or offences of which the defendant was convicted, and
    - (iii) the requirement or requirements imposed; and
  - (d) the person affected, where the court imposes a requirement—
    - (i) for the protection of that person from the defendant, or
    - (ii) requiring the defendant to reside with that person.
- (3) If the court imposes an electronic monitoring requirement, the monitor of which is not the responsible officer, the court officer must—
- (a) notify the defendant and, where the defendant is under 16, an appropriate adult, of the monitor’s identity, and the means by which the monitor may be contacted; and
  - (b) notify the monitor of—
    - (i) the defendant’s name, address and telephone number (if available),
    - (ii) the offence or offences of which the defendant was convicted,
    - (iii) the place or places at which the defendant’s presence must be monitored,
    - (iv) the period or periods during which the defendant’s presence there must be monitored, and
    - (v) the identity of the responsible officer, and the means by which that officer may be contacted.

*[Note. See section 219(1) of the Criminal Justice Act 2003(a); paragraph 34(1) of Schedule 1 to the Criminal Justice and Immigration Act 2008(b); and section 1A(7) of the Street Offences Act 1959(c).*

*For the circumstances in which the court may—*

- (a) *make a suspended sentence order, see section 189 of the 2003 Act(d);*
- (b) *make a community order (defined by section 177 of the Criminal Justice Act 2003(e)), or a youth rehabilitation order (defined by section 7 of the Criminal Justice and Immigration Act 2008(f)), and for the identity and duties of responsible officers and qualifying officers, see generally—*
  - (i) *Part 12 of the 2003 Act, and*
  - (ii) *Part 1 of the 2008 Act;*
- (c) *order the defendant to attend meetings with a supervisor, see section 1(2A) of the Street Offences Act 1959(g).*

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(a) 2003 c. 44; section 219(1) was amended by article 3 of, and paragraphs 19(1) and (12) of Schedule 1 to, S.I. 2008/912.  
 (b) 2008 c. 4.  
 (c) 1959 c. 57; section 1A was inserted by section 17(1) and (3) of the Policing and Crime Act 2009 (c. 26).  
 (d) 2003 c. 44; section 189 was amended by articles 2(1) and (2), and 3(1) and (2) of S.I. 2005/643 and section 68 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).  
 (e) 2003 c. 44; section 177 was amended by section 6 of, and paragraphs 71 and 82 of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c. 4), sections 66, 70 and 72 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), section 44 of, and paragraphs 1 and 2 of Schedule 16 to, the Crime and Courts Act 2013 (c. 22) and section 15 of, and paragraphs 1 and 2 of Schedule 5 to, the Offender Rehabilitation Act 2014 (c. 11). It is further amended by section 76 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and section 44 of, and paragraphs 11 and 12 of Schedule 16 to, the Crime and Courts Act 2013 (c. 22), with effect from dates to be appointed.  
 (f) 2008 c. 4.  
 (g) 1959 c. 57; section 1(2A) was inserted by section 17(1) and (3) of the Policing and Crime Act 2009 (c. 26).

*Under sections 190 or 215 of the 2003 Act(a), or section 1(2) of the 2008 Act(b), the court may impose an electronic monitoring requirement to secure the monitoring of the defendant's compliance with certain other requirements (for example, a curfew or an exclusion).]*

### Notification requirements

**28.3.**—(1) This rule applies where, on a conviction, sentence or order, legislation requires the defendant—

- (a) to notify information to the police; or
- (b) to be included in a barred list.

(2) The court must tell the defendant that such requirements apply, and under what legislation.

*[Note. For the circumstances in which a defendant is required to notify information to the police, see—*

- (a) *Part 2 of, and Schedule 3 to, the Sexual Offences Act 2003(c) (notification for the period specified by section 82 of the Act(d) after conviction, etc. of an offence listed in Schedule 3 and committed in the circumstances specified in that Schedule);*
- (b) *Part 4 of the Counter Terrorism Act 2008(e) (notification after conviction of a specified offence of, or connected with, terrorism, for which a specified sentence is imposed).*

*For the circumstances in which a defendant will be included in a barred list, see paragraphs 1, 2, 7, 8 and 24 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006(f). See also paragraph 25 of that Schedule(g).*

*These requirements are not part of the court's sentence.]*

### Variation of sentence

**28.4.**—(1) This rule—

- (a) applies where a magistrates' court or the Crown Court can vary or rescind a sentence or order, other than an order to which rule 24.18 applies (Setting aside a conviction or varying a costs etc. order); and
- (b) authorises the Crown Court, in addition to its other powers, to do so within the period of 56 days beginning with another defendant's acquittal or sentencing where—
  - (i) defendants are tried separately in the Crown Court on the same or related facts alleged in one or more indictments, and
  - (ii) one is sentenced before another is acquitted or sentenced.

(2) The court may exercise its power—

- (a) on application by a party, or on its own initiative;

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(a) 2003 c. 44; section 190 was amended by sections 68 and 72 of, and paragraphs 2 and 4 of Schedule 9 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and section 15 of, and paragraphs 1 and 3 of Schedule 5 to, the Offender Rehabilitation Act 2014 (c. 11). It is further amended by section 76 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and section 44 of, and paragraphs 11 and 13 of Schedule 16 to, the Crime and Courts Act 2013 (c. 22), with effect from dates to be appointed. Section 215 is amended by section 76 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and section 44 of, and paragraphs 11 and 16 of Schedule 16 to, the Crime and Courts Act 2013 (c. 22), with effect from dates to be appointed.

(b) 2008 c. 4.

(c) 2003 c. 42; Schedule 3 was amended by article 2 of S.I. 2007/296, section 63(2) of, and paragraph 63 of Schedule 6 to, the Serious Crimes Act 2007 (c. 27), section 148(1) of, and paragraphs 53 and 58 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4) and section 177(1) of, and paragraph 62 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25). Other amendments to Schedule 3 are not relevant to these Rules.

(d) 2003 c. 42; section 82 was amended by section 57 of the Violent Crime Reduction Act 2006 (c. 38).

(e) 2008 c. 28.

(f) 2006 c. 47; paragraphs 1, 2, 7 and 8 of Schedule 3 were amended by sections 81 and 89 of the Policing and Crime Act 2009 (c. 26). Paragraph 24 was amended by article 2 of S.I. 2008/3050.

(g) 2006 c. 47; paragraph 25 of Schedule 3 was amended by article 3 of S.I. 2008/3050 and section 81 of the Policing and Crime Act 2009 (c. 26).

- (b) at a hearing, in public or in private, or without a hearing.
- (3) A party who wants the court to exercise that power must—
  - (a) apply in writing as soon as reasonably practicable after—
    - (i) the sentence or order that that party wants the court to vary or rescind, or
    - (ii) where paragraph (1)(b) applies, the other defendant’s acquittal or sentencing;
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) each other party; and
  - (c) in the application—
    - (i) explain why the sentence should be varied or rescinded,
    - (ii) specify the variation that the applicant proposes, and
    - (iii) if the application is late, explain why.
- (4) The court must not exercise its power in the defendant’s absence unless—
  - (a) the court makes a variation—
    - (i) which is proposed by the defendant, or
    - (ii) the effect of which is that the defendant is no more severely dealt with under the sentence as varied than before; or
  - (b) the defendant has had an opportunity to make representations at a hearing (whether or not the defendant in fact attends).
- (5) The court may—
  - (a) extend (even after it has expired) the time limit under paragraph (3), unless the court’s power to vary or rescind the sentence cannot be exercised;
  - (b) allow an application to be made orally.

*[Note. Under section 142 of the Magistrates’ Courts Act 1980(a), in some cases a magistrates’ court can vary or rescind a sentence or other order that it has imposed or made, if that appears to be in the interests of justice. The power cannot be exercised if the Crown Court or the High Court has determined an appeal about that sentence or order. See also rule 24.18 (Setting aside a conviction or varying a costs etc. order), which governs the exercise by a magistrates’ court of the power conferred by section 142 of the 1980 Act in the circumstances to which that rule applies.*

*Under section 155 of the Powers of Criminal Courts (Sentencing) Act 2000(b), the Crown Court can vary or rescind a sentence or other order that it has imposed or made. The power cannot be exercised—*

- (a) *after the period of 56 days beginning with the sentence or order (but see the note below); or*
- (b) *if an appeal or application for permission to appeal against that sentence or order has been determined.*

*Under section 155(7), Criminal Procedure Rules can extend that period of 56 days where another defendant is tried separately in the Crown Court on the same or related facts alleged in one or more indictments.]*

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(a) 1980 c. 43; section 142 was amended by sections 26 and 29 of, and Schedule 3 to, the Criminal Appeal Act 1995 (c. 35).  
 (b) 2000 c. 6; section 155 was amended by article 3 of, and paragraphs 39 and 43 of the Schedule to, S.I. 2004/2035, sections 47 and 149 of, and paragraph 28 (1), (2), (3) and (4) of Schedule 8 and Part 3 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraphs 52 and 54 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

**Application to vary or discharge a compensation, etc. order**

**28.5.**—(1) This rule applies where on application by the defendant a magistrates' court can vary or discharge—

(a) a compensation order; or

(b) a slavery and trafficking reparation order.

(2) A defendant who wants the court to exercise that power must—

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

(b) serve the application on the magistrates' court officer;

(c) where the order was made in the Crown Court, serve a copy of the application on the Crown Court officer; and

(d) in the application, specify the order that the defendant wants the court to vary or discharge and explain (as applicable)—

(i) what civil court finding shows that the injury, loss or damage was less than it had appeared to be when the order was made,

(ii) in what circumstances the person for whose benefit the order was made has recovered the property for the loss of which it was made,

(iii) why a confiscation order, unlawful profit order or slavery and trafficking reparation order makes the defendant now unable to pay compensation or reparation in full, or

(iv) in what circumstances the defendant's means have been reduced substantially and unexpectedly, and why they seem unlikely to increase for a considerable period.

(3) The court officer must serve a copy of the application on the person for whose benefit the order was made.

(4) The court must not vary or discharge the order unless—

(a) the defendant, and the person for whose benefit it was made, each has had an opportunity to make representations at a hearing (whether or not either in fact attends); and

(b) where the order was made in the Crown Court, the Crown Court has notified its consent.

*[Note. For the circumstances in which—*

(a) *the court may make a compensation order, see section 130 of the Powers of Criminal Courts (Sentencing) Act 2000(a);*

(b) *the court may make a slavery and trafficking reparation order, see section 8 of the Modern Slavery Act 2015(b);*

(c) *a magistrates' court with power to enforce such an order may vary or discharge it under the 2000 Act, see section 133(c). (Under section 133(4), where the order was made in the Crown Court, the magistrates' court must first obtain the Crown Court's consent.)]*

**Application to remove, revoke or suspend a disqualification or restriction**

**28.6.**—(1) This rule applies where, on application by the defendant, the court can remove, revoke or suspend a disqualification or restriction included in a sentence (except a disqualification from driving).

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(a) 2000 c. 6; section 130 was amended by paragraphs 90 and 117 of Schedule 32 to the Criminal Justice Act 2003 (c. 44), section 14(1) of, and paragraph 29 of Schedule 1 to, the Fraud Act 2006 (c. 35), section 49 of, and paragraph 6(b) of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38), section 148(1) of, and paragraphs 40 and 46 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4) and section 63 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(b) 2015 c. 30; section 8 comes into force on a date to be appointed.

(c) 2000 c. 6; section 133 was amended by section 456 of, and paragraphs 1 and 37(1) and (3) of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29) and paragraphs 7 and 9 of the Schedule to, the Prevention of Social Housing Fraud 2013 (c. 3). It is further amended by paragraph 14 of Schedule 5 to the Modern Slavery Act 2015 (c. 30), with effect from a date to be appointed.

- (2) A defendant who wants the court to exercise such a power must—
- (a) apply in writing, no earlier than the date on which the court can exercise the power;
  - (b) serve the application on the court officer; and
  - (c) in the application—
    - (i) specify the disqualification or restriction, and
    - (ii) explain why the defendant wants the court to remove, revoke or suspend it.
- (3) The court officer must serve a copy of the application on the chief officer of police for the local justice area.

*[Note. Part 29 contains rules about disqualification from driving. See in particular rule 29.2.]*

*Part 34 (Appeal to the Crown Court) and Part 35 (Appeal to the High Court by case stated) contain rules about applications to suspend disqualifications pending appeal.*

*For the circumstances in which the court may—*

- (a) remove a disqualification from keeping a dog, see section 4(6) of the Dangerous Dogs Act 1991(a). The court may not consider an application made within 1 year of the disqualification; or, after that, within 1 year of any previous application that was refused.*
- (b) revoke or suspend a travel restriction order against a defendant convicted of drug trafficking, see section 35 of the Criminal Justice and Police Act 2001(b). The court may not consider an application made within 2 years of the disqualification, in any case; or, after that, before a specified period has expired.]*

#### **Application for a restitution order by the victim of a theft**

**28.7.**—(1) This rule applies where, on application by the victim of a theft, the court can order a defendant to give that person goods obtained with the proceeds of goods stolen in that theft.

- (2) A person who wants the court to exercise that power if the defendant is convicted must—
- (a) apply in writing as soon as practicable (without waiting for the verdict);
  - (b) serve the application on the court officer; and
  - (c) in the application—
    - (i) identify the goods, and
    - (ii) explain why the applicant is entitled to them.

(3) The court officer must serve a copy of the application on each party.

(4) The court must not determine the application unless the applicant and each party has had an opportunity to make representations at a hearing (whether or not each in fact attends).

- (5) The court may —
- (a) extend (even after it has expired) the time limit under paragraph (2); and
  - (b) allow an application to be made orally.

*[Note. For the circumstances in which the court may order—*

- (a) the return of stolen goods, see section 148 of the Powers of Criminal Courts (Sentencing) Act 2000(c);*
- (b) the defendant to give the victim of the theft goods that are not themselves the stolen goods but which represent their proceeds, see section 148(2)(b) of the 2000 Act.]*

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(a) 1991 c. 65; section 4(6) was amended by section 109(1) of, and paragraph 353 of Schedule 8 to, the Courts Act 2003 (c. 39).

(b) 2001 c. 16; section 35 was amended by sections 39(3) of the Identity Cards Act 2006 (c. 15).

(c) 2000 c. 6; section 148 was amended by paragraph 74 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

**Directions for commissioning medical reports for sentencing purposes**

- 28.8.**—(1) This rule applies where for sentencing purposes the court requires—
- (a) a medical examination of the defendant and a report; or
  - (b) information about the arrangements that could be made for the defendant where the court is considering—
    - (i) a hospital order, or
    - (ii) a guardianship order.
- (2) The court must—
- (a) identify each issue in respect of which the court requires expert medical opinion and the legislation applicable;
  - (b) specify the nature of the expertise likely to be required for giving such opinion;
  - (c) identify each party or participant by whom a commission for such opinion must be prepared, who may be—
    - (i) a party (or party’s representative) acting on that party’s own behalf,
    - (ii) a party (or party’s representative) acting on behalf of the court, or
    - (iii) the court officer acting on behalf of the court;
  - (d) where there are available to the court arrangements with the National Health Service under which an assessment of a defendant’s mental health may be prepared, give such directions as are needed under those arrangements for obtaining the expert report or reports required;
  - (e) where no such arrangements are available to the court, or they will not be used, give directions for the preparation of a commission or commissions for an expert report or expert reports, including—
    - (i) such directions as can be made about supplying the expert or experts with the defendant’s medical records,
    - (ii) directions about the other information, about the defendant and about the offence or offences alleged to have been committed by the defendant, which is to be supplied to each expert, and
    - (iii) directions about the arrangements that will apply for the payment of each expert;
  - (f) set a timetable providing for—
    - (i) the date by which a commission is to be delivered to each expert,
    - (ii) the date by which any failure to accept a commission is to be reported to the court,
    - (iii) the date or dates by which progress in the preparation of a report or reports is to be reviewed by the court officer, and
    - (iv) the date by which each report commissioned is to be received by the court; and
  - (g) identify the person (each person, if more than one) to whom a copy of a report is to be supplied, and by whom.
- (3) A commission addressed to an expert must—
- (a) identify each issue in respect of which the court requires expert medical opinion and the legislation applicable;
  - (b) include—
    - (i) the information required by the court to be supplied to the expert,
    - (ii) details of the timetable set by the court, and
    - (iii) details of the arrangements that will apply for the payment of the expert;
  - (c) identify the person (each person, if more than one) to whom a copy of the expert’s report is to be supplied; and
  - (d) request confirmation that the expert from whom the opinion is sought—



- (i) accepts the commission, and
- (ii) will adhere to the timetable.

*[Note. See also rule 3.28 (directions for commissioning medical reports in connection with fitness to participate in the trial, etc.).]*

*For sentencing purposes the court may request a medical examination of the defendant and a report under—*

- (a) section 35 of the Mental Health Act 1983(a), under which the court may order the defendant’s detention in hospital to obtain a medical report;*
- (b) section 36 of the 1983 Act(b), under which the Crown Court may order the defendant’s detention in hospital instead of in custody pending trial or sentence;*
- (c) section 37 of the 1983 Act(c), under which the court may order the defendant’s detention and treatment in hospital, or make a guardianship order, instead of disposing of the case in another way (section 37(3) allows a magistrates’ court to make such an order without convicting the defendant if satisfied that the defendant did the act or made the omission charged);*
- (d) 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;*
- (e) 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;*
- (f) section 207 of the 2003 Act(f) (in the case of a defendant aged 18 or over), or section 1(1)(k) of the Criminal Justice and Immigration Act 2008(g) (in the case of a defendant who is under 18), under which the court may impose a mental health treatment requirement.*

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

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- (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).
  - (f)** 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.
  - (g)** 2008 c. 4.

*Under section 11 of the Powers of Criminal Courts (Sentencing) Act 2000(a), 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(b).*

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

### **Information to be supplied on admission to hospital or guardianship**

**28.9.**—(1) This rule applies where the court—

- (a) orders the defendant's detention and treatment in hospital; or
- (b) makes a guardianship order.

(2) Unless the court otherwise directs, the court officer must, as soon as practicable, serve on (as applicable) the hospital or the guardian—

- (a) a record of the court's order;
- (b) such information as the court has received that appears likely to assist in treating or otherwise dealing with the defendant, including information about—
  - (i) the defendant's mental condition,
  - (ii) the defendant's other circumstances, and
  - (iii) the circumstances of the offence.

*[Note. For the circumstances in which the court may order the defendant's detention and treatment in hospital, see sections 35, 36, 37, 38 and 44 of the Mental Health Act 1983(e). For the circumstances in which the court may make a guardianship order, see the same section 37.]*

### **Information to be supplied on committal for sentence, etc.**

**28.10.**—(1) This rule applies where a magistrates' court or the Crown Court convicts the defendant and—

- (a) commits or adjourns the case to another court—

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(a) 2000 c. 6.

(b) 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).

(c) 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).

(d) 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.

(e) 1983 c. 20; section 44 was amended by sections 10, 40 and 55 of, and Part 8 of Schedule 11 to, the Mental Health Act 2007 (c. 12).

- (i) for sentence, or
  - (ii) for the defendant to be dealt with for breach of a deferred sentence, a conditional discharge, or a suspended sentence of imprisonment, imposed by that other court;
  - (b) deals with a deferred sentence, a conditional discharge, or a suspended sentence of imprisonment, imposed by another court; or
  - (c) makes an order that another court is, or may be, required to enforce.
- (2) Unless the convicting court otherwise directs, the court officer must, as soon as practicable—
- (a) where paragraph (1)(a) applies, arrange the transmission from the convicting to the other court of a record of any relevant—
    - (i) certificate of conviction,
    - (ii) magistrates' court register entry,
    - (iii) decision about bail, for the purposes of section 5 of the Bail Act 1976(a),
    - (iv) note of evidence,
    - (v) statement or other document introduced in evidence,
    - (vi) medical or other report,
    - (vii) representation order or application for such order, and
    - (viii) interim driving disqualification;
  - (b) where paragraph (1)(b) or (c) applies, arrange—
    - (i) the transmission from the convicting to the other court of notice of the convicting court's order, and
    - (ii) the recording of that order at the other court;
  - (c) in every case, notify the defendant and, where the defendant is under 14, an appropriate adult, of the location of the other court.

*[Note. For the circumstances in which—*

- (a) *a magistrates' court may (and in some cases must) commit the defendant to the Crown Court for sentence, see sections 3, 3A, 3B, 3C, 4, 4A and 6 of the Powers of Criminal Courts (Sentencing) Act 2000(b) and section 43 of the Mental Health Act 1983(c);*
- (b) *a magistrates' court may adjourn the case to another magistrates' court for sentence, see section 10 of the Magistrates' Courts Act 1980(d) and section 10 of the 2000 Act(e);*
- (c) *a magistrates' court or the Crown Court may (and in some cases must) adjourn the case to a youth court for sentence, see section 8 of the 2000 Act(f);*

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- (a) 1976 c. 63; section 5 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 60 of the Criminal Justice Act 1982 (c. 48), paragraph 1 of Schedule 3 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 53 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 129(1) of the Criminal Justice and Police Act 2001 (c. 16), paragraph 182 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 48 of Schedule 3, paragraphs 1 and 2 of Schedule 36, and Parts 2, 4 and 12 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 208 of, and paragraphs 33 and 35 of Schedule 21 to, the Legal Services Act 2007 (c. 27).
  - (b) 2000 c. 6; sections 3, 4 and 6 were amended, and sections 3A, 3B, 3C and 4A inserted, by paragraphs 21, 22A, 23, 24, 25 and 28 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 3A was amended by section 53 of, and paragraphs 1 and 9 of Schedule 13 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraphs 7 and 8 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 3C was amended by paragraphs 7 and 9 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 6 was further amended by paragraphs 90 and 91 of Schedule 32, and Parts 7 and 9 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).
  - (c) 1983 c. 20; section 43 was amended by paragraph 91 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraph 55 of Schedule 3, and Part 9 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).
  - (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).
  - (e) 2000 c. 6.
  - (f) 2000 c. 6; section 8 was amended by section 41 of, and paragraph 74 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44) and article 2 of, and paragraph 62 of the Schedule to S.I. 2005/886.

- (d) a youth court may adjourn the case to a magistrates' court for sentence, see section 9 of the 2000 Act(a);
- (e) a magistrates' court may transfer a fine to be enforced to another court, see sections 89 and 90 of the 1980 Act(b).

For the court's powers where it convicts a defendant who is subject to a deferred sentence, a conditional discharge, or a suspended sentence of imprisonment, imposed by another court, see sections 1C and 13 of the 2000 Act(c) and section 189 of, and Schedule 12 to, the Criminal Justice Act 2003(d).

Under section 140 of the 2000 Act(e), a fine imposed or other sum ordered to be paid in the Crown Court is enforceable by a magistrates' court specified in the order, or from which the case was committed or sent to the Crown Court.

See also section 219(3) of the 2003 Act(f); paragraph 34(3) of Schedule 1 to the Criminal Justice and Immigration Act 2008(g); and section 1A(9) of the Street Offences Act 1959(h).]

### Application to review sentence because of assistance given or withheld

**28.11.**—(1) This rule applies where the Crown Court can reduce or increase a sentence on application by a prosecutor in a case in which—

- (a) since being sentenced, the defendant has assisted, or has agreed to assist, an investigator or prosecutor in relation to an offence; or
- (b) since receiving a reduced sentence for agreeing to give such assistance, the defendant has failed to do so.

(2) A prosecutor who wants the court to exercise that power must—

- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
- (b) serve the application on—
  - (i) the court officer, and
  - (ii) the defendant; and
- (c) in the application—
  - (i) explain why the sentence should be reduced, or increased, as appropriate, and
  - (ii) identify any other matter relevant to the court's decision, including any sentencing guideline or guideline case.

(3) The general rule is that the application must be determined by the judge who passed the sentence, unless that judge is unavailable.

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(a) 2000 c. 6; section 9 was amended by article 2 of, and paragraph 63 of the Schedule to, S.I. 2005/886.  
 (b) 1980 c. 43; section 89 was amended by section 47 of the Criminal Justice and Public Order Act 1994 (c. 33), paragraphs 95 and 107 of Schedule 13 to the Access to Justice Act 1999 (c. 22), paragraph 225 of Schedule 8 to the Courts Act 2003 (c. 39) and articles 46 and 49 of S.I. 2006/1737. Section 90 was amended by section 47(2) of the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 226 of Schedule 8 to the Courts Act 2003 (c. 39) and articles 46 and 50 of S.I. 2006/1737.  
 (c) 2000 c. 6; section 1C was substituted, together with sections 1, 1A, 1B and 1D, for sections 1 and 2 as originally enacted, by section 278 of, and paragraph 1 of Schedule 23 to, the Criminal Justice Act 2003 (c. 44). Section 13 was amended by article 2 of, and paragraph 64 of the Schedule to, S.I. 2005/886.  
 (d) 2003 c. 44; section 189 was amended by articles 2(1) and (2), and 3(1) and (2) of S.I. 2005/643 and section 68 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).  
 (e) 2000 c. 6; section 140 was amended by paragraphs 74 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and section 40(4) of, and paragraph 69 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4). It is further amended by sections 74 and 75 of, and paragraphs 160 and 194 of Schedule 8 to, the Criminal Justice and Court Services Act 2000 (c. 43) with effect from a date to be appointed.  
 (f) 2003 c. 44; section 219(3) was amended by article 2 of, and paragraph 105(b) of the Schedule to, S.I. 2005/886.  
 (g) 2008 c. 4.  
 (h) 1959 c. 57; section 1A was inserted by section 17(1) and (3) of the Policing and Crime Act 2009 (c. 26).

(4) The court must not determine the application in the defendant's absence unless the defendant has had an opportunity to make representations at a hearing (whether or not the defendant in fact attends).

*[Note. Under section 73 of the Serious Organised Crime and Police Act 2005(a), the Crown Court may pass a lesser sentence than it otherwise would have passed because the defendant has assisted, or has agreed to assist, an investigator or prosecutor in relation to an offence.*

*Under section 74 of the 2005 Act(b), where the Crown Court has sentenced a defendant a prosecutor may apply to the court—*

- (a) to reduce the sentence, if the defendant subsequently assists, or agrees to assist, in the investigation or prosecution of an offence; or*
- (b) to increase a reduced sentence to that which the court otherwise would have passed, if the defendant agreed to give such assistance but subsequently has knowingly failed to do so.*

*Such an application may be made only where the defendant is still serving the sentence and the prosecutor thinks it is in the interests of justice to apply.]*

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(a) 2005 c. 15.

(b) 2005 c. 15; section 74 was amended by article 13 of, and paragraphs 1 and 19 of Schedule 15 to, S.I. 2010/976.