

MAGISTRATES' COURTS TRIAL PREPARATION FORM

NOTES FOR GUIDANCE

A. Using the form – the overriding objective

1. These notes contain guidance on using the form for preparation for trial in a magistrates' court which is prescribed by the Criminal Procedure Rules and Practice Directions for use in connection with the rules in Part 3 of the Criminal Procedure Rules. The purpose of the form, and of these notes, is to assist the parties and the court to comply with their respective obligations under CrimPR Parts 1 and 3. However, neither the form, nor these notes, relieves the parties, or the court, of those obligations.

2. The parties and the court are reminded that careful and effective case management to identify all issues that are likely to arise in the trial requires time. The listing of cases where not guilty pleas are expected should take this into account. The parties are also reminded of their duties under CrimPR Part 3 and that failure to comply with a direction without the consent of the court may have serious consequences for the conduct of the case by the defaulting party or parties in accordance with guidance issued by or on behalf of the Lord Chief Justice or the Senior Presiding Judge.

3. As a general rule, the form is to be used in any case to be tried in a magistrates' court in which a not guilty plea is entered. In the interests of consistent practice and effective case management, the court should insist on observance of this general rule. The court should only depart from this rule in cases where the issue or issues in dispute are so limited and the case so lacking in complexity that it is clear that no advantage will be gained from use of the form other than as an *aide memoire* for proper management of the trial preparation process. **The form is a prescribed form and no other form may be used.** As a general rule the form should be used in accordance with these notes for guidance.

4. In these notes, the term 'prosecutor' includes anyone presenting a criminal prosecution, including a private prosecution, and any legal representative; and the term 'defendant' includes legal representatives or a defendant in person.

5. In accordance with current practice, the prosecutor will assess the likelihood of a guilty plea and prepare the case papers accordingly, serving under CrimPR Part 10 (Initial details of the prosecution case) proportionately more evidence and other material where a not guilty plea is anticipated than in a case in which a guilty plea is thought likely.

6. Where the prosecutor anticipates a not guilty plea then, unless otherwise directed by the court, the prosecutor must complete Parts 1, 2 and 4 of the form and serve it on the defendant with the initial details of the prosecution case, or as soon after that as possible (and in any event before the first hearing). See CrimPR rule 10.2.

7. Before the first hearing (even if only very shortly before) or, if the court allows, during the first hearing, the defendant must complete Parts 1, 3 and 4 of the form, unless the court otherwise directs. The court may require a defendant who intends to plead not guilty to complete those parts of the form before calling the case on for the first hearing. At that hearing, at which the not guilty plea is taken, the court then will have before it relevant information on the basis of which to give directions for an effective trial. An unrepresented defendant may need to be excused completion of the form before the hearing. He or she may need to be taken through it by the court instead, and the relevant information gathered in that way.

8. In a case in which the prosecutor has not anticipated a not guilty plea, the form will not have been prepared and served before the first hearing. In such a case, the court may require the defendant to complete Parts 1, 3 and 4, as far as possible, before calling the case on; and at the hearing may require the prosecutor to provide the information required so that the court can give directions for an effective trial there and then.

9. The form is arranged ordinarily to collect information first from the prosecutor (Parts 1 and 2 and paragraph 11 in Part 4); then from the defendant (Parts 1 and 3, and paragraph 12 in Part 4), who will rely on such information about the prosecution case as has been supplied by the prosecutor; with provision, finally, for the court's directions in consequence (paragraphs 11 and 12 in Part 4, and Part 5). However, each part of the form is so arranged as to make it possible to separate one part from another, in order to accommodate other possibilities. For example, the defendant may begin to complete the form before the prosecutor, as described above. The arrangement of the form in this way allows for Parts completed by parties separately to be amalgamated in a single consolidated form for the court's subsequent use, with repetition kept to a minimum.

B. Copying the form

10. The court's duty under CrimPR 3.11 is to make available to the parties a record of its directions. The arrangement of the form lends itself to different possible ways of copying and transmitting the form, or any part of it. All, or any, of the pages may be photocopied or scanned and sent by fax or email. However, it is anticipated that most copies will be distributed in electronic form at or as soon as possible after the hearing.

C. Case preparation time limits

11. The list on the final page of the form (which may be made available separately) includes (a) time limits that are prescribed by the Criminal Procedure Rules, or by other legislation, and (b) time limits and other directions that the court may adopt, where they are relevant, by default. They are arranged largely in the sequence of the relevant rules. The default time limits are those which discussion and consultation prior to the introduction of the form had shown were common practice.

12. Some of the case preparation time limits run from the date on which the defendant pleads not guilty, and others from the date on which the prosecutor complies with the initial duty of disclosure under section 3 of the Criminal Procedure and Investigations Act 1996. The hearing date that is fixed must take account of how much time realistically is needed to prepare for an effective trial. The court can extend or abbreviate the time limits if required.

D. Case management information

Prosecution case management information

13. The purpose of the questions at paragraphs 4.1, 4.2 and 4.3 is to establish whether any more evidence will, or may, be served and relied upon by the prosecutor as probative of the prosecution case. Unless there is to be any more such evidence, the prosecutor is entitled to say that the preparation and service of the prosecution case is complete. The prosecutor's duty of disclosure, under section 3 of the Criminal Procedure and Investigations Act 1996, is the subject of a paragraph for completion by the court in Part 5 of the form: see below.

14. The purpose of the question at paragraph 4.4 is to elicit specific information likely to affect preparation for trial and which may not be apparent from the initial details of the case served under CrimPR Part 10. Where an application or notice to introduce hearsay or bad character evidence is

anticipated, CrimPR Parts 34 and 35 apply: see case preparation time limits n to t. Case management information supplied by the defendant under paragraph 8 may allow the court to determine any oral applications made there and then.

15. Where CCTV, plans or similar evidence relied upon by the prosecutor is available at or before the first hearing, it is anticipated that this will have been considered before the completion of the form.

Defence case management information

16. The purpose of the questions, in accordance with CrimPR rules 3.2, 3.3 and 3.9, is to establish what is, and what is not, in dispute: bearing in mind that the defendant may not be represented and that it may be necessary for the court to assist him or her to answer such questions. The form accommodates two possibilities. First, that the defendant, though unwilling to admit facts formally, is willing nonetheless to acknowledge that certain matters are not in dispute, **so that at least the court can expect that they will be proved without relevant witnesses giving evidence in person**. Second, that the defendant is willing to make formal admissions of fact, so that those facts can be proved by written admission prepared by the prosecutor and signed by the parties.

17. The giving of a defence statement in a case to be tried in a magistrates' court is voluntary, but it should be noted that, if none is given, **then the court has no power to order prosecution disclosure under CrimPR rule 22.5 (see the rule, and section 8 of the Criminal Procedure and Investigations Act 1996)**.

18. The court cannot require the defendant to reveal information about the defence case that is subject to litigation privilege, unless an Act of Parliament so requires. But where at trial an issue is raised that was not revealed earlier, then under CrimPR rule 3.5(6) the court may:

- (a) adjourn, to allow that issue to be dealt with fairly; and
- (b) make a costs order.

Witness information

19. The purpose of paragraphs 11 and 12 is to encourage the parties and the court to concentrate on the question of which witnesses it is necessary to call to give evidence in person and how much time to allocate to the trial. They deal also with any measures that may be needed to assist those giving evidence. It is the prosecutor's responsibility to decide on which prosecution witnesses to rely. However, where the prosecutor has indicated that a witness will be called to give evidence in person, and especially where the court has indicated that the issues in the case justify a witness' attendance, then the prosecutor or defendant must promptly inform the court and the other party if that witness no longer is relied upon or required, because that may affect the arrangements for the hearing: CrimPR rule 3.9.

20. The questions about special or other measures include issues as to cross examination of a witness by the defendant in person. Under section 36 of the Youth Justice and Criminal Evidence Act 1999 (on an application under CrimPR 31.4), the court may need to appoint a representative under CrimPR 31.2, because such a prohibition is mandatory, under either section 34 or 35 of the 1999 Act. It is linked to paragraph 13.9 in Part 5. Any issues raised in paragraphs 11 or 12 as to any special or other measures should be the subject of court direction in Part 5 and consideration must be given to the arrangements for trial, to include (but not limited to) matters such as facilities, timings, interpretation, intermediaries and breaks.

21. Section 6C of the Criminal Procedure and Investigations Act 1996 requires the defendant to supply the names, addresses and dates of birth of intended defence witnesses. The Practice

Direction sets out a form for use. Under regulation 2 of the Criminal Procedure and Investigations Act 1996 (Notification of Intention to Call Defence Witnesses) (Time Limits) Regulations 2010, that must be done within 14 days of the prosecution complying with its initial duty of disclosure. The requirement is listed among the standard case preparation time limits. However, it is very unlikely that that time limit will have expired by the date of the first hearing, at which the trial preparation form will be completed. Therefore the form asks only which defence witnesses are **expected** to give evidence in person, and does not ask why it is intended that those witnesses should be called. The question therefore does not encroach on litigation privilege, but the answer will help the court arrange for an effective trial.

22. However, the duty to notify the court of matters likely to affect the trial proceeding as planned (CrimPR rule 3.9(2)) means that if the anticipated defence witness information changes, this should be notified to the court and to the prosecutor, as soon as practicable.

E. The court's directions

23. The purpose of recording directions as set out in the form is to record decisions made and directions given following full preparation for an effective trial, and to remind the participants of all those that may be relevant, while at the same time allowing for such variations as the court may order. Witness summonses, or other steps to secure the attendance of necessary witnesses, measures to help witnesses or the defendant to give evidence, and any other directions, will rely upon full explanation on the form as to the issues likely to arise at trial. The service of any further prosecution evidence, and the date by which the prosecutor should complete the initial duty of disclosure under section 3 of the Criminal Procedure and Investigations Act 1996, each is dealt with by a direction specific to the case (paragraphs 13.1 and 13.2), because each is likely to be affected by the individual circumstances of the case.

24. The purpose of providing for signatures at the end of the form by the parties and the court, or at the court's direction, is to authenticate the record for those to whom it will be sent, and notably those responsible for the conduct of the trial and the care of witnesses. By signing the signatory confirms that the decisions and directions recorded in the form have been approved or noted by the party concerned.

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