

**CRIMINAL PRACTICE DIRECTIONS 2015 DIVISION XIII
LISTING**

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CPD XIII Listing A: JUDICIAL RESPONSIBILITY FOR LISTING AND KEY PRINCIPLES

Listing as a judicial responsibility and function

A.1 Listing is a judicial responsibility and function. The purpose is to ensure that all cases are brought to a hearing or trial in accordance with the interests of justice, that the resources available for criminal justice are deployed as effectively as possible, and that cases are heard by an appropriate judge or bench with the minimum of delay.

A.2 The agreement reached between the Lord Chief Justice and the Secretary of State for Constitutional Affairs and Lord Chancellor set out in a statement to the House of Lords on 26 January 2004 ('the Concordat'), states that judges, working with HMCTS, are responsible for deciding on the assignment of cases to particular courts and the listing of those cases before particular judges. Therefore:

- (a) The Presiding Judges of each circuit have the overall responsibility for listing at all courts, Crown and magistrates', on their circuit;
- (b) Subject to the supervision of the Presiding Judges, the Resident Judge at each Crown Court has the general responsibility within his or her court centre for the

allocation of criminal judicial work, to ensure the just and efficient despatch of the business of the court or group of courts. This includes overseeing the deployment of allocated judges at the court or group, including the distribution of work between all the judges allocated to that court. A Resident Judge must appoint a deputy or deputies to exercise his or her functions when he or she is absent from his or her court centre. See also paragraph A.5: Discharge of judicial responsibilities;

- (c) The listing officer in the Crown Court is responsible for carrying out the day-to-day operation of listing practice under the direction of the Resident Judge. The listing officer at each Crown Court centre has one of the most important functions at that Crown Court and makes a vital contribution to the efficient running of that Crown Court and to the efficient operation of the administration of criminal justice;
- (d) In the magistrates' courts, the Judicial Business Group, subject to the supervision of the Presiding Judges of the circuit, is responsible for determining the listing practice in that area. The day-to-day operation of that listing practice is the responsibility of the justices' clerk with the assistance of the listing officer.

Key principles of listing

A.3 When setting the listing practice, the Resident Judge or the Judicial Business Group should take into account principles a-j:

- (a) Ensure the timely trial of cases and resolution of other issues (such as confiscation) so that justice is not delayed. The following factors are relevant:
 - i. In general, each case should be tried within as short a time of its arrival in the court as is consistent with the interests of justice, the needs of victims and witnesses, and with the proper and timely preparation by the prosecution and defence of their cases in accordance with the directions and timetable set;
 - ii. Priority should be accorded to the trial of young defendants, and cases where there are vulnerable or young witnesses. In *R v Barker* [2010] EWCA Crim 4, the Lord Chief Justice highlighted "the importance to the trial and investigative process of keeping any delay in a case involving a child complainant to an irreducible minimum";

- iii. Custody time limits (CTLs) should be observed, see CPD XIII Listing F;
 - iv. Every effort must be made to avoid delay in cases in which the defendant is on bail;
- (b) Ensure that in the magistrates' court unless impracticable, non-custody anticipated guilty plea cases are listed 14 days after charge, and non-custody anticipated not guilty pleas are listed 28 days after charge;
- (c) Provide, when possible, for certainty and/or as much advance notice as possible, of the trial date; and take all reasonable steps to ensure that the trial date remains fixed;
- (d) Ensure that a judge or bench with any necessary authorisation and of appropriate experience is available to try each case and, wherever desirable and practicable, there is judicial continuity, including in relation to post-trial hearings;
- (e) Strike an appropriate balance in the use of resources, by taking account of:
- i. The efficient deployment of the judiciary in the Crown Court and the magistrates' courts taking into account relevant sitting requirements for magistrates. See CPD XIII Annex 1 for information to support judicial deployment in the magistrates' courts;
 - ii. The proper use of the courtrooms available at the court;
 - iii. The provision in long and/or complex cases for adequate reading time for the judiciary;
 - iv. The facilities in the available courtrooms, including the security needs (such as a secure dock), size and equipment, such as video and live link facilities;
 - v. The proper use of those who attend the Crown Court as jurors;
 - vi. The availability of legal advisers in the magistrates' courts;
 - vii. The need to return those sentenced to custody as soon as possible after the sentence is passed, and to facilitate the efficient operation of the prison escort contract;
- (f) Provide where practicable:
- i. the defendant and the prosecution with the advocate of their choice where this does not

result in any delay to the trial of the case;
and,

- ii. for the efficient deployment of advocates, lawyers and associate prosecutors of the Crown Prosecution Service, and other prosecuting authorities, and of the resources available to the independent legal profession, for example by trying to group certain cases together;
- (g) Meet the need for special security measures for category A and other high-risk defendants;
- (h) Ensure that proper time (including judicial reading time) is afforded to hearings in which the court is exercising powers that impact on the rights of individuals, such as applications for investigative orders or warrants;
- (i) Consider the significance of ancillary proceedings, such as confiscation hearings, and the need to deal with such hearings promptly and, where possible, for such hearings to be conducted by the trial judge;
- (j) Provide for government initiatives or projects approved by the Lord Chief Justice.

A.4 Although the listing practice at each Crown Court centre and magistrates' court will take these principles into account, the listing practice adopted will vary from court to court depending particularly on the number of courtrooms and the facilities available, the location and the workload, its volume and type.

Discharge of judicial responsibilities

- A.5 The Resident Judge of each court is responsible for:
- i. ensuring that good practice is implemented throughout the court, such that all hearings commence on time;
 - ii. ensuring that the causes of trials that do not proceed on the date originally fixed are examined to see if there is any systemic issue;
 - iii. monitoring the general performance of the court and the listing practices;
 - iv. monitoring the timeliness of cases and reporting any cases of serious concern to the Presiding Judge;
 - v. maintaining and reviewing annually a list of Recorders, qualifying judge advocates and Deputy Circuit Judges authorised to hear appeals from the magistrates' courts unless such a list is maintained by the Presiding Judge.

- A.6 The Judicial Business Group for each clerkship subject to the overall jurisdiction of the Presiding Judge is responsible for:
- i. monitoring the workload and anticipated changes which may impact on listing policies;
 - ii. ensuring that any listing practice meets the needs of the system as a whole.

CPD XIII Listing B: CLASSIFICATION

- B.1 The classification structure outlined below is solely for the purposes of trial in the Crown Court. The structure has been devised to accommodate practical administrative functions and is not intended to reflect a hierarchy of the offences therein.

Offences are classified as follows:

Class 1: A:

- i. Murder;
- ii. Attempted Murder;
- iii. Manslaughter;
- iv. Infanticide;
- v. Child destruction (section 1(1) of the Infant Life (Preservation) Act 1929;
- vi. Abortion (section 58 of the Offences Against the Person Act 1861);
- vii. Assisting a suicide;
- viii. Cases including section 5 of the Domestic Violence, Crime and Victims Act 2004, as amended (if a fatality has resulted);
- ix. Soliciting, inciting, encouraging or assisting, attempting or conspiring to commit any of the above offences or assisting an offender having committed such an offence.

Class 1: B:

- i. Genocide;
- ii. Torture, hostage-taking and offences under the War Crimes Act 1991;
- iii. Offences under ss.51 and 52 International Criminal Courts Act 2001;
- iv. An offence under section 1 of the Geneva Conventions Act 1957;
- v. Terrorism offences (where offence charged is indictable only and took place during an act of terrorism or for the purposes of terrorism as defined in s.1 of the Terrorism Act 2000);
- vi. Piracy, under the Merchant Shipping and Maritime Security Act 1997;
- vii. Treason;
- viii. An offence under the Official Secrets Acts;
- ix. Incitement to disaffection;

- x. Soliciting, inciting, encouraging or assisting, attempting or conspiring to commit any of the above offences or assisting an offender having committed such an offence.

Class 1: C:

- i. Prison mutiny, under the Prison Security Act 1992;
- ii. Riot in the course of serious civil disturbance;
- iii. Serious gang related crime resulting in the possession or discharge of firearms, particularly including a campaign of firebombing or extortion, especially when accompanied by allegations of drug trafficking on a commercial scale;
- iv. Complex sexual offence cases in which there are many complainants (often under age, in care or otherwise particularly vulnerable) and/or many defendants who are alleged to have systematically groomed and abused them, often over a long period of time;
- v. Cases involving people trafficking for sexual, labour or other exploitation and cases of human servitude;
- vi. Soliciting, inciting, encouraging or assisting, attempting or conspiring to commit any of the above offences or assisting an offender having committed such an offence.

Class 1: D:

- i. Causing death by dangerous driving;
- ii. Causing death by careless driving;
- iii. Causing death by unlicensed, disqualified or uninsured driving;
- iv. Any Health and Safety case resulting in a fatality or permanent serious disability;
- v. Any other case resulting in a fatality or permanent serious disability;
- vi. Soliciting, inciting, encouraging or assisting, attempting or conspiring to commit any of the above offences or assisting an offender having committed such an offence.

Class 2: A

- i. Arson with intent to endanger life or reckless as to whether life was endangered;
- ii. Cases in which explosives, firearms or imitation firearms are used or carried or possessed;
- iii. Kidnapping or false imprisonment (without intention to commit a sexual offence but charged on the same indictment as a serious offence of violence

- such as under section 18 or section 20 of the Offences Against the Person Act 1861);
- iv. Cases in which the defendant is a police officer, member of the legal profession or a high profile or public figure;
 - v. Cases in which the complainant or an important witness is a high profile or public figure;
 - vi. Riot otherwise than in the course of serious civil disturbance;
 - vii. Child cruelty;
 - viii. Cases including section 5 of the Domestic Violence, Crime and Victims Act 2004, as amended (if no fatality has resulted);
 - ix. Soliciting, inciting, encouraging or assisting, attempting or conspiring to commit any of the above offences or assisting an offender having committed such an offence.

Class 2: B

- i. Any sexual offence, with the exception of those included in Class 1C;
- ii. Kidnapping or false imprisonment (with intention to commit a sexual offence or charged on the same indictment as a sexual offence);
- iii. Soliciting, inciting, encouraging or assisting, attempting or conspiring to commit any of the above offences or assisting an offender having committed such an offence.

Class 2: C:

- i. Serious, complex fraud;
- ii. Serious and/or complex money laundering;
- iii. Serious and/or complex bribery;
- iv. Corruption;
- v. Complex cases in which the defendant is a corporation (including cases for sentence as well as for trial);
- vi. Any case in which the defendant is a corporation with a turnover in excess of £1bn (including cases for sentence as well as for trial);
- vii. Soliciting, inciting, encouraging or assisting, attempting or conspiring to commit any of the above offences or assisting an offender having committed such an offence.

Class 3: All other offences not listed in the classes above.

Deferred Prosecution Agreements

- B.2 Cases coming before the court under section 45 and Schedule 17 of the Crime and Courts Act 2013 must be referred to the President of the Queen's Bench Division who will allocate the matter to a judge from a list of judges approved by the Lord Chief Justice. Only the allocated judge may thereafter hear any matter or make any decision in relation to that case.

Criminal Cases Review Commission

- B.3 Where the CCRC refers a case upon conviction from the magistrates' courts to the Crown Court, this shall be dealt with at a Crown Court centre designated by the Senior Presiding Judge.

CPD XIII Listing C: REFERRAL OF CASES IN THE CROWN COURT TO THE RESIDENT JUDGE AND TO THE PRESIDING JUDGES

- C.1 This Practice Direction specifies:
- (a) cases which must be referred to a Presiding Judge for release; and
 - (b) cases which must be referred to the Resident Judge before being assigned to a judge, Recorder or qualifying judge advocate to hear.

It is applicable to all Crown Courts, but its application may be modified by the Senior Presiding Judge or the Presiding Judges, with the approval of the Senior Presiding Judge, through the provision of further specific guidance to Resident Judges in relation to the allocation and management of the work at their court.

- C.2 This Practice Direction does not prescribe the way in which the Resident Judge gives directions as to listing policy to the listing officer; its purpose is to ensure that there is appropriate judicial control over the listing of cases. However, the Resident Judge must arrange with the listing officers a satisfactory means of ensuring that all cases listed at their court are listed before judges, Recorders or qualifying judge advocates of suitable seniority and experience, subject to the requirements of this Practice Direction. The Resident Judge should ensure that listing officers are made aware of the contents and importance of this Practice Direction, and that listing officers develop satisfactory procedures for referral of cases to him or her.
- C.3 In order to assist the Resident Judge and the listing officer, all cases sent to the Crown Court should where possible include a brief case summary prepared by the prosecution. The prosecutor should ensure that any factors that make the case complex, or would lead it to be referred to the Resident Judge or a Presiding Judge are highlighted. The defence may also send submissions to the court,

again highlighting any areas of complexity or any other factors that might assist in the case being allocated to an appropriate judge.

Cases in the Crown Court to be referred to the Resident Judge

- C.4 All cases in Class 1A, 1B, 1C, 1D, 2A and 2C must be referred to the Resident Judge as must any case which appears to raise particularly complex, sensitive or serious issues.
- C.5 Resident Judges should give guidance to the judges and staff of their respective courts as to which Class 2B cases should be referred to them following consultation with the Senior Presiding Judge. This will include any cases that may be referred to the Presiding Judge, see below. Class 2B cases to be referred to the Resident Judge are likely to be identified by the list officer, or by the judge at the first hearing in the Crown Court.
- C.6 Once a case has been referred to the Resident Judge, the Resident Judge should refer the case to the Presiding Judge, following the guidance below, or allocate the case to an appropriate category of judge, and if possible to a named judge.

Cases in the Crown Court to be referred to a Presiding Judge

- C.7 All cases in Class 1A, 1B and 1C must be referred by the Resident Judge to a Presiding Judge, as must a case in any class which is:
- i. An usually grave or complex case or one in which a novel and important point of law is to be raised;
 - ii. A case where it is alleged that the defendant caused more than one fatality;
 - iii. A non-fatal case of baby shaking where serious injury resulted;
 - iv. A case where the defendant is a police officer, or a member of the legal profession or a high profile figure;
 - v. A case which for any reason is likely to attract exceptional media attention;
 - vi. A case where a large organisation or corporation may, if convicted, be ordered to pay a very large fine;
 - vii. Any case likely to last more than three months.
- C.8 Resident Judges are encouraged to refer any other case if they think it is appropriate to do so.
- C.9 Presiding Judges and Resident Judges should agree a system for the referral of cases to the Presiding Judge, ideally by electronic means. The system agreed should include provision for the Resident Judge to provide the Presiding Judge with a brief summary of the case, a clear recommendation by the Resident

Judge about the judges available to try the case and any other comments. A written record of the decision and brief reasons for it must be made and retained.

- C.10 Once a case has been referred to the Presiding Judge, the Presiding Judge may retain the case for trial by a High Court Judge, or release the case back to the Resident Judge, either for trial by a named judge, or for trial by an identified category of judges, to be allocated by the Resident Judge.

CPD XIII Listing D: AUTHORISATION OF JUDGES

- D.1 Judges must be authorised by the Lord Chief Justice before they may hear certain types of case.
- D.2 Judges (other than High Court Judges) to hear Class 1A cases must be authorised to hear such cases. Any judge previously granted a 'Class 1' or 'murder' authorisation is authorised to hear Class 1A cases. Judges previously granted an 'attempted murder' (including soliciting, incitement or conspiracy thereof) authorisation can only deal with these cases within Class 1A.
- D.3 Judges (other than High Court Judges) to hear sexual offences cases in Class 1C or any case within Class 2B must be authorised to hear such cases. Any judge previously granted a 'Class 2' or 'serious sex offences' authorisation is authorised to hear sexual offences cases in Class 1C or 2B. It is a condition of the authorisation that it does not take effect until the judge has attended the relevant Judicial College course; the Resident Judge should check in the case of newly authorised judges that they have attended the course. Judges who have been previously authorised to try such cases should make every effort to ensure their training is up-to-date and maintained by attending the Serious Sexual Offences Seminar at least once every three years. See CPD XIII Annex 2 for guidance in dealing with sexual offences in the youth court.
- D.4 **Cases in the magistrates' courts involving the imposition of very large fines**
- i. Where a defendant appears before a magistrates' court for an either way offence, to which CPD XIII Annex 3 applies the case must be dealt with by a DJ (MC) who has been authorised to deal with such cases by the Chief Magistrate.
 - ii. The authorised DJ (MC) must first consider whether such cases should be allocated to the Crown Court or, where the defendant pleads guilty, committed for sentence under s.3 Powers of Courts (Sentence) Act 2000, and must do so when the DJ (MC) considers the offence or combination of offences so serious that the Crown Court should deal with the defendant had they been convicted on indictment.

- iii. If an authorised DJ (MC) decides not to commit such a case the reasons must be recorded in writing to be entered onto the court register.

CPD XIII Listing E: ALLOCATION OF BUSINESS WITHIN THE CROWN COURT

- E.1 Cases in Class 1A may only be tried by:
 - i. a High Court Judge;
 - ii. a Circuit Judge or a Deputy High Court Judge authorised to try such cases and provided that the Presiding Judge has released the case for trial by such a judge; or
 - iii. a Deputy Circuit Judge to whom the case has been specifically released by the Presiding Judge.

- E.2 Cases in Class 1B may only be tried by:
 - i. a High Court Judge; or
 - ii. a Circuit Judge or a Deputy High Court Judge provided that the Presiding Judge has released the case for trial by such a judge; or
 - iii. a Deputy Circuit Judge to whom the case has been specifically released by the Presiding Judge

- E.3 Cases in Class 1C may only be tried by:
 - i. a High Court Judge, or
 - ii. a Circuit Judge, or a Deputy High Court Judge, or Deputy Circuit Judge, authorised to try such cases (if the case requires the judge to be authorised to hear sexual offences cases), provided that the Presiding Judge has released the case for trial by such a judge, or, if the case is a sexual offence, the Presiding Judge has assigned the case to that named judge.

See also CPD XIII Listing C.10

- E.4 Cases in Class 1D and 2A may be tried by:
 - i. a High Court Judge, or
 - ii. a Circuit Judge, or Deputy High Court Judge, or Deputy Circuit Judge, or a Recorder or a qualifying judge advocate, provided that either the Presiding Judge has released the case or the Resident Judge has allocated the case for trial by such a judge; with the exception that Class 2A i) cases may not be tried by a Recorder or qualifying judge advocate.

- E.5 Cases in Class 2B may be tried by:
 - i. a High Court Judge, or
 - ii. a Circuit Judge, or Deputy High Court Judge, or Deputy Circuit Judge, or a Recorder or a qualifying judge advocate, authorised to try such cases and provided that either the Presiding Judge has released

the case or the Resident Judge has allocated the case for trial by such a judge.

- E.6 Cases in Class 2C may be tried by:
- i. a High Court Judge, or
 - ii. a Circuit Judge, or Deputy High Court Judge, or Deputy Circuit Judge, or a Recorder or a qualifying judge advocate, with suitable experience (for example, with company accounts or other financial information) and provided that either the Presiding Judge has released the case or the Resident Judge has allocated the case for trial by such a judge.
- E.7 Cases in Classes 1D, 2A and 2C will usually be tried by a Circuit Judge.
- E.8 Cases in Class 3 may be tried by a High Court Judge, or a Circuit Judge, a Deputy Circuit Judge, a Recorder or a qualifying judge advocate. A case in Class 3 shall not be listed for trial by a High Court Judge except with the consent of a Presiding Judge.
- E.9 If a case has been allocated to a judge, Recorder or qualifying judge advocate, the preliminary hearing should be conducted by the allocated judge if practicable, and if not, if possible by a judge of at least equivalent standing. PCMHs should only be heard by Recorders or qualifying judge advocates with the approval of the Resident Judge.
- E.10 For cases in Class 1A, 1B or 1C, or any case that has been referred to the Presiding Judge, the preliminary hearing and PCMH must be conducted by a High Court Judge; by a Circuit Judge; or by a judge authorised by the Presiding Judges to conduct such hearings. In the event of a guilty plea before such an authorised judge, the case will be adjourned for sentencing and will immediately be referred to the Presiding Judge who may retain the case for sentence by a High Court Judge, or release the case back to the Resident Judge, either for sentence by a named judge, or for sentence by an identified category of judges, to be allocated by the Resident Judge.
- E.11 Appeals from decisions of magistrates' courts shall be heard by:
- i. a Resident Judge, or
 - ii. a Circuit Judge, nominated by the Resident Judge, who regularly sits at the Crown Court centre, or
 - iii. a Recorder or qualifying judge advocate or a Deputy Circuit Judge listed by the Presiding Judge to hear such appeals; or, if there is no such list nominated by the Resident Judge to hear such appeals;
 - iv. and, no less than two and no more than four justices of the peace, none of whom took part in the decision under appeal;
 - v. where no Circuit Judge or Recorder or qualifying judge advocate satisfying the requirements above is

available, by a Circuit Judge, Recorder, qualifying judge advocate or Deputy Circuit Judge selected by the Resident Judge to hear a specific case or cases listed on a specific day.

- E.12 Allocation or committal for sentence following breach (such as a matter in which a community order has been made, or a suspended sentence passed), should, where possible, be listed before the judge who originally dealt with the matter or, if not, before a judge of the same or higher level.
- E.13 Applications for removal of a driving disqualification should be made to the location of the Crown Court where the order of disqualification was made. Where possible, the matter should be listed before the judge who originally dealt with the matter or, if not, before a judge of the same or higher level.

CPD XIII Listing F: LISTING OF TRIALS, CUSTODY TIME LIMITS AND TRANSFER OF CASES

Estimates of trial length

- F.1 Under the regime set out in the Criminal Procedure Rules, the parties will be expected to provide an accurate estimate of the length of trial at the hearing where the case is to be managed based on a detailed estimate of the time to be taken with each witness to be called, and accurate information about the availability of witnesses.
- F.2 At the hearing the judge will ask the prosecution to clarify any custody time limit ('CTL') dates. The court clerk must ensure the CTL date is marked clearly on the court file or electronic file. When a case is subject to a CTL all efforts must be made at the first hearing to list the case within the CTL and the judge should seek to ensure this. Further guidance on listing CTL cases can be found below.

Cases that should usually have fixed trial dates

- F.3 The cases where fixtures should be given will be set out in the listing practice applicable at the court, but should usually include the following:
- i. Cases in classes 1A, 1B, 1C, 2B and 2C;
 - ii. Cases involving vulnerable and intimidated witnesses (including domestic violence cases), whether or not special measures have been ordered by the court;
 - iii. Cases where the witnesses are under 18 or have to come from overseas;
 - iv. Cases estimated to last more than a certain time – the period chosen will depend on the size of the centre and the available judges;

- v. Cases where a previous fixed hearing has not been effective;
- vi. Re-trials; and,
- vii. Cases involving expert witnesses.

Custody Time Limits

F.4 Every effort must be made to list cases for trial within the CTL limits set by Parliament. The guiding principles are:

- i. At the first hearing in the Crown Court, prosecution will inform the court when the CTL lapses.
- ii. All efforts must be made to list the case within the CTL. The CTL may only be extended in accordance with *s.22 Prosecution of Offences Act 1985* and the *Prosecution of Offences (Custody Time Limits) Regulations 1987*.
- iii. If suitable, given priority and listed on a date not less than 2 weeks before the CTL expires, the case may be placed in a warned list.
- iv. The CTL must be kept under continual review by the parties, HMCTS and the Resident Judge.
- v. If the CTL is at risk of being exceeded, an additional hearing should take place and should be listed before the Resident Judge or trial judge or other judge nominated by the Resident Judge.
- vi. An application to extend the CTL in any case listed outside the CTL must be considered by the court whether or not it was listed with the express consent of the defence.
- vii. Any application to extend CTLs must be considered as a matter of urgency. The reasons for needing the extension must be ascertained and fully explained to the court.
- viii. Where courtroom or judge availability is an issue, the court must itself list the case to consider the extension of any CTL. The Delivery Director of the circuit must provide a statement setting out in detail what has been done to try to accommodate the case within the CTL.
- ix. Where courtroom or judge availability is not in issue, but all parties and the court agree that the case will not be ready for trial before the expiration of the CTL, a date may be fixed outside the CTL. This may be done without prejudice to any application to extend the CTLs or with the express consent of the defence; this must be noted on the papers.

F.5 As legal argument may delay the swearing in of a jury, it is desirable to extend the CTL to a date later than the first day of the trial.

Re-trials ordered by the Court of Appeal

- F.6 The Crown Court must comply with the directions of the Court of Appeal and cannot vary those directions without reference to the Court of Appeal.
- F.7 In cases where a retrial is ordered by the Court of Appeal the CTL is 112 days starting from the date that the new indictment is preferred i.e. from the date that the indictment is delivered to the Crown Court. Court centres should check that CREST has calculated the dates correctly and that it has not used 182 days on cases that have previously been 'sent'.

Changes to the date of fixed cases

- F.8 Once a trial date or window is fixed, it should not be vacated or moved without good reason. Under the Criminal Procedure Rules, parties are expected to be ready by the trial date.
- F.9 The listing officer may, in circumstances determined by the Resident Judge, agree to the movement of the trial to a date to which the defence and prosecution both consent, provided the timely hearing of the case is not delayed. The prosecution will be expected to have consulted the witnesses before agreeing to any change.
- F.10 In all other circumstances, requests to adjourn or vacate fixtures or trial windows must be referred to the Resident Judge for his or her personal attention; the Resident Judge may delegate the decision to a named deputy.

Transferring cases to another court

- F.11 Transfer between courts on the same circuit must be agreed by the Resident Judges of each court, subject to guidance from the Presiding Judges of the circuit.
- F.12 Transfer of trials between circuits must be agreed between the Presiding Judges and Delivery Directors of the respective circuits.
- F.13 Transfers may be agreed either in specific cases or in accordance with general principles agreed between those cited above.

CPD XIII Listing G: LISTING OF HEARINGS OTHER THAN TRIALS

- G.1 In addition to trials, the court's listing practice will have to provide court time for shorter matters, such as those listed below. These hearings are important, often either for setting the necessary case management framework for the proper and efficient preparation of cases for trial, or for determining matters that affect the rights of individuals. They must be afforded the appropriate level of resource that they require to be considered properly, and this may

include judicial reading time as well as an appropriate length of hearing.

- G.2 The applicant is responsible for notifying the court, and the other party if appropriate, and ensuring that the papers are served in good time, including a time estimate for judicial reading time and for the hearing. The applicant must endeavour to complete the application within the time estimate provided unless there are exceptional circumstances.
- G.3 Hearings other than trials include the following:
- i. Applications for search warrants and Production Orders, sufficient reading time must be provided, see G.8 below;
 - ii. Bail applications;
 - iii. Applications to vacate or adjourn hearings;
 - iv. Applications for dismissal of charges;
 - v. Preliminary hearings;
 - vi. Preparatory hearings;
 - vii. Plea and case management hearings;
 - viii. Applications for disclosure of further unused material under section 8 of CPIA 1996;
 - ix. Case progression or case management hearings;
 - x. Applications in respect of sentence indications not sought at the PCMH;
 - xi. Sentences;
 - xii. Civil applications under the Anti-Social Behaviour, Crime and Policing Act 2014;
 - xiii. Appeals from the magistrates' court: it is essential in all cases where witnesses are likely to be needed on the appeal to check availability before a date is fixed.
- G.4 Short hearings should not generally be listed before a judge such that they may delay the start or continuation of a trial at the Crown Court. It is envisaged that any such short hearing will be completed by 10.30am or start after 4.30pm.
- G.5 Each Crown Court equipped with a video link with a prison must have in place arrangements for the conduct of PCMHs, other pre-trial hearings and sentencing hearings by video link.

Notifying sureties of hearing dates

- G.6 Where a surety has entered into a recognizance in the magistrates' court in respect of a case allocated or sent to the Crown Court and where the bail order or recognizance refers to attendance at the first hearing in the Crown Court, the defendant should be reminded by the listing officer that the surety should attend the first hearing in the Crown Court in order to provide further recognizance. If attendance is not arranged, the defendant may be remanded in custody pending the recognisance being provided.

- G.7 The Court should also notify sureties of the dates of the hearing at the Crown Court at which the defendant is ordered to appear in as far in advance as possible: see the observations of Parker LJ in *R v Crown Court at Reading ex p. Bello* [1992] 3 All ER 353.

Applications for Production Orders and Search Warrants

- G.8 The use of production orders and search warrants involve the use of intrusive state powers that affect the rights and liberties of individuals. It is the responsibility of the court to ensure that those powers are not abused. To do so, the court must be presented with a properly completed application, on the appropriate form, which includes a summary of the investigation to provide the context for the order, a clear explanation of how the statutory requirements are fulfilled, and full and frank disclosure of anything that might undermine the basis for the application. Further directions on the proper making and consideration of such applications will be provided by Practice Direction. However, the complexity of the application must be taken into account in listing it such that the judge is afforded appropriate reading time and the hearing is given sufficient time for the issues to be considered thoroughly, and a short judgment given.

Confiscation and Related Hearings

- G.9 Applications for restraint orders should be determined by the Resident Judge, or a judge nominated by the Resident Judge, at the Crown Court location at which they are lodged.
- G.10 In order to prevent possible dissipation of assets of significant value, applications under the Proceeds of Crime Act 2002 should be considered urgent when lists are being fixed. In order to prevent potential prejudice, applications for the variation and discharge of orders, for the appointment of receivers, and applications to punish alleged breaches of orders as a contempt of court should similarly be treated as urgent and listed expeditiously.

Confiscation Hearings

- G.11 It is important that confiscation hearings take place in good time after the defendant is convicted or sentenced.

CPD XIII Annex 1:

GENERAL PRINCIPLES FOR THE DEPLOYMENT OF THE JUDICIARY IN THE MAGISTRATES' COURT

This distils the full deployment guidance issued in November 2012. The relevant sections dealing specifically with the allocation of work within the magistrates' court have been incorporated into this Practice Direction. It does not seek to replace the guidance in its entirety.

PRESUMPTIONS

1. The presumptions which follow are intended to provide an acceptable and flexible framework establishing the deployment of the DJ (MC)s and magistrates. The system must be capable of adaptation to meet particular needs, whether of locality or caseload. In any event, the presumptions which follow are illustrative not exhaustive.

2. DJ(MC)s should generally (not invariably) be deployed in accordance with the following presumptions (“the Presumptions”):

- (a) Cases involving complex points of law and evidence.
- (b) Cases involving complex procedural issues.
- (c) Long cases (included on grounds of practicality).
- (d) Interlinked cases (given the need for consistency, together with their likely complexity and novelty).
- (e) Cases for which armed police officers are required in court, such as high end firearms cases.
- (f) A share of the more routine business of the Court, including case management and pre-trial reviews, (for a variety of reasons, including the need for DJ(MC)s to have competence in all areas of work and the desirability of an equitable division of work between magistrates and DJ(MC)s, subject always to the interests of the administration of justice).
- (g) Where appropriate, in supporting the training of magistrates.
- (h) Occasionally, in mixed benches of DJ(MC)s and magistrates (with a particular view both to improving the case management skills of magistrates and to improving the culture of collegiality).
- (i) In the short term tackling of particular local backlogs (“backlog busting”), some times in combination with magistrates from the local or (with the SPJ’s approval) adjoining benches.

3. In accordance with current arrangements certain classes of cases necessarily require DJ(MC)s and have therefore been excluded from the above presumptions; these are as follows:

- (a) Extradition;
- (b) Terrorism;
- (c) Prison Adjudications;

- (d) Sex cases in the Youth Court as per Annex 2;
 - (e) Cases where the defendant is likely to be sentenced to a very large fine, see Annex 3;
 - (f) The Special Jurisdiction of the Chief Magistrate.
4. In formulating the Presumptions, the following considerations have been taken into account:
- (a) The listing of cases is here, as elsewhere, a judicial function, see CPD XIII A.1. In the magistrates' courts the Judicial Business Group, subject to the supervision of the Presiding Judges of the circuit, is responsible for determining the day to day listing practice in that area. The day-to-day operation of that listing practice is the responsibility of the justices' clerk with the assistance of the listing officer.
 - (b) Equally, providing the training of magistrates is a responsibility of justices' clerks.
 - (c) It is best not to treat "high profile" cases as a separate category but to consider their listing in the light of the principles and presumptions. The circumstances surrounding high profile cases do not permit ready generalisation, save that they are likely to require especially sensitive handling. Listing decisions involving such cases will often benefit from good communication at a local level between the justices' clerk, the DJ (MC) and the Bench Chairman.
 - (d) Account must be taken of the need to maintain the competences of all members of the judiciary sitting in the magistrates' court.

CPD XIII Annex 2

SEXUAL OFFENCES IN THE YOUTH COURT

1. This annex sets out the procedure to be applied in the Youth Court in all cases involving allegations of sexual offences which are capable of being sent for trial at the Crown Court under the grave crime provisions.
2. This applies to all cases involving such charges, irrespective of the gravity of the allegation, the age of the defendant and / or the antecedent history of the defendant^(a).
3. This does not alter the test^(a) that the Youth Court must apply when determining whether a case is a "grave crime".

^(a) So, for example, every allegation of sexual touching, under s3 of the Sexual Offences Act 2003, is covered by this protocol.

4. In the Crown Court, cases involving allegations of sexual offences frequently involve complex and sensitive issues and only those Circuit Judges and Recorders who have been specifically authorised and who have attended the appropriate Judicial College course may try this type of work.
5. A number of District Judges (Magistrates' Courts) have now undertaken training in dealing with these difficult cases and have been specifically authorised to hear cases involving serious sexual offences which fall short of requiring to be sent to the Crown Court ("an authorised DJ (MC)"). As such, a procedure similar to that of the Crown Court will now apply to allegations of sexual offences in the Youth Court.

Procedure

6. The determination of venue in the Youth Court is governed by section 51 Crime and Disorder Act 1998, which provides that the youth must be tried summarily unless charged with such a grave crime that long term detention is a realistic possibility^(b), or that one of the other exceptions to this presumption arises.
7. Wherever possible such cases should be listed before an authorised DJ (MC), to decide whether the case falls within the grave crime provisions and should therefore be sent for trial. If jurisdiction is retained and the allegation involves actual, or attempted, penetrative activity, the case must be tried by an authorised DJ (MC). In all other cases, the authorised DJ (MC) must consider whether the case is so serious and / or complex that it must be tried by an authorised DJ (MC), or whether the case can be heard by any DJ (MC) or any Youth Court Bench.
8. If it is not practicable for an authorised DJ(MC) to determine venue, any DJ(MC) or any Youth Court Bench may consider that issue. If jurisdiction is retained, appropriate directions may be given but the case papers, including a detailed case summary and a note of any representations made by the parties, must be sent to an authorised DJ(MC) to consider. As soon as possible the authorised DJ(MC) must decide whether the case must be tried by an authorised DJ(MC) or whether the case is suitable to be heard by any DJ(MC) or any Youth Court Bench; however, if the case involves actual, or alleged, penetrative activity, the trial must be heard by an authorised DJ(MC).
9. Once an authorised DJ(MC) has decided that the case is one which must be tried by an authorised DJ(MC), and in all cases involving

(a) Set out in the Sentencing Guidelines Council's definitive guideline, entitled "Overarching Principles – Sentencing Youths" Published by the Sentencing Guidelines Council in November 2009.

(b) Section 24(1) of the Magistrates Court Act 1980

actual or alleged penetrative activity, all further procedural hearings should, so far as practicable, be heard by an authorised DJ(MC).

Cases remitted for sentence

10. All cases which are remitted for sentence from the Crown Court to the Youth Court should be listed for sentence before an authorised DJ(MC).

Arrangements for an authorised DJ(MC) to be appointed

11. Where a case is to be tried by an authorised DJ(MC) but no such Judge is available, the Bench Legal Adviser should contact the Chief Magistrates Office for an authorised DJ(MC) to be assigned.

CPD XIII Annex 3

CASES INVOLVING VERY LARGE FINES IN THE MAGISTRATES' COURT

1. This Annex applies when s.85 Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force and the magistrates' court has the power to impose a maximum fine of any amount.
2. An authorised DJ (MC) must deal with any allocation decision, trial and sentencing hearing in the following types of cases which are triable either way:
 - a) Cases involving death or significant, life changing injury or a high risk of death or significant, life-changing injury;
 - b) Cases involving substantial environmental damage or polluting material of a dangerous nature;
 - c) Cases where major adverse effect on human health or quality of life, animal health or flora has resulted;
 - d) Cases where major costs through clean up, site restoration or animal rehabilitation have been incurred;
 - e) Cases where the defendant corporation has a turnover in excess of £10 million but does not exceed £250 million, and has acted in a deliberate, reckless or negligent manner;
 - f) Cases where the defendant corporation has a turnover in excess of £250 million;
 - g) Cases where the court will be expected to analyse complex company accounts;
 - h) High profile cases or ones of an exceptionally sensitive nature.
3. The prosecution agency must notify the justices' clerk where practicable of any case of the type mentioned in paragraph 2 of this Annex, no less than 7 days before the first hearing to ensure that an authorised DJ (MC) is available at the first hearing.
4. The justices' clerk shall contact the Office of the Chief Magistrate to ensure that an authorised DJ (MC) can be assigned to deal with such a case if there is not such a person available in the courthouse. The justices' clerk shall also notify a Presiding Judge of the Circuit that such a case has been listed.

5. Where an authorised DJ (MC) is not appointed at the first hearing the court shall adjourn the case. The court shall ask the accused for an indication of his plea, but shall not allocate the case nor, if the accused indicates a guilty plea, sentence him, commit him for sentence, ask for a pre sentence report or give any indication as to likely sentence that will be imposed. The justices' clerk shall ensure an authorised DJ (MC) is appointed for the following hearing and notify the Presiding Judge of the Circuit that the case has been listed.
6. When dealing with sentence, section 3 of the Powers of Criminal Courts (Sentence) Act 2000 can be invoked where, despite the magistrates' court having maximum fine powers available to it, the offence or combination of offences make it so serious that the Crown Court should deal with it as though the person had been convicted on indictment.
7. An authorised DJ (MC) should consider allocating the case to the Crown Court or committing the accused for sentence.

CPD XIII Annex 4

This annex replaces the Protocol on the case management of Terrorism Cases issued in December 2006 by the President of the Queen's Bench Division.

APPLICATION

1. This annex applies to 'terrorism cases'. For the purposes of this annex a case is a 'terrorism case' where:
 - (a) one of the offences charged against any of the defendants is indictable only and it is alleged by the prosecution that there is evidence that it took place during an act of terrorism or for the purposes of terrorism as defined in s1 of the Terrorism Act 2000. This may include, but is not limited to:
 - (i) murder;
 - (ii) manslaughter;
 - (iii) an offence under section 18 of the Offences against the Person Act 1861 (wounding with intent);
 - (iv) an offence under section 23 or 24 of that Act (administering poison etc);
 - (v) an offence under section 28 or 29 of that Act (explosives);
 - (vi) an offence under section 2, 3 or 5 of the Explosive Substances Act 1883 (causing explosions);
 - (vii) an offence under section 1(2) of the Criminal Damage Act 1971 (endangering life by damaging property);

- (viii) an offence under section 1 of the Biological Weapons Act 1974 (biological weapons);
 - (ix) an offence under section 2 of the Chemical Weapons Act 1996 (chemical weapons);
 - (x) an offence under section 56 of the Terrorism Act 2000 (directing a terrorist organisation);
 - (xi) an offence under section 59 of that Act (inciting terrorism overseas);
 - (xii) offences under (v), (vii) and (viii) above given jurisdiction by virtue of section 62 of that Act (terrorist bombing overseas); and
 - (xiii) an offence under section 5 of the Terrorism Act 2006 (preparation of terrorism acts).
- (b) one of the offences charged is indictable only and includes an allegation by the prosecution of serious fraud that took place during an act of terrorism or for the purposes of terrorism as defined in s1 of the Terrorism Act 2000, and the prosecutor gives a notice under section 51B of the Crime and Disorder Act 1998 (Notices in serious or complex fraud cases) ;
 - (c) one of the offences charged is indictable only, which includes an allegation that a defendant conspired, incited or attempted to commit an offence under sub paragraphs (1)(a) or (b) above; or
 - (d) it is a case (which can be indictable only or triable either way) that a judge of the terrorism cases list (see paragraph 2(a) below) considers should be a terrorism case. In deciding whether a case not covered by subparagraphs (1)(a), (b) or (c) above should be a terrorism case, the judge may hear representations from the Crown Prosecution Service.

The terrorism cases list

- 2(a) All terrorism cases, wherever they originate in England and Wales, will be managed in a list known as the ‘terrorism cases list’ by such judges of the High Court as are nominated by the President of the Queen’s Bench Division.
- 2(b) Such cases will be tried, unless otherwise directed by the President of the Queen’s Bench Division, by a judge of the High Court as nominated by the President of the Queen’s Bench Division.
- 3. The judges managing the terrorism cases referred to in paragraph 2(a) will be supported by the London and South Eastern Regional Co-ordinator’s Office (the ‘Regional Co-ordinator’s Office’). An official of that office or an individual nominated by that office will act as the case progression officer for cases in that list for the purposes of CrimPR 3.4.

Procedure after charge

4. Immediately after a person has been charged in a terrorism case, anywhere in England and Wales, a representative of the Crown Prosecution Service will notify the person on the 24 hour rota for special jurisdiction matters at Westminster Magistrates' Court of the following information:
 - (a) the full name of each defendant and the name of his solicitor or other legal representative, if known;
 - (b) the charges laid;
 - (c) the name and contact details of the Crown Prosecutor with responsibility for the case, if known; and
 - (d) confirmation that the case is a terrorism case.
5. The person on the 24-hour rota will then ensure that all terrorism cases wherever they are charged in England and Wales are listed before the Chief Magistrate or other District Judge designated under the Terrorism Act 2000. Unless the Chief Magistrate or other District Judge designated under the Terrorism Act 2000 directs otherwise, the first appearance of all defendants accused of terrorism offences will be listed at Westminster Magistrates' Court.
6. In order to comply with section 46 of the Police and Criminal Evidence Act 1984, if a defendant in a terrorism case is charged at a police station within the local justice area in which Westminster Magistrates' Court is situated, the defendant must be brought before Westminster Magistrates' Court as soon as is practicable and in any event not later than the first sitting after he is charged with the offence. If a defendant in a terrorism case is charged in a police station outside the local justice area in which Westminster Magistrates' Court is situated, unless the Chief Magistrate or other designated judge directs otherwise, the defendant must be removed to that area as soon as is practicable. He must then be brought before Westminster Magistrates' Court as soon as is practicable after his arrival in the area and in any event not later than the first sitting of Westminster Magistrates' Court after his arrival in that area.
7. As soon as is practicable after charge a representative of the Crown Prosecution Service will also provide the Regional Listing Co-ordinator's Office with the information listed in paragraph 4 above.
8. The Regional Co-ordinator's Office will then ensure that the Chief Magistrate and the Legal Aid Agency have the same information.

Cases to be sent to the Crown Court under section 51 of the Crime and Disorder Act 1998

9. The court should ordinarily direct that the plea and trial preparation hearing should take place about 14 days after charge.

10. The sending magistrates' court should contact the Regional Listing Co-ordinator's Office who will be responsible for notifying the magistrates' court as to the relevant Crown Court to which to send the case.
11. In all terrorism cases, the magistrates' court case progression form for cases sent to the Crown Court under section 51 of the Crime and Disorder Act 1998 should not be used. Instead of the automatic directions set out in that form, the magistrates' court shall make the following directions to facilitate the preliminary hearing at the Crown Court:
 - (a) three days prior to the preliminary hearing in the terrorism cases list, the prosecution must serve upon each defendant and the Regional Listing co-ordinator:
 - (i) a preliminary summary of the case;
 - (ii) the names of those who are to represent the prosecution, if known;
 - (iii) an estimate of the length of the trial;
 - (iv) a suggested provisional timetable which should generally include:
 - the general nature of further enquiries being made by the prosecution,
 - the time needed for the completion of such enquiries,
 - the time required by the prosecution to review the case,
 - a timetable for the phased service of the evidence,
 - the time for the provision by the Attorney General for his consent if necessary,
 - the time for service of the detailed defence case statement,
 - the date for the case management hearing, and
 - the estimated trial date;
 - (v) a preliminary statement of the possible disclosure issues setting out the nature and scale of the problem, including the amount of unused material, the manner in which the prosecution seeks to deal with these matters and a suggested timetable for discharging their statutory duty; and
 - (vi) any information relating to bail and custody time limits.
 - (b) one day prior to the preliminary hearing in the terrorist cases list, each defendant must serve in writing on the Regional Listing Co-ordinator and the prosecution:

- (i) the proposed representation;
- (ii) observations on the timetable; and
- (iii) an indication of plea and the general nature of the defence.

Cases to be sent to the Crown Court after the prosecutor gives notice under section 51B of the Crime and Disorder Act 1998

- 12. If a terrorism case is to be sent to the Crown Court after the prosecutor gives a notice under section 51B of the Crime and Disorder Act 1998 the magistrates' court should proceed as in paragraphs 9 – 11 above.
- 13. When a terrorism case is so sent the case will go into the terrorism list and be managed by a judge as described in paragraph 2(a) above.

The plea and trial preparation hearing at the Crown Court

- 14. At the plea and trial preparation hearing, the judge will determine whether the case is one to remain in the terrorism list and if so, give directions setting the provisional timetable.
- 15. The Legal Aid Agency must attend the hearing by an authorised officer to assist the court.

Use of video links

- 16. Unless a judge otherwise directs, all Crown Court hearings prior to the trial will be conducted by video link for all defendants in custody.

Security

- 17. The police service and the prison service will provide the Regional Listing Co-ordinator's Office with an initial joint assessment of the security risks associated with any court appearance by the defendants within 14 days of charge. Any subsequent changes in circumstances or the assessment of risk which have the potential to impact upon the choice of trial venue will be notified to the Regional Listing Co-ordinator's Office immediately.

CPD XIII Annex 5

MANAGEMENT OF CASES FROM THE ORGANISED CRIME DIVISION OF THE CROWN PROSECUTION SERVICE

This annex replaces the guidance issued by the Senior Presiding Judge in January 2014.

- 1. The Organised Crime Division (OCD) of the CPS is responsible for prosecution of cases from the National Crime Agency (NCA). Typically, these cases involve more than one defendant, are voluminous and raise complex and specialised issues of law. It is recognised that if not closely managed, such cases have the potential to cost vast amounts of public money and take longer than necessary.

2. This annex applies to all cases handled by the OCD.

Designated court centres

3. Subject to the overriding discretion of the Presiding Judges of the circuit, OCD cases should normally be heard at Designated Court Centres (DCC). The process of designating court centres for this purpose has taken into account geographical factors and the size, security and facilities of those court centres. The designated court centres are:
 - (a) Northern Circuit: Manchester, Liverpool and Preston.
 - (b) North Eastern Circuit: Leeds, Newcastle and Sheffield.
 - (c) Western Circuit: Bristol and Winchester.
 - (d) South Eastern Circuit (not including London): Reading, Luton, Chelmsford, Ipswich, Maidstone, Lewes and Hove.
 - (e) South Eastern Circuit (London only): Southwark, Blackfriars, Kingston, Woolwich, Croydon and the Central Criminal Court.
 - (f) Midland Circuit: Birmingham, Leicester and Nottingham.
 - (g) Wales Circuit: Cardiff, Swansea and Mold.

Selection of designated court centres

4. If arrests are made in different parts of the country and the OCD seeks to have all defendants tried by one Crown Court, the OCD will, at the earliest opportunity, write to the relevant court cluster manager with a recommendation as to the appropriate designated court centre, requesting that the decision be made by the relevant Presiding Judges. In the event that the designated court centre within one region is unable to accommodate a case, for example, as a result of a custody time limit expiry date, consideration may be given to transferring the case to a DCC in another region with the consent of the relevant Presiding Judges.
5. There will be a single point of contact person at the OCD for each HMCTS region, to assist listing co-ordinators.
6. The single contact person for each HMCTS region will be the relevant cluster manager, with the exception of the South Eastern Circuit where the appropriate person will be the Regional Listing Co-ordinator.

Designation of the trial judge

7. The trial judge will be assigned by the Presiding Judge at the earliest opportunity, and in accordance with CPD XIII Listing E: Allocation of Business within the Crown Court. Where the trial judge is unable to continue with the case, all further pre-trial hearings should be by a single judge until a replacement has been assigned.

Procedure after charge

8. Within 24 hours of the laying of a charge, a representative of the OCD will notify the relevant cluster manager of the following information to enable an agreement to be reached between that cluster manager and the reviewing CPS lawyer before the first appearance as to the DCC to which the case should be sent :
 - (a) the full name of each defendant and the name of his legal representatives, if known;
 - (b) the charges laid; and
 - (c) the name and contact details of the Crown Prosecutor with responsibility for the case.

Exceptions

9. Where it is not possible to have a case dealt with at a DCC, the OCD should liaise closely with the relevant cluster manager and the Presiding Judges to ensure that the cases are sent to the most appropriate court centre. This will, among other things, take into account the location of the likely source of the case, convenience of the witnesses, travelling distance for OCD staff and facilities at the court centres.
10. In the event that it is allocated to a non-designated court centre, the OCD should be permitted to make representations in writing to the Presiding Judges within 14 days as to why the venue is not suitable. The Presiding Judges will consider the reasons and, if necessary, hold a hearing. The CPS may renew their request at any stage where further reasons come to light that may affect the original decision on venue.
11. Nothing in this annex should be taken to remove the right of the defence to make representations as to the venue.