



Neutral Citation Number: [2014] EWCA Crim 1569

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/07/2014

Before :

LORD CHIEF JUSTICE OF ENGLAND AND WALES

Criminal Practice Directions
Amendment No. 2



AMENDMENT NO. 2 TO THE CRIMINAL PRACTICE DIRECTIONS

This Practice Direction adds new Practice Directions at CPD I General Matters 5C, CPD II Preliminary Proceedings Part 17 Extradition, CPD V Evidence Part 33A and CPD VII Sentencing Q, amends CPD Preliminary Proceedings 16B and CPD X Appeal and includes a new section at CPD XIII Listing and Allocation. They are handed down by the Lord Chief Justice on 23rd July 2014 and come into force on 6th October 2014.

It sets out:

- (a) An amended Table of Content;
- (b) A new Practice Direction on the issue of medical certificates;
- (c) An amendment to reflect the revised guidance on Reporting Restrictions in the Criminal Courts;
- (d) A new Practice Direction on Extradition;
- (e) A new Practice Direction on Expert Evidence;
- (f) A new section setting out requirements for information when sentencing, particularly in the case of corporate defendants;
- (g) An amendment to reflect the need for skeleton arguments to be filed in conviction appeal cases if necessary;
- (h) A new Practice Direction on the Listing and Allocation of court business.

The Table of Content is amended as follows to reflect the additional sections:

CPD	Division	CPD ref	Title of CPD, if applicable
CPD	I General matters	A	
CPD	I General matters	1A	
CPD	I General matters	3A	Case management
CPD	I General matters	3B	Pagination and indexing of served evidence
CPD	I General matters	3C	Abuse of process stay applications

CPD	I General matters	3D	Vulnerable people in the Courts
CPD	I General matters	3E	Ground rules hearings to plan the questioning of a vulnerable witness or defendant
CPD	I General matters	3F	Intermediaries
CPD	I General matters	3G	Vulnerable defendants
CPD	I General matters	3H	Wales and the Welsh Language: Devolution issues
CPD	I General matters	3J	Wales and the Welsh Language: Applications for evidence to be given in Welsh
CPD	I General matters	3K	Wales and the Welsh Language: Use of the Welsh Language in Courts in Wales
CPD	I General matters	5A	Forms
CPD	I General matters	5B	Access to information held by the Court
CPD	I General matters	5C	Issue of medical certificates
CPD	II Preliminary proceedings	6A	Investigation orders and warrants
CPD	II Preliminary proceedings	9A	Allocation (mode of trial)
CPD	II Preliminary proceedings	10A	Defendant's record
CPD	II Preliminary proceedings	14A	Settling the indictment
CPD	II Preliminary proceedings	14B	Voluntary bills of indictment
CPD	II Preliminary proceedings	16A	Unofficial sound recording of proceedings
CPD	II Preliminary proceedings	16B	Restrictions on reporting proceedings
CPD	II Preliminary proceedings	17A	Extradition: General matters
CPD	II Preliminary proceedings	17B	Extradition: Management of the Appeal
CPD	II Preliminary proceedings	17C	Extradition: Representation Orders
CPD	II Preliminary proceedings	17D	Extradition: Applications
CPD	II Preliminary proceedings	17E	Extradition: Court Papers
CPD	II Preliminary proceedings	17F	Extradition: Consequences of non compliance with directions
CPS	III Custody and bail	19A	Bail before sending for trial
CPD	III Custody and bail	19B	Bail: Failure to surrender and trials in absence
CPD	III Custody and bail	19C	Penalties for failure to surrender
CPD	III Custody and bail	19D	Relationship between the Bail Act offence and further remands on bail or in custody
CPD	III Custody and bail	19E	Trials in absence
CPD	III Custody and bail	19F	Forfeiture of monies lodged as security or pledged by a surety/estreatment of recognizances
CPD	III Custody and bail	19G	Bail during trial
CPD	III Custody and bail	19H	Crown Court judge's certification of fitness to

			appeal and applications to the Crown Court for bail pending appeal
CPD	IV Disclosure	22A	Disclosure of unused material
CPD	V Evidence	27A	Evidence by written statement
CPD	V Evidence	27B	Video recorded evidence in chief
CPD	V Evidence	27C	Evidence of audio and video recorded interviews
CPD	V Evidence	28A	Wards of Court and children subject to current Family proceedings
CPD	V Evidence	29A	Measures to assist a witness or defendant to give evidence
CPD	V Evidence	29B	Witnesses giving evidence by live link
CPD	V Evidence	29C	Visually recorded interviews: memory refreshing and watching at a different time from the jury
CPD	V Evidence	29D	Witness anonymity orders
CPD	V Evidence	33A	Expert evidence
CPD	V Evidence	35A	Spent convictions
CPD	VI Trial	37A	Role of the justices' clerk/legal adviser
CPD	VI Trial	39A	Juries: introduction
CPD	VI Trial	39B	Juries: preliminary matters arising before jury service commences
CPD	VI Trial	39C	Juries: eligibility
CPD	VI Trial	39D	Juries: precautionary measures before swearing
CPD	VI Trial	39E	Juries: swearing in jurors
CPD	VI Trial	39F	Juries: ensuring an effective jury panel
CPD	VI Trial	39G	Juries: preliminary instructions to jurors
CPD	VI Trial	39H	Juries: discharge of a juror for personal reasons
CPD	VI Trial	39J	Juries: views
CPD	VI Trial	39K	Juries: directions to jury before retirement
CPD	VI Trial	39L	Juries: jury access to exhibits and evidence in retirement
CPD	VI Trial	39M	Jury Irregularities
CPD	VI Trial	39N	Open justice
CPD	VI Trial	39P	Defendant's right to give or not to give evidence
CPD	VI Trial	39Q	Majority verdicts
CPD	VII Sentencing	A	Pleas of guilty in the Crown Court
CPD	VII Sentencing	B	Determining the factual basis of sentence
CPD	VII Sentencing	C	Indications of sentence: <i>R v Goodyear</i>
CPD	VII Sentencing	D	Facts to be stated on pleas of guilty
CPD	VII Sentencing	E	Concurrent and consecutive sentences
CPD	VII Sentencing	F	Victim Personal Statements
CPD	VII Sentencing	G	Families bereaved by homicide and other criminal conduct
CPD	VII Sentencing	H	Community Impact Statements
CPD	VII Sentencing	I	Impact Statements for Businesses
CPD	VII Sentencing	J	Binding over orders and conditional discharges
CPD	VII Sentencing	K	Committal for sentence
CPD	VII Sentencing	L	Imposition of life sentences
CPD	VII Sentencing	M	Mandatory life sentences
CPD	VII Sentencing	N	Transitional arrangements for sentences where

			the offence was committed before 18 December 2003
CPD	VII Sentencing	P	Procedure for announcing the minimum term in open court
CPD	VII Sentencing	Q	Financial information required for sentencing
CPD	IX Contempt of court	62A	Contempt in the face of the magistrates' court
CPD	X Appeal	63A	Appeals to the Crown Court
CPD	X Appeal	68A	Appeals against conviction and sentence – the provision of notice to the prosecution
CPD	X Appeal	68B	Listing of appeals against conviction and sentence in the Court of Appeal Criminal Division (CACD)
CPD	X Appeal	68C	Appeal notices containing grounds of appeal
CPD	X Appeal	68D	Respondents' notices
CPD	X Appeal	68E	Loss of time
CPD	X Appeal	68F	Skeleton arguments
CPD	X Appeal	68G	Criminal Appeal Office summaries
CPD	X Appeal	75A	References to the European Court of Justice
CPD	XI Costs		
CPD	XII General application	A	Court dress
CPD	XII General application	B	Modes of address and titles of judges and magistrates
CPD	XII General application	C	Availability of judgments given in the Court of Appeal and the High Court
CPD	XII General application	D	Citation of authority and provision of copies of judgments to the Court
CPD	XII General application	E	Preparation of judgments: neutral citation
CPD	XII General application	F	Citation of Hansard
CPD	XIII Listing	A	Judicial responsibility and key principles
CPD	XIII Listing	B	Classification
CPD	XIII Listing	C	Referral of cases in the Crown Court to the Resident Judge and to the Presiding Judges
CPD	XIII Listing	D	Authorisation of Judges
CPD	XIII Listing	E	Allocation of business within the Crown Court
CPD	XIII Listing	F	Listing of trials, Custody Time Limits and transfer of cases
CPD	XIII Listing	G	Listing of hearings other than trials
CPD	XIII Listing		Annex 1: General principles for the deployment of the judiciary in the magistrates' court
CPD	XIII Listing		Annex 2: Sexual offences in the youth court
CPD	XIII Listing		Annex 3: Cases involving very large fines in the magistrates' court

New Practice Direction on issue of medical certificates

After CPD I General matters 5B Access to information held by the court, the following to be added as 'CPD I General matters 5C Issue of medical certificates:

CPD I General matters: 5C ISSUE OF MEDICAL CERTIFICATES

- 5C.1 Doctors will be aware that medical notes are normally submitted by defendants in criminal proceedings as justification for not answering bail. Medical notes may also be submitted by witnesses who are due to give evidence and jurors.
- 5C.2 If a medical certificate is accepted by the court, this will result in cases (including contested hearings and trials) being adjourned rather than the court issuing a warrant for the defendant's arrest without bail. Medical certificates will also provide the defendant with sufficient evidence to defend a charge of failure to surrender to bail.
- 5C.3 However, a court is not absolutely bound by a medical certificate. The medical practitioner providing the certificate may be required by the court to give evidence. Alternatively the court may exercise its discretion to disregard a certificate which it finds unsatisfactory: *R V Ealing Magistrates' Court Ex P. Burgess [2001] 165 J.P. 82*
- 5C.4 Circumstances where the court may find a medical certificate unsatisfactory include:
- (a) Where the certificate indicates that the defendant is unfit to attend work (rather than to attend court);
 - (b) Where the nature of the defendant's ailment (e.g. a broken arm) does not appear to be capable of preventing his attendance at court;
 - (c) Where the defendant is certified as suffering from stress/anxiety/depression and there is no indication of the defendant recovering within a realistic timescale.
- 5C.5 It therefore follows that the minimum standards a medical certificate should set out are:
- (a) The date on which the medical practitioner examined the defendant;
 - (b) The exact nature of the defendant's ailments
 - (c) If it is not self-evident, why the ailment prevents the defendant attending court;
 - (d) An indication as to when the defendant is likely to be able to attend court, or a date when the current certificate expires.
- 5C.6 Medical practitioners should be aware that when issuing a certificate to a defendant in criminal proceedings they make themselves liable to being summonsed to court to give evidence

about the content of the certificate, and they may be asked to justify their statements.

CPD II Preliminary proceedings 16B: Restrictions on reporting proceedings

For CPD 16B.1 substitute

16B.1 Open justice is an essential principle in the criminal courts but the principle is subject to some statutory restrictions. These restrictions are either automatic or discretionary. Guidance is provided in the joint publication, *Reporting Restrictions in the Criminal Courts* issued by the Judicial College, the Newspaper Society, the Society of Editors and the Media Lawyers Association. The current version is the third edition and has been updated to be effective from June 2014.

New Practice Direction on Extradition

CPD II Preliminary Proceedings 17A: EXTRADITION: GENERAL MATTERS

General matters: expedition at all times

17A.1 Compliance with these directions is essential to ensure that extradition proceedings are dealt with expeditiously. Both in accordance with the spirit of the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and surrender procedures between Member States and the United Kingdom's other treaty obligations. It is of the utmost importance that orders which provide directions for the proper management and progress of cases are obeyed so that the parties can fulfil their duty to assist the Court in furthering the overriding objective and in making efficient use of judicial resources.

General guidance under s. 2(7A) Extradition Act 2003 (as amended by the Anti-Social Behaviour, Crime and Policing Act 2014)

17A.2 When proceeding under section 21A of the Act and considering under subsection (3)(a) of the Act the seriousness of the conduct alleged to constitute the extradition offence, the judge will determine the issue on the facts of each case as set out in the warrant, subject to the guidance in 17A.3 below.

17A.3 In any case where the conduct alleged to constitute the offence falls into one of the categories in the table at 17A.5 below, unless there are exceptional circumstances, the judge should generally determine that extradition would be disproportionate. It would follow under the terms of s. 21A (4) (b) of the Act that the judge must order the person's discharge.

17A.4 The exceptional circumstances referred to above in 17A.3 will include:

- i. Vulnerable victim
- ii. Crime committed against someone because of their disability, gender-identity, race, religion or belief, or sexual orientation
- iii. Significant premeditation
- iv. Multiple counts
- v. Extradition also sought for another offence
- vi. Previous offending history

17A.5 The table is as follows:

Category of offence	Examples
Minor theft – (<u>not</u> robbery/ burglary or theft from the person)	Where the theft is of a low monetary value <u>and</u> there is a low impact on the victim or indirect harm to others, for example: <ul style="list-style-type: none"> (a) Theft of an item of food from a supermarket (b) Theft of a small amount of scrap metal from company premises (c) Theft of a very small sum of money
Minor financial offences (forgery, fraud and tax offences)	Where the sums involved are small <u>and</u> there is a low impact on the victim and / or low indirect harm to others, for example: <ul style="list-style-type: none"> (a) Failure to file a tax return or invoices on time (b) Making a false statement in a tax return (c) Dishonestly applying for a tax refund (d) Obtaining a bank loan using a forged or falsified document (e) Non-payment of child maintenance
Minor road traffic, driving and related offences	Where no injury, loss or damage was incurred to any person or property, for example: <ul style="list-style-type: none"> (a) Driving whilst using a mobile phone (b) Use of a bicycle whilst intoxicated
Minor public order offences	Where there is no suggestion the person started the trouble, and the offending behaviour was for example: <ul style="list-style-type: none"> (a) Non-threatening verbal abuse of a law enforcement officer or government official

	(b) Shouting or causing a disturbance, without threats (c) Quarrelling in the street, without threats
Minor criminal damage , (other than by fire)	For example, breaking a window
Possession of controlled substance (other than one with a high capacity for harm such as heroin, cocaine, LSD or crystal meth)	Where it was possession of a very small quantity and intended for personal use

CPD II Preliminary Proceedings 17B MANAGEMENT OF THE APPEAL

17B.1 Applications for permission to appeal to the High Court under the Extradition Act 2003 must be started in the Administrative Court of the Queen’s Bench Division at the Royal Courts of Justice in London.

17B.2 A Lord Justice of Appeal appointed by the Lord Chief Justice will have responsibility to assist the President of the Queen’s Bench Division with overall supervision of extradition appeals.

Definitions

17B.3 Where appropriate “appeal” includes “application for permission to appeal”.

17B.4 “EAW” means European Arrest Warrant.

17B.5 A “nominated legal officer of the court” is a court officer assigned to the Administrative Court Office who is a barrister or solicitor and who has been nominated for the purpose by the Lord Chief Justice under Criminal Procedure Rules 17.18 and 17.30.

Forms

17B.6 The forms are to be used in the High Court, in accordance with the Criminal Procedure Rules 17.19, 17.20, 17.21 and 17.22.

17B.7 The forms may be amended or withdrawn from time to time, or new forms added, under the authority of the Lord Chief Justice.

Management of the Appeal

17B.8 Where it is not possible for the High Court to begin to hear the appeal in accordance with time limits contained in Crim PR 17.23(1) and (2), the Court may extend the time limit if it believes it to be in the interests of justice to do so and may do so even after the time limit has expired.

17B.9 The power to extend those time limits may be exercised by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court .

17B.10 Case Management directions setting down a timetable may be imposed upon the parties by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court.

Listing of Oral, Renewal Hearings and Substantive Hearings

17B.11 Arrangements for the fixing of dates for hearings will be made by a Listing Officer of the Administrative Court under the direction of the Judge with overall responsibility for supervision of extradition appeals.

17B.12 A Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court may give such directions to the Listing Officer as they deem necessary with regard to the fixing of dates, including as to whether cases in the same/related proceedings or raising the same or similar issues should be heard together or consecutively under the duty imposed by Crim PR 1.1 (2) (e). Parties must alert the nominated legal officer of the court for the need for such directions.

17B.13 Save in exceptional circumstances, regard will not be given to an advocate's existing commitments. This is in accordance with the spirit of the legislation that extradition matters should be dealt with expeditiously. Extradition matters are generally not so complex that an alternative advocate cannot be instructed.

17B.14 If a party disagrees with the time estimate given by the Court, they must inform the Listing Office within 5 business days of the notification of the listing and they must provide a time estimate of their own.

Expedited appeals

17B.15 The Court may direct that the hearing of an appeal be expedited.

17B.16 The Court will deal with requests for an expedited appeal without a hearing. Requests for expedition must be made in writing, either within the appeal notice, or by application notice, clearly marked with the Administrative Court reference number, which must be lodged with the Administrative Court Office or emailed to the appropriate email address: administrativecourtoffice.crimex@hmcts.x.gsi.gov.uk and notice must be given to the other parties.

17B.17 Any requests for an expedited appeal made to an out of hours

Judge must be accompanied by:

- i) A detailed chronology;
- ii) Any Orders or Judgments made in the proceedings

Amendment to Notices

17B.18 Amendment to Notice of Appeal requiring permission

- (i) Subject to Crim PR 17.20(5), an appeal notice may not be amended without the permission of the Court.
- (ii) An application for permission to amend made before permission to appeal has been considered will be determined without a hearing.
- (iii) An application for permission to amend after permission to appeal has been granted and any submissions in opposition will normally be dealt with at the hearing unless there is any risk that the hearing may have to be adjourned. If there is any risk that the application to amend may lead the other party to seek time to answer the proposed amendment, the application must be made as soon as practicable and well in advance of the hearing. A failure to make immediate applications for such an amendment is likely to result in refusal.
- (iv) Legal representatives or the appellant, if acting in person, must
 - a. Inform the Court at the time they make the application if the existing time estimate is affected by the proposed amendment; and
 - b. Attempt to agree any revised time estimate no later than 5 business days after service of the application.

17B.19 Amendment to Respondent's Notice

- (i) A respondent's notice may not be amended without the permission of the Court.
- (ii) An application for permission to amend made before permission to appeal has been considered will be determined without a hearing.
- (iii) An application for permission to amend after permission to appeal has been granted and any submissions in opposition will normally be dealt with at the hearing unless there is any risk that the hearing may have to be adjourned. If there is any risk that the application to amend may require the other party to seek time to answer the proposed amendment, the application must be made as soon as practicable and well in advance of the hearing. A failure to make immediate applications for such an amendment is likely to result in refusal.

- (iv) Legal representatives or the appellant, if acting in person, must
 - a. Inform the Court at the time they make the application if the existing time estimate is affected by the proposed amendment; and
 - b. Attempt to agree any revised time estimate no later than 5 business days after service of the application.

Use of Live-Links

17B.20 When a party acting in person is in custody, the Court office will request the institution to use live-link for attendance at any oral or renewal hearing or substantive appeal. The institution must give precedence to all such applications in the High Court over live-links to the lower courts, including the Crown Court.

Interpreters

17B.21 It is the responsibility of the Court Listing Officer to ensure the attendance of an accredited interpreter when an unrepresented party in extradition proceedings is acting in person and does not understand or speak English.

17B.22 Where a party who does not understand or speak English is legally represented it is the responsibility of his/her solicitors to instruct an interpreter if required for any hearing in extradition proceedings.

Disposing of applications and appeals by way of consent

17B.23 Any consent order to dismiss pursuant to Crim PR 17.24(3) must be approved by a Lord Justice of Appeal or Single Judge of the High Court and be pronounced in open Court.

17B.24 A consent order to allow an appeal brought under s.28 of the Extradition Act 2003 must provide –

- (i) for the quashing of the decision of the District Judge in Westminster Magistrates' Court discharging the Requested Person;
- (ii) for the matter to be remitted to the District Judge to hold fresh extradition proceedings;
- (iii) the consent order may be approved by the Lord Justice of Appeal, Single Judge of the High Court or a Master of the High Court. The order once approved will be sent to the parties.

17B.25 A consent order to allow an appeal brought under s.110 of the Extradition Act 2003 must provide –

- (i) for the quashing of the decision of the Secretary of State for the Home Department not to order extradition;

- (ii) for the matter to be remitted to the Secretary of State to make a fresh decision on whether or not to order extradition;
- (iii) the consent order may be approved by the Lord Justice of Appeal, Single Judge of the High Court or a Master of the High Court. The order once approved will be sent to the parties.

17B.26 Where one of the parties is a child or protected party, any disposal of an application or appeal requires the Court's approval. A draft order signed by the party's solicitors should be sent to the Court, together with an opinion from the advocate acting on behalf of the child or protected party and, in the case of a protected party, any relevant documents prepared for the Court of Protection.

Fees

17B.27 Applications to extend representation orders do not attract any fee.

17B.28 Fees are payable for all other applications in accordance with the current Fees Order.

CPD II Preliminary Proceedings 17C: EXTRADITION: REPRESENTATION ORDERS

17C.1 Representation orders may be granted by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court upon a properly completed CRM14 being lodged with the Court. A representation order will cover junior advocate and solicitors for the preparation of the Notice of Appeal to determination of the appeal.

17C.2 Applications to extend representation orders may be granted by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated Court Officer who may direct a case management hearing before a Lord Justice of Appeal, a Single Judge, or a Master. Since these applications do not attract a fee, parties may lodge them with the Court by attaching them to an email addressed to the nominated legal officer of the court.

17C.3 Applications to extend representation orders to cover the instruction of Queen's Counsel to appear either alone or with junior advocate must be made in writing, either by letter or application notice, clearly marked with the Administrative Court reference number, which must be lodged with the Administrative Court Office or emailed to the appropriate email address: administrativecourtoffice.crimex@hmcts.x.gsi.gov.uk.
The request must:

- (i) identify the substantial novel or complex issues of law or fact in the case;
- (ii) explain why these may only be adequately presented by a Queen's Counsel;
- (iii) state whether a Queen's Counsel has been instructed on behalf of the respondent;
- (iv) explain any delay in making the request;
- (v) be supported by advice from junior advocate or Queen's Counsel.

17C.4 Applications for prior authority to cover the cost of obtaining expert evidence must be made in writing, either by letter, clearly marked with the Administrative Court reference number, which must be sent or emailed to the Administrative Court Office.

The request must:

- (i) confirm that the evidence sought has not been considered in any previous appeals determined by the appellate courts;
- (ii) explain why the evidence was not called at the extradition hearing in Westminster Magistrates' Court and what evidence can be produced to support that;
- (iii) explain why the new evidence would have resulted in the District Judge deciding a question at the extradition hearing differently and whether, if so, the District Judge would have been required to make a different order as to discharge of the requested person;
- (iv) explain why the evidence was not raised when the case was being considered by the Secretary of State for the Home Department or information was available that was not available at that time;
- (v) explain why the new evidence would have resulted in the Secretary of State deciding a question differently, and if the question had been decided differently, the Secretary of State would not have ordered the person's extradition;
- (vi) state when the need for the new evidence first became known;
- (vii) explain any delay in making the request;

- (viii) explain what relevant factual, as opposed to expert evidence, is being given by whom to create the factual basis for the expert's opinion;
- (ix) explain why this particular area of expertise is relevant: for example why a child psychologist should be appointed as opposed to a social worker;
- (x) state whether the requested person has capacity;
- (xi) set out a full breakdown of all costs involved including any VAT or other tax payable, including alternative quotes or explaining why none are available;
- (xii) provide a list of all previous extensions of the representation order and the approval of expenditure to date;
- (xiii) provide a timetable for the production of the evidence and its anticipated effect on the time estimate and hearing date;
- (xiv) set out the level of compliance to date with any directions order.

17C.5 Experts must have direct personal experience of and proven expertise in the issue on which a report is sought; it is only if they do have such experience and it is relevant, that they can give evidence of what they have observed.

17C.6 Where an order is granted to extend a representation order to obtain further evidence it will still be necessary for the party seeking to rely on the new evidence to satisfy the Court hearing the application for permission or the substantive appeal that the evidence obtained should be admitted having regard to sections 27(4) and 29(4) of the Extradition Act 2003 and the judgment in *Szombathely City Court v Fenyvesi* [2009]EWHC 231 (Admin).

17C.7 Applications to extend representation for the translation of documents must be made in writing, either by letter, clearly marked with the Administrative Court reference number, which must be sent or emailed to the appropriate email address: administrativecourtoffice.crimex@hmcts.x.gsi.gov.uk

The request should:

- (i) explain the importance of the document for which a translation is being sought and the justification for obtaining it;

- (ii) explain what it is believed the contents of the document is and the issues it will assist the court to address in hearing the appeal;
- (iii) confirm that the evidence sought has not been considered in any previous appeals determined by the appellate courts;
- (iv) confirm that the evidence sought was not called at the extradition hearing in the Westminster Magistrates' Court;
- (v) explain why the evidence sought would have resulted in the District Judge deciding a question at the extradition hearing differently and whether, if so, the District Judge would have been required to make a different order as to discharge of the requested person;
- (vi) confirm that the new evidence was not raised when the case was being considered by the Secretary of State for the Home Department;
- (vii) explain why the new evidence sought would have resulted in the Secretary of State deciding a question differently, and if the question had been decided differently, the Secretary of State would not have ordered the person's extradition;
- (viii) confirm when the need for the new evidence first became known;
- (ix) explain any delay in making the request;
- (x) explain fully the evidential basis for incurring the expenditure;
- (xi) explain why the appellant cannot produce the evidence himself or herself in the form of a statement of truth;
- (xii) set out a full breakdown of all costs involved including any VAT or other tax payable and the Legal Aid Agency contractual rates;
- (xiii) provide a list of all previous extensions of the representation order and the expenditure to date.

17C.8 Where an order is made to extend representation to cover the cost of the translation of documents it will still be necessary for the party seeking to rely on the documents as evidence to satisfy the Court that it should be admitted at the hearing of the appeal having regard to sections 27(4) and 29(4) of the Extradition Act 2003 and

the judgment in *Szombathely City Court v Fenyvesi* [2009] EWHC 231 (Admin).

CPD II Preliminary Proceedings 17D: EXTRADITION: APPLICATIONS

17D.1 Extension or abridgement of time

- (i) Any party who seeks extension or abridgment of time for the service of documents, evidence or skeleton arguments must apply to the High Court on the appropriate form and pay the appropriate fee.
- (ii) Applications for extension or abridgment of time may be determined by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court.
- (iii) Applications for extension of time must include a witness statement setting out the reasons for non-compliance with any previous order and the proposed timetable for compliance.
- (iv) Any application made to an out of hours Judge must be accompanied with:
 - a. A detailed chronology;
 - b. Reasons why the application could not be made within Court hours;
 - c. Any Orders or Judgments made in the proceedings

Application to come off record

17D.2 Any solicitor seeking to come off record as acting for a party must apply to the High Court on the appropriate form and pay the appropriate fee at least 7 business days before the hearing of the appeal. Applications may be determined by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court.

17D.3 The application must be supported by a statement of truth –

- (i) providing proper and sufficient reasons why the solicitor wishes to come off record;
- (ii) confirming that the solicitor has complied with Orders made by the High Court before the application to come off record was made or an

compliance;

- (iii) confirming that where, the Requested Person is on bail, that person has been advised of the time and date of the appeal hearing and the need to attend in person;
- (iv) confirming where the Requested Person is in custody, the institution in which he/she is being held, the person's prison number and date of birth.

Application to adjourn

17D.4 Where a hearing date has been fixed, any application to vacate the hearing must be made on the appropriate form. A fee is required for the application if it is made within 14 days of the hearing date. The application must:

- (i) explain the reasons why an application is being made to vacate the hearing;
- (ii) detail the views of the other parties to the appeal;
- (iii) include a draft order with the application notice.

17D.5 If the parties both seek an adjournment then the application must be submitted for consideration by a Lord Justice of Appeal, a single Judge of the High Court or a Master of the Administrative Court. Exceptional circumstances must be shown if a date for the hearing has been fixed or the adjournment will result in material delay to the determination of the appeal.

17D.6 An application to adjourn following a compromise agreement must be supported by evidence justifying exceptional circumstances and why it is in compliance with the overriding objective.

Variation of directions

17D.7 Where parties are unable to comply with any order of the Court they must apply promptly to vary directions before deadlines for compliance have expired and seek further directions. An application to vary directions attracts a fee and the application notice [on the appropriate form] must:

- (i) provide full and proper explanations for why the current and existing directions have not been complied with;
- (ii) detail the views of the other parties to the appeal;

- (iii) include a draft order setting out in full the timetable and directions as varied i.e. a superseding order which stands alone.

17D.8 A failure to make the application prior to the expiry of the date specified in the Order will generally result in the refusal of the application unless good reasons are shown.

Application to certify a point of law of general public importance

17D.9 Where an application is made under Crim PR 17.25(2)(b) the application must be made on the appropriate form accompanied by the relevant fee.

17D.10 Any response to the application must be made within 10 business days.

17D.11 Where an application to certify is granted but permission to appeal to the Supreme Court is refused, it shall be for those representing the Requested Person to apply for an extension of the Representation Order to cover proceedings in the Supreme Court, if so advised.

17D.12 The representation order may be extended by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court.

17D.13 The result of the application to certify a point of law of general public importance and permission to appeal to the Supreme Court may be notified in advance to the legal representatives but legal representatives must not communicate it to the Requested Person until 1 hour before the pronouncement is made in open court.

17D.14 There shall be no public announcement of the result until after it has been formally pronounced.

Application to reopen the determination of an appeal

17D.15 An application under Crim PR 17.27 to reopen an appeal must be referred to the court that determined the appeal, but may if circumstances require be considered by a Judge or Judges other than those who determined the original appeal.

Application to extend required period for removal pursuant to section 36 of the Extradition Act 2003

17D.16 Where an application is made for an extension of the required period within which to extradite a Requested Person it must be accompanied by:

- (i) a witness statement explaining why it is not possible to remove the Requested Person within the required period and the proposed timetable for removal;
- (ii) a draft order

17D.17 The application to extend time may only be made within an extant required period for removal.

17D.18 Where extensions of time are sought for the same reason in respect of a number of Requested Persons who are due to be extradited at the same time, a single application may be made to the Court listing each of the Requested Persons for whom an extension is sought.

17D.19 The application may be determined by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a legal officer of the court and a single order listing those persons may be granted.

Application for a discharge pursuant to section 42 of the Extradition Act 2003

17D.20 Where an application notice is issued seeking the discharge of a Requested Person it must be accompanied by

- (i) the notification by the requesting state that the EAW has been withdrawn together with a translation of the same
- (ii) a witness statement containing:
 - a. details of whether the withdrawn EAW is the only EAW outstanding in respect of the Requested Person
 - b. details of other EAWs outstanding in respect of the Requested Person and the stage which the proceedings have reached
 - c. whether only part of the EAW has been withdrawn
 - d. details of any bail conditions
 - e. details of any institution in which the Requested Person is being detained, the Requested Person's prison number and date of birth.

17D.21 The decision to discharge may be made by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court.

17D.22 It is the responsibility of the High Court to serve the approved order on the appropriate institution and Westminster Magistrates' Court.

CPD II Preliminary Proceedings 17E: EXTRADITION: COURT PAPERS

Skeleton arguments

17E.1 The Court on granting permission to appeal or directing an oral hearing for permission to appeal will give directions as to the filing of skeleton arguments. Strict compliance is required with all time limits.

17E.2 A skeleton argument must:

- (a) not normally exceed 25 pages (excluding front sheets and back sheets) and be concise;
- (b) be printed on A4 paper in not less than 12 point font and 1.5 line spacing;
- (c) define the issues in the appeal;
- (d) be set out in numbered paragraphs;
- (e) be cross-referenced to any relevant document in the bundle;
- (f) be self-contained and not incorporate by reference material from previous skeleton arguments;
- (g) not include extensive quotations from documents or authorities.

17E.3 Where it is necessary to refer to an authority, the skeleton argument must

- (a) state the proposition of law the authority demonstrates;

and

- (b) identify but not quote the parts of the authority that support the proposition.

17E.4 If more than one authority is cited in support of a given proposition, the skeleton argument must briefly state why.

17E.5 A chronology of relevant events will be necessary in most appeals.

17E.6 Where a skeleton argument has been prepared in respect of an application for permission to appeal, the same skeleton argument may be relied upon in the appeal upon notice being given to the Court or a replacement skeleton may be lodged not less than 10 business days before the hearing of the appeal.

17E.7 At the hearing the Court may refuse to hear argument on a point not included in a skeleton argument filed within the prescribed time.

Bundles

17E.8 The bundle for the hearing should be agreed by the parties save where the Requested Person is acting in person. In those circumstances the Court expects the Requesting State to prepare the bundle.

17E.9 The bundle must be paginated and indexed.

17E.10 Subject to any order made by the Court, the following documents must be included in the appeal bundle:

- (a) a copy of the appellant's notice;
- (b) a copy of any respondent's notice;
- (c) a copy of any appellant's or respondent's skeleton argument;
- (d) a copy of the order under appeal;
- (e) a copy of any order made by the Court in the exercise of its case management powers;
- (f) any judgment of the Court made in a previous appeal involving the party or parties which is relevant to the present proceedings.
- (g) where the bundle of papers reaches more than 200 pages, the parties should agree a core appeal bundle which must contain (a)-(f) above.

17E.11 The Bundle should only contain relevant documents and must not include duplicate documents.

17E.12 Bundles lodged with the Court will not be returned to the parties but will be destroyed in the confidential waste system at the conclusion of the proceedings and without further notification.

CPD II Preliminary Proceedings 17F:EXTRADITION: CONSEQUENCES OF NON COMPLIANCE WITH DIRECTIONS

17F.1 Failure to comply with these directions will lead to applications for permission and appeals being dealt with on the material available to the Court at the time when the decision is made.

17F.2 Judges dealing with extradition appeals will seek full and proper explanations for any breaches of the rules and the provisions of this Practice Direction.

17F.3 If no good explanation can be given immediately by counsel or solicitors, the senior partner or the departmental head responsible is likely to be called to court to explain any failure to comply with a court order. Where counsel or solicitors fail to obey orders of the Court and are unable to provide proper and sufficient reasons for their disobedience they may anticipate the matter being formally referred to the President of the Queen's Bench Division with a recommendation that the counsel or solicitors involved be reported to their professional bodies.

17F.4 The court may also refuse to admit any material or any evidence not filed in compliance with the order for Directions or outside a time limit specified by the court

17F. 5 A failure to comply with the time limits or other requirements for skeleton arguments will have the consequences specified in 17E.7.

New Practice Direction on Expert Evidence

In CPD V Evidence Part 33A insert:

CPD V Evidence 33A: EXPERT EVIDENCE

33A.1 Expert opinion evidence is admissible in criminal proceedings at common law if, in summary, (i) it is relevant to a matter in issue in the proceedings; (ii) it is needed to provide the court with information likely to be outside the court's own knowledge and experience; and (iii) the witness is competent to give that opinion.

33A.2 Legislation relevant to the introduction and admissibility of such evidence includes section 30 of the Criminal Justice Act 1988, which provides that an expert report shall be admissible as

evidence in criminal proceedings whether or not the person making it gives oral evidence, but that if he or she does not give oral evidence then the report is admissible only with the leave of the court; and Part 33 of the Criminal Procedure Rules, which in exercise of the powers conferred by section 81 of the Police and Criminal Evidence Act 1984 and section 20 of the Criminal Procedure and Investigations Act 1996 requires the service of expert evidence in advance of trial in the terms required by those rules.

- 33A.3 In the Law Commission report entitled 'Expert Evidence in Criminal Proceedings in England and Wales', report number 325, published in March, 2011, the Commission recommended a statutory test for the admissibility of expert evidence. However, in its response the government declined to legislate. The common law, therefore, remains the source of the criteria by reference to which the court must assess the admissibility and weight of such evidence; and rule 33.4 of the Criminal Procedure Rules lists those matters with which an expert's report must deal, so that the court can conduct an adequate such assessment.
- 33A.4 In its judgment in *R v Dlugosz and Others* [2013] EWCA Crim 2, the Court of Appeal observed (at paragraph 11): "It is essential to recall the principle which is applicable, namely in determining the issue of admissibility, the court must be satisfied that there is a sufficiently reliable scientific basis for the evidence to be admitted. If there is then the court leaves the opposing views to be tested before the jury." Nothing at common law precludes assessment by the court of the reliability of an expert opinion by reference to substantially similar factors to those the Law Commission recommended as conditions of admissibility, and courts are encouraged actively to enquire into such factors.
- 33A.5 Therefore factors which the court may take into account in determining the reliability of expert opinion, and especially of expert scientific opinion, include:
- (a) the extent and quality of the data on which the expert's opinion is based, and the validity of the methods by which they were obtained;
 - (b) if the expert's opinion relies on an inference from any findings, whether the opinion properly explains how safe or unsafe the inference is (whether by reference to statistical significance or in other appropriate terms);
 - (c) if the expert's opinion relies on the results of the use of any method (for instance, a test, measurement or survey), whether the opinion takes proper account of matters, such as the degree of precision or margin of uncertainty, affecting the accuracy or reliability of those results;

- (d) the extent to which any material upon which the expert's opinion is based has been reviewed by others with relevant expertise (for instance, in peer-reviewed publications), and the views of those others on that material;
- (e) the extent to which the expert's opinion is based on material falling outside the expert's own field of expertise;
- (f) the completeness of the information which was available to the expert, and whether the expert took account of all relevant information in arriving at the opinion (including information as to the context of any facts to which the opinion relates);
- (g) if there is a range of expert opinion on the matter in question, where in the range the expert's own opinion lies and whether the expert's preference has been properly explained; and
- (h) whether the expert's methods followed established practice in the field and, if they did not, whether the reason for the divergence has been properly explained.

33A.6 In addition, in considering reliability, and especially the reliability of expert scientific opinion, the court should be astute to identify potential flaws in such opinion which detract from its reliability, such as:

- (a) being based on a hypothesis which has not been subjected to sufficient scrutiny (including, where appropriate, experimental or other testing), or which has failed to stand up to scrutiny;
- (b) being based on an unjustifiable assumption;
- (c) being based on flawed data;
- (d) relying on an examination, technique, method or process which was not properly carried out or applied, or was not appropriate for use in the particular case; or
- (e) relying on an inference or conclusion which has not been properly reached.

New Practice Direction on financial information required for sentencing

After CPD VII Sentencing P insert the following to be added as

CPD VII Sentencing Q: FINANCIAL, ETC. INFORMATION REQUIRED FOR SENTENCING

- Q.1 These directions supplement rules 37.10 and 38.16 of the Criminal Procedure Rules, which set out the procedure to be followed

where a defendant pleads guilty, or is convicted, and is to be sentenced. They are not concerned exclusively with corporate defendants, or with offences of an environmental, public health, health and safety or other regulatory character, but the guidance which they contain is likely to be of particular significance in such cases.

- Q.2 The rules set out the prosecutor's responsibilities in all cases. Where the offence is of a character, or is against a prohibition, with which the sentencing court is unlikely to be familiar, those responsibilities are commensurately more onerous. The court is entitled to the greatest possible assistance in identifying information relevant to sentencing.
- Q.3 In such a case, save where the circumstances are very straightforward, it is likely that justice will best be served by the submission of the required information in writing: see *R v Friskies Petcare (UK) Ltd* [2000] 2 Cr App R (S) 401. Though it is the prosecutor's responsibility to the court to prepare any such document, if the defendant pleads guilty, or indicates a guilty plea, then it is very highly desirable that such sentencing information should be agreed between the parties and jointly submitted. If agreement cannot be reached in all particulars, then the nature and extent of the disagreement should be indicated. If the court concludes that what is in issue is material to sentence, then it will give directions for resolution of the dispute, whether by hearing oral evidence or by other means. In every case, when passing sentence the sentencing court must make clear on what basis sentence is passed: in fairness to the defendant, and for the information of any other person, or court, who needs or wishes to understand the reasons for sentence.
- Q.4 If so directed by or on behalf of the court, a defendant must supply accurate information about financial circumstances. In fixing the amount of any fine the court must take into account, amongst other considerations, the financial circumstances of the offender (whether an individual or other person) as they are known or as they appear to be. Before fixing the amount of fine when the defendant is an individual, the court must inquire into his financial circumstances. Where the defendant is an individual the court may make a financial circumstances order in respect of him. This means an order in which the court requires an individual to provide a statement as to his financial means, within a specified time. It is an offence, punishable with imprisonment, to fail to comply with such an order or for knowingly/recklessly furnishing a false statement or knowingly failing to disclose a material fact. The provisions of section 20A Criminal Justice Act 1991 apply to any person (thereby including a corporate organisation) and place the offender under a statutory duty to provide the court with a

statement as to his financial means in response to an official request. There are offences for non-compliance, false statements or non-disclosure. It is for the court to decide how much information is required, having regard to relevant sentencing guidelines or guideline cases. However, by reference to those same guidelines and cases the parties should anticipate what the court will require, and prepare accordingly. In complex cases, and in cases involving a corporate defendant, the information required will be more extensive than in others. In the case of a corporate defendant, that information usually will include details of the defendant's corporate structure; annual profit and loss accounts, or extracts; annual balance sheets, or extracts; details of shareholders' receipts; and details of the remuneration of directors or other officers.

Q.5 In *R v F Howe and Son (Engineers) Ltd* [1999] 2 Cr App R (S) 37 the Court of Appeal observed:

“If a defendant company wishes to make any submission to the court about its ability to pay a fine it should supply copies of its accounts and any other financial information on which it intends to rely in good time before the hearing both to the court and to the prosecution. This will give the prosecution the opportunity to assist the court should the court wish it. Usually accounts need to be considered with some care to avoid reaching a superficial and perhaps erroneous conclusion. Where accounts or other financial information are deliberately not supplied the court will be entitled to conclude that the company is in a position to pay any financial penalty it is minded to impose. Where the relevant information is provided late it may be desirable for sentence to be adjourned, if necessary at the defendant's expense, so as to avoid the risk of the court taking what it is told at face value and imposing an inadequate penalty.”

Q.6 In the case of an individual, the court is likewise entitled to conclude that the defendant is able to pay any fine imposed unless the defendant has supplied financial information to the contrary. It is the defendant's responsibility to disclose to the court such information relevant to his or her financial position as will enable it to assess what he or she reasonably can afford to pay. If necessary, the court may compel the disclosure of an individual defendant's financial circumstances. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case.

For paragraphs 68F.1 and 68F.3 substitute:

CPD X Appeal 68F: SKELETON ARGUMENTS

68F.1 Advocates should always ensure that the Court, and any other party as appropriate, has a single document containing all of the points that are to be argued. The appeal notice must comply with the requirements of Part 68. In cases of an appeal against conviction, advocates must serve a skeleton argument when the appeal notice does not sufficiently outline the grounds of the appeal, particularly in cases where a complex or novel point of law has been raised. In an appeal against sentence it may be helpful for an advocate to serve a skeleton argument when a complex issue is raised.

...

68F.3 A skeleton argument, if provided, should contain a numbered list of the points the advocate intends to argue, grouped under each ground of appeal, and stated in no more than one or two sentences. It should be as succinct as possible. Advocates should ensure that the correct Criminal Appeal Office number and the date on which the document was served appears at the beginning of any document and that their names are at the end.

New Practice Direction on Listing and Allocation

To be added as:

CPD XIII LISTING AND ALLOCATION

These Practice Directions on Listing and Allocation replace sections III.21, IV.31, IV.32, IV. 33, IV.38 and IV.41.9 and Annex F of the Consolidated Criminal Practice Direction of 8 July 2002 ([2002] 1 W.L.R. 2870; [2002] 2 Cr. App. R. 35), as amended, which are hereby revoked. Additionally, they consolidate 'Deployment and Allocation in Criminal Cases in Class 1, 2 and 3: Guidance for all Resident Judges' issued by the Senior Presiding Judge on 26th May 2005, incorporate parts of the guidance issued by the Senior Presiding Judge and by HMCTS on Custody Time Limits in May 2012 and replace the guidance on Transfer of Cases to other Crown Courts for sentence issued by the Senior Presiding Judge in March 2009. Reference is made to recommendations from the Magistrates' Courts Disclosure Review May 2014. Annex 1 incorporates the relevant operational parts of the 'Protocol to support judicial deployment in the Magistrates' Courts' issued in November 2012. Annex 2 subsumes the 'Sexual Offences Protocol in the Youth Court' issued by the Senior Presiding Judge in March 2010.

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

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 1 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, or
 - ii. a Circuit Judge, or 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.

- 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.

- 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

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

Introduction

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 defendant¹.
3. This does not alter the test² that the Youth Court must apply when determining whether a case is a “grave crime”.
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 possibility³, 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.

¹ So, for example, every allegation of sexual touching, under s3 of the Sexual Offences Act 2003, is covered by this protocol.

² Set out in the Sentencing Guidelines Council’s definitive guideline, entitled “Overarching Principles – Sentencing Youths” Published by the Sentencing Guidelines Council in November 2009.

³ Section 24(1) of the Magistrates Court Act 1980

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 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.

Lord Chief Justice

July 2014