



SENIOR PRESIDING JUDGE
FOR ENGLAND AND WALES

1. Better Case Management (BCM) links certain key complementary initiatives, which together should improve the way cases are processed through the system, for the benefit of all concerned within the criminal justice system (CJS). BCM will undoubtedly evolve given the considerable changes that are currently taking place within criminal justice.
2. BCM forms part of the implementation of Sir Brian Leveson's report *Review of Efficiency in Criminal Proceedings*; indeed, it is based on the overarching principles or themes of the *Review*:
 - Getting it Right First Time
 - Case Ownership
 - Duty of Direct Engagement
 - Consistent judicial case management
3. The overarching aims of BCM are:
 - Robust case management
 - Reduced number of hearings
 - Maximum participation and engagement from every participant within the system
 - Efficient compliance with the **Criminal Procedure Rules; Practice and Court Directions**.
4. BCM supports Transforming Summary Justice (TSJ).
5. BCM introduces two major case management initiatives:
 - 1) A uniform national Early Guilty Plea scheme (EGP); and
 - 2) Crown Court Disclosure in document-heavy cases.

A uniform national Early Guilty Plea scheme

6. The vast majority of cases within the CJS do not go to trial but result in guilty pleas. There are obvious attractions in identifying and removing those cases which are likely to result in guilty pleas sooner rather than later. This will assist the court in the objective of only listing effective cases, and it will help reduce the unnecessary burden that is otherwise imposed on the police, the prosecution and the defence when cases are prepared for trial that result in a guilty plea.

7. It is already clear that the scheme will bring real benefits and it has enjoyed some real success. However, a number of local variants have emerged, in part following the abolition of committals. Some courts had opted for Preliminary Hearings in all cases, whilst others had implemented EGP using Preliminary Hearings only in some cases.
8. It has been decided as a matter of principle that there should be a uniform, national scheme. It is to be emphasised, however, that this common approach does not, of course, preclude the exercise of judicial discretion in individual cases.
9. This single national approach is embodied in the **Criminal Procedure Rules (CPR) 2015** and supported by the **Criminal Practice Directions (Part 3 Case management) 2015**.
10. There will be an early review and identification of those cases that are likely to plead guilty, along with an early discussion between the parties to identify the issues in contested cases, thus complementing the process adopted in TSJ.

Plea and Trial Preparation Hearing (PTPH)

11. All cases must be listed for first hearing in the Crown Court (the PTPH) within 28 days of being sent from the Magistrates' Court.
12. The precise time limits for the first Crown Court hearing, within the 28-day framework, must be consistent within each circuit. This has been agreed as follows:
 - Midlands Circuit –28 days
 - Western Circuit –28 days
 - North Eastern Circuit –28 days
 - London (officially part of the South East Circuit)- 28 days
 - Northern Circuit –28 days
 - Wales–28 days
 - South Eastern Circuit –28 days
13. If a guilty plea is entered at the PTPH then the matter should proceed to sentence whenever possible, with a stand down Pre Sentence Report (PSR) if appropriate. If a not guilty plea is entered at the PTPH case management should then take place in preparation for trial. This should be done using the PTPH form which will have been completed by the parties and served on the court in advance of the hearing. This will be a new version of the Case Management Form agreed by the Criminal Procedure Rule Committee.
14. It will be possible to complete the PTPH form digitally. **An electronic copy of the PTPH form will be available on the Criminal Procedure Rules pages of the Ministry of Justice website on 5th October, when the Criminal Procedure Rules 2015 and the new case management Practice Direction come into force.**
15. Straight-forward cases should then be listed for trial.

Further Case Management Hearing (FCMH) (previously the Plea and Case Management Hearing)

16. This will only occur in identified complex cases or if a judge decides that the interests of justice require a further hearing. Thereafter, the next appearance in court should be for trial.

Crown Court Disclosure in document-heavy cases.

17. A bespoke case-management regime has been developed and is the subject of a pilot at four Crown Courts (Birmingham, Manchester, Kingston and Southwark) in order to address the problems with disclosure in document-heavy cases. This is designed to improve efficiency and reduce delays.
18. This procedure is restricted to specific types of cases.
19. The CPS will conduct a detailed review of the case, including all case-management issues, by way of the **Notification Form** (that will be served in advance of the PTPH hearing). Thereafter, the CPS will regularly review disclosure by updating a **Disclosure Management Document**.
20. All defence requests or suggestions relating to disclosure must be set out in writing in accordance with the CPIA and must be served on the prosecution and court.

Both initiatives come into force on 5 October 2015.

Other initiatives supported by BCM

21. BCM supports Streamlined Forensic Reporting (see **Rule 19.3 of the Criminal Procedure Rules 2015**).
22. BCM supports the introduction of the Child Abuse Image Database (CAID) which is a computer -based image database that will streamline the grading of indecent images of children.

Compliance and monitoring of BCM

23. At a local level this will be by way of liaison between the agencies and the judiciary who lead on the implementation of BCM, and by the use of compliance courts in accordance with **Case Management Practice Direction 2015 3A.26**.
24. At a national level this will be through the analysis of performance data by the Judicial Oversight Group and the Senior Presiding Judge.

Part 3 Case management

CPD I General matters 3A: CASE MANAGEMENT

- 3A.1 CrimPR 1.1(2)(e) requires that cases be dealt with efficiently and expeditiously. CrimPR 3.2 requires the court to further the overriding objective by actively managing the case, for example:
- a) When dealing with an offence which is triable only on indictment the court must ask the defendant whether he or she intends to plead guilty at the Crown Court (CrimPR 9.7(5));
 - b) On a guilty plea, the court must pass sentence at the earliest opportunity, in accordance with CrimPR 24.11(9)(a) (magistrates' courts) and 25.16(7)(a) (the Crown Court).
- 3A.2 Given these duties, magistrates' courts and the Crown Court therefore will proceed as described in paragraphs 3A.3 to 3A.28 beneath. The parties will be expected to have prepared in accordance with CrimPR 3.3(1) to avoid unnecessary and wasted hearings, They will be expected to have communicated with each other by the time of the first hearing; to report to the court on that communication at the first hearing; and to continue thereafter to communicate with each other and with the court officer, in accordance with CrimPR 3.3(2).
- 3A.3 There is a Preparation for Effective Trial form for use in the magistrates' courts, and a Plea and Trial Preparation Hearing form for use in the Crown Court, each of which must be used as appropriate in connection with CrimPR Part 3: see paragraph 5A.2 of these Practice Directions. Versions of those forms in pdf and Word, together with guidance notes, are available on the Criminal Procedure Rules pages of the Ministry of Justice website.

Case progression and trial preparation in magistrates' courts

- 3A.4 CrimPR 8.3 applies in all cases and requires the prosecutor to serve:
- i. a summary of the circumstances of the offence;
 - ii. any account given by the defendant in interview, whether contained in that summary or in another document;
 - iii. any written witness statement or exhibit that the prosecutor then has available and considers material to plea or to the allocation of the case for trial or sentence;
 - iv. a list of the defendant's criminal record, if any; and
 - v. any available statement of the effect of the offence on a victim, a victim's family or others.

The details must include sufficient information to allow the defendant and the court at the first hearing to take an informed view:

- i. on plea;
- ii. on venue for trial (if applicable);
- iii. for the purposes of case management; or
- iv. for the purposes of sentencing (including committal for sentence, if applicable).

Defendant in custody

3A.5 If the defendant has been detained in custody after being charged with an offence which is indictable only or triable either way, at the first hearing a magistrates' court will proceed at once with the allocation of the case for trial, where appropriate, and, if so required, with the sending of the defendant to the Crown Court for trial. The court will be expected to ask for and record any indication of plea and issues for trial to assist the Crown Court.

3A.6 If the offence charged is triable only summarily, or if at that hearing the case is allocated for summary trial, the court will forthwith give such directions as are necessary, either to prepare for sentencing, on a guilty plea, or for a trial.

Defendant on bail

3A.7 If the defendant has been released on bail after being charged, the case must be listed for the first hearing 14 days after charge, or the next available court date thereafter when the prosecutor anticipates a guilty plea which is likely to be sentenced in the magistrates' court. In cases where there is an anticipated not guilty plea or the case is likely to be sent to the Crown Court for either trial or sentence, then it must be listed for the first hearing 28 days after charge or the next available court date thereafter.

Guilty plea in the magistrates' courts

3A.8 Where a defendant pleads guilty or indicates a guilty plea in a magistrates' court the court should consider whether a pre-sentence report – a stand down report if possible – is necessary.

Guilty plea in the Crown Court

3A.9 Where a magistrates' court is considering committal for sentence or the defendant has indicated an intention to plead guilty in a matter which is to be sent to the Crown Court, the magistrates' court should request the preparation of a pre-sentence report for the Crown Court's use if the magistrates' court considers that:

- (a) there is a realistic alternative to a custodial sentence; or
- (b) the defendant may satisfy the criteria for classification as a dangerous offender; or
- (c) there is some other appropriate reason for doing so.

3A.10 When a magistrates' court sends a case to the Crown Court for trial and in which the defendant indicates an intention to plead guilty at the Crown Court, then that magistrates' court must set a date for a Plea and Trial Preparation Hearing at the Crown Court, in accordance with CrimPR 9.7(5)(a)(i).

Case sent for Crown Court trial: no indication of guilty plea

3A.11 In any case sent to the Crown Court for trial, other than one in which the defendant indicates an intention to plead guilty, the magistrates' court must set a date for a Plea and Trial Preparation Hearing, in accordance with CrimPR 9.7(5)(a)(ii). The Plea and Trial Preparation Hearing must be held within 28 days of sending, unless the standard directions of the Presiding Judges of the circuit direct otherwise. Paragraph 3A.16 below additionally applies to the arrangements for such hearings. A magistrates' court may give other directions appropriate to the needs of the case, in accordance with CrimPR 3.5(3), and in accordance with any standard directions issued by the Presiding Judges of the circuit.

Defendant on bail: anticipated not guilty plea

3A.12 Where the defendant has been released on bail after being charged, and where the prosecutor does not anticipate a guilty plea at the first hearing in a magistrates' court, then it is essential that the initial details of the prosecution case that are provided for that first hearing are sufficient to assist the court, in order to identify the real issues and to give appropriate directions for an effective trial (regardless of whether the trial is to be in the magistrates' court or the Crown Court). In these circumstances, unless there is good reason not to do so, the prosecution should make available the following material in advance of the first hearing in the magistrates' court:

- (a) A summary of the circumstances of the offence(s) including a summary of any account given by the defendant in interview;
- (b) Statements and exhibits that the prosecution has identified as being of importance for the purpose of plea or initial case management, including any relevant CCTV that would be relied upon at trial and any Streamlined Forensic Report;
- (c) Details of witness availability, as far as they are known at that hearing;
- (d) Defendant's criminal record;
- (e) Victim Personal Statements if provided;
- (f) An indication of any medical or other expert evidence that the prosecution is likely to adduce in relation to a victim or the defendant;
- (g) Any information as to special measures, bad character or hearsay, where applicable.

- 3A.13 In addition to the material required by CrimPR Part 8, the information required by the Preparation for Effective Trial form must be available to be submitted at the first hearing, and the parties must complete that form, in accordance with the guidance published with it. Where there is to be a contested trial in a magistrates' court, that form includes directions and a timetable that will apply in every case unless the court otherwise orders.
- 3A.14 Nothing in paragraph 3A.12-3A.13 shall preclude the court from taking a plea pursuant to CrimPR 3.9(2)(b) at the first hearing and for the court to case manage as far as practicable under Part 3 CrimPR.

Exercise of magistrates' court's powers

- 3A.15 In accordance with CrimPR 9.1 and section 49 Crime and Disorder Act 1998 a single Justice of the Peace can:
- a) allocate and send for trial;
 - b) take an indication of guilty plea, (but not pass sentence)
 - c) take a not guilty plea and give direction for the preparation of trial including:
 - i. timetable for the proceedings;
 - ii. the attendance of the parties;
 - iii. the service of documents;
 - iv. the manner in which evidence is to be given.

Case progression and trial preparation in the Crown Court

Plea and Trial Preparation Hearing

- 3A.16 In a case in which a magistrates' court has directed a Plea and Trial Preparation Hearing, the period which elapses between sending for trial and the date of that hearing must be consistent within each circuit. In every case, the time allowed for the conduct of the Plea and Trial Preparation Hearing must be sufficient for effective trial preparation. It is expected in every case that an indictment will be lodged at least 7 days in advance of the hearing. Please see the Note to the Practice Direction.
- 3A.17 In a case in which the defendant, not having done so before, indicates an intention to plead guilty to his representative after being sent for trial but before the Plea and Trial Preparation Hearing, the defence representative will notify the Crown Court and the prosecution forthwith. The court will ensure there is sufficient time at the PTPH for sentence and the Judge should at once request the preparation of a pre-sentence report if it appears to the court that either:
- (a) there is a realistic alternative to a custodial sentence; or
 - (b) the defendant may satisfy the criteria for classification as a dangerous offender; or
 - (c) there is some other appropriate reason for doing so.

- 3A.18 If at the Plea and Trial Preparation Hearing the defendant pleads guilty and no pre-sentence report has been prepared, if possible the court should obtain an immediate ('stand down') report.
- 3A.19 Where the defendant was remanded in custody after being charged and was sent for trial without initial details of the prosecution case having been served, then at least 7 days before the Plea and Trial Preparation Hearing the prosecutor should serve, as a minimum, the material identified in paragraph 3A.12 above. If at the Plea and Trial Preparation Hearing the defendant does not plead guilty, the court will be expected to identify the issues in the case and give appropriate directions for an effective trial. Please see the Note to the Practice Direction.
- 3A.20 At the Plea and Trial Preparation Hearing, in addition to the material required by paragraph 3A.12 above, the prosecutor must serve sufficient evidence to enable the court to case manage effectively without the need for a further case management hearing, unless the case falls within paragraph 3A.21. In addition, the information required by the Plea and Trial Preparation Hearing form must be available to the court at that hearing, and it must have been discussed between the parties in advance. The prosecutor must provide details of the availability of likely prosecution witnesses so that a trial date can immediately be arranged if the defendant does not plead guilty.

Further case management hearing

- 3A.21 In accordance with CrimPR 3.13(1)(c), after the Plea and Trial Preparation Hearing there will be no further case management hearing before the trial unless:
- (i) a condition listed in that rule is met, and
 - (ii) the court so directs, to further the overriding objective.

The directions to be given at the Plea and Trial Preparation Hearing therefore may include a direction for a further case management hearing, but usually will do so only in one of the following cases:

- (a) Class 1 cases;
- (b) Class 2 cases which carry a maximum penalty of 10 years or more;
- (c) cases involving death by driving (whether dangerous or careless), or death in the workplace;
- (d) cases involving a vulnerable witness;
- (e) cases in which the defendant is a child or otherwise under a disability, or requires special assistance;
- (f) cases in which there is a corporate or unrepresented defendant;

- (g) cases in which the expected trial length is such that a further case management hearing is desirable and any case in which the trial is likely to last longer than four weeks;
- (h) cases in which expert evidence is to be introduced;
- (i) cases in which a party requests a hearing to enter a plea;
- (j) cases in which an application to dismiss or stay has been made;
- (k) cases in which arraignment has not taken place, whether because of an issue relating to fitness to plead, or abuse of process or sufficiency of evidence, or for any other reason;
- (l) cases in which there are likely to be linked criminal and care directions in accordance with the 2013 Protocol.

3A.22 If a further case management hearing is directed, a defendant in custody will not usually be expected to attend in person, unless the court otherwise directs.

Compliance hearing

3A.23 If a party fails to comply with a case management direction, that party may be required to attend the court to explain the failure. Unless the court otherwise directs a defendant in custody will not usually be expected to attend. See paragraph 3A.26-3A.28 below.

Conduct of case progression hearings

3A.24 As far as possible, case progression should be managed without a hearing in the courtroom, using electronic communication in accordance with CrimPR 3.5(2)(d). Court staff should be nominated to conduct case progression as part of their role, in accordance with CrimPR 3.4(2). To aid effective communication the defence representative should notify the court and provide details of who shall be dealing with the case at the earliest opportunity.

Completion of Effective Trial Monitoring Form

3A.25 It is imperative that the Effective Trial Monitoring form (as devised and issued by Her Majesty's Courts and Tribunals Service) is accurately completed by the parties for all cases that have been listed for trial. Advocates must engage with the process by providing the relevant details and completing the form.

Compliance Courts

3A.26 To ensure effective compliance with directions of the courts made in accordance with the Criminal Procedure Rules and the Overriding Objective, courts should maintain a record whenever a party to the proceedings has failed to comply with a direction made by the court. The parties may have to attend a hearing to explain any lack of compliance.

- 3A.27 These hearings may be conducted by live link facilities or via other electronic means, as the court may direct.
- 3A.28 It will be for the Presiding Judges, Resident Judge and Justices' Clerks to decide locally how often compliance courts should be held, depending on the scale and nature of the problem at each court centre.

Note to the Practice Direction

In 3A.16 and 3A.19 the reference to "at least 7 days" in advance of the hearing is necessitated by the fact that, for the time being, different circuits have different timescales for the Plea and Trial Preparation Hearing. Had this not been so, the paragraphs would have been drafted forward from the date of sending rather than backwards from the date of the Plea and Trial Preparation Hearing.

PART 8

INITIAL DETAILS OF THE PROSECUTION CASE

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When this Part applies

8.1. This Part applies in a magistrates' court.

Providing initial details of the prosecution case

8.2.—(1) The prosecutor must serve initial details of the prosecution case on the court officer—

- (a) as soon as practicable; and
- (b) in any event, no later than the beginning of the day of the first hearing.

(2) Where a defendant requests those details, the prosecutor must serve them on the defendant—

- (a) as soon as practicable; and
- (b) in any event, no later than the beginning of the day of the first hearing.

(3) Where a defendant does not request those details, the prosecutor must make them available to the defendant at, or before, the beginning of the day of the first hearing.

Content of initial details

8.3. Initial details of the prosecution case must include—

- (a) where, immediately before the first hearing in the magistrates' court, the defendant was in police custody for the offence charged—
 - (i) a summary of the circumstances of the offence, and
 - (ii) the defendant's criminal record, if any;
- (b) where paragraph (a) does not apply—
 - (i) a summary of the circumstances of the offence,
 - (ii) any account given by the defendant in interview, whether contained in that summary or in another document,
 - (iii) any written witness statement or exhibit that the prosecutor then has available and considers material to plea, or to the allocation of the case for trial, or to sentence,
 - (iv) the defendant's criminal record, if any, and
 - (v) any available statement of the effect of the offence on a victim, a victim's family or others.

PART 15

DISCLOSURE

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When this Part applies

15.1. This Part applies—

- (a) in a magistrates’ court and in the Crown Court;
- (b) where Parts I and II of the Criminal Procedure and Investigations Act 1996 apply.

[Note. A summary of the disclosure requirements of the Criminal Procedure and Investigations Act 1996 is at the end of this Part.]

Prosecution disclosure

15.2.—(1) This rule applies where, under section 3 of the Criminal Procedure and Investigations Act 1996(a), the prosecutor—

- (a) discloses prosecution material to the defendant; or
- (b) serves on the defendant a written statement that there is no such material to disclose.

(2) The prosecutor must at the same time so inform the court officer.

[Note. See section 3 of the Criminal Procedure and Investigations Act 1996 and paragraph 10 of the Code of Practice accompanying the Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2015(b).]

Prosecutor’s application for public interest ruling

15.3.—(1) This rule applies where—

- (a) without a court order, the prosecutor would have to disclose material; and
- (b) the prosecutor wants the court to decide whether it would be in the public interest to disclose it.

(2) The prosecutor must—

- (a) apply in writing for such a decision; and
- (b) serve the application on—

(a) 1996 c. 25; section 3 was amended by section 82 of, and paragraph 7 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23) and section 32 and section 331 of, and paragraphs 20 and 21 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(b) S.I. 2015/861.

- (i) the court officer,
 - (ii) any person who the prosecutor thinks would be directly affected by disclosure of the material, and
 - (iii) the defendant, but only to the extent that serving it on the defendant would not disclose what the prosecutor thinks ought not be disclosed.
- (3) The application must—
- (a) describe the material, and explain why the prosecutor thinks that—
 - (i) it is material that the prosecutor would have to disclose,
 - (ii) it would not be in the public interest to disclose that material, and
 - (iii) no measure such as the prosecutor’s admission of any fact, or disclosure by summary, extract or edited copy, adequately would protect both the public interest and the defendant’s right to a fair trial;
 - (b) omit from any part of the application that is served on the defendant anything that would disclose what the prosecutor thinks ought not be disclosed (in which case, paragraph (4) of this rule applies); and
 - (c) explain why, if no part of the application is served on the defendant.
- (4) Where the prosecutor serves only part of the application on the defendant, the prosecutor must—
- (a) mark the other part, to show that it is only for the court; and
 - (b) in that other part, explain why the prosecutor has withheld it from the defendant.
- (5) Unless already done, the court may direct the prosecutor to serve an application on—
- (a) the defendant;
 - (b) any other person who the court considers would be directly affected by the disclosure of the material.
- (6) The court must determine the application at a hearing which—
- (a) must be in private, unless the court otherwise directs; and
 - (b) if the court so directs, may take place, wholly or in part, in the defendant’s absence.
- (7) At a hearing at which the defendant is present—
- (a) the general rule is that the court must consider, in the following sequence—
 - (i) representations first by the prosecutor and any other person served with the application, and then by the defendant, in the presence of them all, and then
 - (ii) further representations by the prosecutor and any such other person in the defendant’s absence; but
 - (b) the court may direct other arrangements for the hearing.
- (8) The court may only determine the application if satisfied that it has been able to take adequate account of—
- (a) such rights of confidentiality as apply to the material; and
 - (b) the defendant’s right to a fair trial.
- (9) Unless the court otherwise directs, the court officer—
- (a) must not give notice to anyone other than the prosecutor—
 - (i) of the hearing of an application under this rule, unless the prosecutor served the application on that person, or
 - (ii) of the court’s decision on the application;
 - (b) may—
 - (i) keep a written application or representations, or

- (ii) arrange for the whole or any part to be kept by some other appropriate person, subject to any conditions that the court may impose.

[Note. The court's power to order that it is not in the public interest to disclose material is provided for by sections 3(6), 7(6) (where the investigation began between 1st April, 1997 and 3rd April, 2005) and 7A(8) (where the investigation began on or after 4th April, 2005) of the Criminal Procedure and Investigations Act 1996(a).

See also sections 16 and 19 of the 1996 Act(b).]

Defence disclosure

15.4.—(1) This rule applies where—

- (a) under section 5 or 6 of the Criminal Procedure and Investigations Act 1996(c), the defendant gives a defence statement;
- (b) under section 6C of the 1996 Act(d), the defendant gives a defence witness notice.

(2) The defendant must serve such a statement or notice on—

- (a) the court officer; and
- (b) the prosecutor.

[Note. The Practice Direction sets out forms of—

- (a) *defence statement; and*
- (b) *defence witness notice.*

Under section 5 of the 1996 Act, in the Crown Court the defendant must give a defence statement. Under section 6 of the Act, in a magistrates' court the defendant may give such a statement but need not do so.

Under section 6C of the 1996 Act, in the Crown Court and in magistrates' courts the defendant must give a defence witness notice indicating whether he or she intends to call any witnesses (other than him or herself) and, if so, identifying them.]

Defendant's application for prosecution disclosure

15.5.—(1) This rule applies where the defendant—

- (a) has served a defence statement given under the Criminal Procedure and Investigations Act 1996; and
- (b) wants the court to require the prosecutor to disclose material.

(2) The defendant must serve an application on—

- (a) the court officer; and
- (b) the prosecutor.

(3) The application must—

- (a) describe the material that the defendant wants the prosecutor to disclose;
- (b) explain why the defendant thinks there is reasonable cause to believe that—

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- (a) 1996 c. 25; section 7 was repealed by sections 331 and 332 of, and paragraphs 20 and 25 of Schedule 36 and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with transitional provisions for certain offences in article 2 of S.I. 2005/1817. Section 7A was inserted by section 37 of the Criminal Justice Act 2003 (c. 44).
- (b) 1996 c. 25; section 16 was amended by section 331 of, and paragraphs 20 and 32 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44). Section 19 was amended by section 109 of, and paragraph 377 of Schedule 8 to, the Courts Act 2003 (c. 39), section 331 of, and paragraphs 20 and 34 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and section 15 of, and paragraph 251 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).
- (c) 1996 c. 25; section 5 was amended by section 33 of, and paragraph 66 of Schedule 3, paragraphs 20 and 23 of Schedule 36 and Parts 3 and 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44). It was further amended by section 119 of, and paragraph 126 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) in respect of certain proceedings only.
- (d) 1996 c. 25; section 6C was inserted by section 34 of the Criminal Justice Act 2003 (c. 44).

- (i) the prosecutor has that material, and
 - (ii) it is material that the Criminal Procedure and Investigations Act 1996 requires the prosecutor to disclose; and
 - (c) ask for a hearing, if the defendant wants one, and explain why it is needed.
- (4) The court may determine an application under this rule—
- (a) at a hearing, in public or in private; or
 - (b) without a hearing.
- (5) The court must not require the prosecutor to disclose material unless the prosecutor—
- (a) is present; or
 - (b) has had at least 14 days in which to make representations.

[Note. The Practice Direction sets out a form of application for use in connection with this rule.]

Under section 8 of the Criminal Procedure and Investigations Act 1996(a), a defendant may apply for prosecution disclosure only if the defendant has given a defence statement.]

Review of public interest ruling

- 15.6.**—(1) This rule applies where the court has ordered that it is not in the public interest to disclose material that the prosecutor otherwise would have to disclose, and—
- (a) the defendant wants the court to review that decision; or
 - (b) the Crown Court reviews that decision on its own initiative.
- (2) Where the defendant wants the court to review that decision, the defendant must—
- (a) serve an application on—
 - (i) the court officer, and
 - (ii) the prosecutor; and
 - (b) in the application—
 - (i) describe the material that the defendant wants the prosecutor to disclose, and
 - (ii) explain why the defendant thinks it is no longer in the public interest for the prosecutor not to disclose it.
- (3) The prosecutor must serve any such application on any person who the prosecutor thinks would be directly affected if that material were disclosed.
- (4) The prosecutor, and any such person, must serve any representations on—
- (a) the court officer; and
 - (b) the defendant, unless to do so would in effect reveal something that either thinks ought not be disclosed.
- (5) The court may direct—
- (a) the prosecutor to serve any such application on any person who the court considers would be directly affected if that material were disclosed;
 - (b) the prosecutor and any such person to serve any representations on the defendant.
- (6) The court must review a decision to which this rule applies at a hearing which—
- (a) must be in private, unless the court otherwise directs; and
 - (b) if the court so directs, may take place, wholly or in part, in the defendant's absence.
- (7) At a hearing at which the defendant is present—
- (a) the general rule is that the court must consider, in the following sequence—

(a) 1996 c. 25; section 8 was amended by section 82 of, and paragraph 7 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23) and section 38 of the Criminal Justice Act 2003 (c. 44).

- (i) representations first by the defendant, and then by the prosecutor and any other person served with the application, in the presence of them all, and then
 - (ii) further representations by the prosecutor and any such other person in the defendant's absence; but
- (b) the court may direct other arrangements for the hearing.
- (8) The court may only conclude a review if satisfied that it has been able to take adequate account of—
- (a) such rights of confidentiality as apply to the material; and
 - (b) the defendant's right to a fair trial.

[Note. The court's power to review a public interest ruling is provided for by sections 14 and 15 of the Criminal Procedure and Investigations Act 1996(a). Under section 14 of the Act, a magistrates' court may reconsider an order for non-disclosure only if a defendant applies. Under section 15, the Crown Court may do so on an application, or on its own initiative.

See also sections 16 and 19 of the 1996 Act.]

Defendant's application to use disclosed material

- 15.7.**—(1) This rule applies where a defendant wants the court's permission to use disclosed prosecution material—
- (a) otherwise than in connection with the case in which it was disclosed; or
 - (b) beyond the extent to which it was displayed or communicated publicly at a hearing.
- (2) The defendant must serve an application on—
- (a) the court officer; and
 - (b) the prosecutor.
- (3) The application must—
- (a) specify what the defendant wants to use or disclose; and
 - (b) explain why.
- (4) The court may determine an application under this rule—
- (a) at a hearing, in public or in private; or
 - (b) without a hearing.
- (5) The court must not permit the use of such material unless—
- (a) the prosecutor has had at least 28 days in which to make representations; and
 - (b) the court is satisfied that it has been able to take adequate account of any rights of confidentiality that may apply to the material.

[Note. The court's power to allow a defendant to use disclosed material is provided for by section 17 of the Criminal Procedure and Investigations Act 1996(b).

See also section 19 of the 1996 Act.]

Unauthorised use of disclosed material

- 15.8.**—(1) This rule applies where a person is accused of using disclosed prosecution material in contravention of section 17 of the Criminal Procedure and Investigations Act 1996.

(a) 1996 c. 25; section 14 was amended by section 331 of, and paragraphs 20 and 30 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and section 15 was amended by section 331 of, and paragraphs 20 and 31 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(b) 1996 c. 25; section 17 was amended by section 331 of, and paragraphs 20 and 33 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(2) A party who wants the court to exercise its power to punish that person for contempt of court must comply with the rules in Part 48 (Contempt of court).

(3) The court must not exercise its power to forfeit material used in contempt of court unless—

- (a) the prosecutor; and
- (b) any other person directly affected by the disclosure of the material,

is present, or has had at least 14 days in which to make representations.

[Note. Under section 17 of the Criminal Procedure and Investigations Act 1996, a defendant may use disclosed prosecution material—

- (a) in connection with the case in which it was disclosed, including on an appeal;*
- (b) to the extent to which it was displayed or communicated publicly at a hearing in public; or*
- (c) with the court's permission.*

Under section 18 of the 1996 Act, the court can punish for contempt of court any other use of disclosed prosecution material. See also section 19 of the 1996 Act.]

Court's power to vary requirements under this Part

15.9. The court may—

- (a) shorten or extend (even after it has expired) a time limit under this Part;
- (b) allow a defence statement, or a defence witness notice, to be in a different written form to one set out in the Practice Direction, as long as it contains what the Criminal Procedure and Investigations Act 1996 requires;
- (c) allow an application under this Part to be in a different form to one set out in the Practice Direction, or to be presented orally; and
- (d) specify the period within which—
 - (i) any application under this Part must be made, or
 - (ii) any material must be disclosed, on an application to which rule 15.5 applies (Defendant's application for prosecution disclosure).

Summary of disclosure requirements of Criminal Procedure and Investigations Act 1996

The Criminal Procedure and Investigations Act 1996 came into force on 1st April, 1997. It does not apply where the investigation began before that date. With effect from 4th April, 2005, the Criminal Justice Act 2003 made changes to the 1996 Act that do not apply where the investigation began before that date.

In some circumstances, the prosecutor may be required to disclose material to which the 1996 Act does not apply: see sections 1 and 21(a).

Part I of the 1996 Act contains sections 1 to 21A. Part II, which contains sections 22 to 27, requires an investigator to record information relevant to an investigation that is obtained during its course. See also the Criminal Procedure and Investigations Act 1996 (Code of Practice) (No. 2) Order 1997(b), the Criminal Procedure and Investigations Act 1996 (Code of Practice) Order

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- (a) 1996 c. 25; section 1 was amended by section 119 of, and paragraph 125 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), paragraph 66 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and paragraph 37 of Schedule 17 to the Crime and Courts Act 2013 (c. 22). It was amended in respect of certain proceedings only by section 119 of, and paragraph 125(a) of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37). It is further amended by section 9 of the Sexual Offences (Protected Material) Act 1997 (c. 39), with effect from a date to be appointed. Section 21 was amended by paragraph 66 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).
 - (b) S.I. 1997/1033; this Order was revoked by S.I. 2005/985.

2005(a) and the Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2015(b) issued under sections 23 to 25 of the 1996 Act.

Prosecution disclosure

Where the investigation began between 1st April, 1997, and 3rd April, 2005, sections 3 and 7 of the 1996 Act require the prosecutor—

- (a) to disclose material not previously disclosed that in the prosecutor's opinion might undermine the case for the prosecution against the defendant—
 - (i) in a magistrates' court, as soon as is reasonably practicable after the defendant pleads not guilty, and
 - (ii) in the Crown Court, as soon as is reasonably practicable after the case is committed or transferred for trial, or after the evidence is served where the case is sent for trial; and
- (b) as soon as is reasonably practicable after service of the defence statement, to disclose material not previously disclosed that might be reasonably expected to assist the defendant's case as disclosed by that defence statement; or in either event
- (c) if there is no such material, then to give the defendant a written statement to that effect.

Where the investigation began on or after 4th April, 2005, sections 3 and 7A of the 1996 Act(c) require the prosecutor—

- (a) to disclose prosecution material not previously disclosed that might reasonably be considered capable of undermining the case for the prosecution against the defendant or of assisting the case for the defendant—
 - (i) in a magistrates' court, as soon as is reasonably practicable after the defendant pleads not guilty, or
 - (ii) in the Crown Court, as soon as is reasonably practicable after the case is committed or transferred for trial, or after the evidence is served where the case is sent for trial, or after a count is added to the indictment; and in either case
- (b) if there is no such material, then to give the defendant a written statement to that effect; and after that
- (c) in either court, to disclose any such material—
 - (i) whenever there is any, until the court reaches its verdict or the prosecutor decides not to proceed with the case, and
 - (ii) in particular, after the service of the defence statement.

Sections 2 and 3 of the 1996 Act define material, and prescribe how it must be disclosed.

In some circumstances, disclosure is prohibited by section 17 of the Regulation of Investigatory Powers Act 2000.

The prosecutor must not disclose material that the court orders it would not be in the public interest to disclose: see sections 3(6), 7(6) and 7A(8) of the 1996 Act.

Sections 12 and 13 of the 1996 Act prescribe the time for prosecution disclosure. Under paragraph 10 of the Code of Practice accompanying the Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2015, in a magistrates' court the prosecutor must disclose any material due to be disclosed at the hearing where a not guilty plea is entered, or as soon as possible following a formal indication from the accused or representative that a not guilty plea will be entered at that hearing.

(a) S.I. 2005/985.

(b) S.I. 2015/861.

(c) 1996 c. 25; section 3 was amended by section 82 of, and paragraph 7 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23) and section 32 and section 331 of, and paragraphs 20 and 21 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44). Section 7A was inserted by section 37 of the Criminal Justice Act 2003 (c. 44).

See also sections 1, 4 and 10 of the 1996 Act.

Defence disclosure

Under section 5 of the 1996 Act(a), in the Crown Court the defendant must give a defence statement. Under section 6 of the Act, in a magistrates' court the defendant may give such a statement but need not do so.

Under section 6C of the 1996 Act(b), in the Crown Court and in magistrates' courts the defendant must give a defence witness notice indicating whether he or she intends to call any witnesses (other than him or herself) and, if so, identifying them.

The time for service of a defence statement is prescribed by section 12 of the 1996 Act(c) and by the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 2011(d). It is—

- (a) in a magistrates' court, not more than 14 days after the prosecutor—
 - (i) discloses material under section 3 of the 1996 Act, or
 - (ii) serves notice that there is no such material to disclose;
- (b) in the Crown Court, not more than 28 days after either of those events, if the prosecution evidence has been served on the defendant.

The requirements for the content of a defence statement are set out in—

- (a) section 5 of the 1996 Act, where the investigation began between 1st April, 1997 and 3rd April, 2005;
- (b) section 6A of the 1996 Act(e), where the investigation began on or after 4th April, 2005. See also section 6E of the Act(f).

Where the investigation began between 1st April, 1997 and 3rd April, 2005, the defence statement must—

- (a) set out in general terms the nature of the defence;
- (b) indicate the matters on which the defendant takes issue with the prosecutor, and, in respect of each, explain why;
- (c) if the defence statement discloses an alibi, give particulars, including—
 - (i) the name and address of any witness whom the defendant believes can give evidence in support (that is, evidence that the defendant was in a place, at a time, inconsistent with having committed the offence),
 - (ii) where the defendant does not know the name or address, any information that might help identify or find that witness.

Where the investigation began on or after 4th April, 2005, the defence statement must—

- (a) set out the nature of the defence, including any particular defences on which the defendant intends to rely;
- (b) indicate the matters of fact on which the defendant takes issue with the prosecutor, and, in respect of each, explain why;

(a) 1996 c. 25; section 5 was amended by section 33 of, and paragraph 66 of Schedule 3, paragraphs 20 and 23 of Schedule 36 and Parts 3 and 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44). It was further amended by section 119 of, and paragraph 126 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) in respect of certain proceedings only.

(b) 1996 c. 25; section 6C was inserted by section 34 of the Criminal Justice Act 2003 (c. 44).

(c) 1996 c. 25; section 12 was amended by sections 331 of, and paragraphs 20 and 28 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(d) S.I. 2011/209.

(e) 1996 c. 25; section 6A was inserted by section 33 of the Criminal Justice Act 2003 (c. 44) and amended by section 60 of the Criminal Justice and Immigration Act 2008 (c. 4).

(f) 1996 c. 25; section 6E was inserted by section 36 of the Criminal Justice Act 2003 (c. 44).

- (c) *set out particulars of the matters of fact on which the defendant intends to rely for the purposes of the defence;*
- (d) *indicate any point of law that the defendant wants to raise, including any point about the admissibility of evidence or about abuse of process, and any authority relied on; and*
- (e) *if the defence statement discloses an alibi, give particulars, including—*
 - (i) *the name, address and date of birth of any witness whom the defendant believes can give evidence in support (that is, evidence that the defendant was in a place, at a time, inconsistent with having committed the offence),*
 - (ii) *where the defendant does not know any of those details, any information that might help identify or find that witness.*

The time for service of a defence witness notice is prescribed by section 12 of the 1996 Act and by the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 2011. The time limits are the same as those for a defence statement.

A defence witness notice that identifies any proposed defence witness (other than the defendant) must—

- (a) *give the name, address and date of birth of each such witness, or as many of those details as are known to the defendant when the notice is given;*
- (b) *provide any information in the defendant's possession which might be of material assistance in identifying or finding any such witness in whose case any of the details mentioned in paragraph (a) are not known to the defendant when the notice is given; and*
- (c) *amend any earlier such notice, if the defendant—*
 - (i) *decides to call a person not included in an earlier notice as a proposed witness,*
 - (ii) *decides not to call a person so included, or*
 - (iii) *discovers any information which the defendant would have had to include in an earlier notice, if then aware of it.*

Under section 11 of the 1996 Act(a), if a defendant—

- (a) *fails to disclose what the Act requires;*
- (b) *fails to do so within the time prescribed;*
- (c) *at trial, relies on a defence, or facts, not mentioned in the defence statement;*
- (d) *at trial, introduces alibi evidence without having given in the defence statement—*
 - (i) *particulars of the alibi, or*
 - (ii) *the details of the alibi witness, or witnesses, required by the Act; or*
- (e) *at trial, calls a witness not identified in a defence witness notice,*

then the court or another party at trial may comment on that, and the court may draw such inferences as appear proper in deciding whether the defendant is guilty.

Under section 6E(2) of the 1996 Act, if before trial in the Crown Court it seems to the court that section 11 may apply, then the court must warn the defendant.

(a) 1996 c. 25; section 11 was substituted by section 39 of the Criminal Justice Act 2003 (c. 44) and amended by section 60(2) of the Criminal Justice and Immigration Act 2008 (c. 4).

PART 19
EXPERT EVIDENCE

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When this Part applies

19.1.—(1) This Part applies where a party wants to introduce expert opinion evidence.

(2) A reference to an 'expert' in this Part is a reference to a person who is required to give or prepare expert evidence for the purpose of criminal proceedings, including evidence required to determine fitness to plead or for the purpose of sentencing.

[Note. Expert medical evidence may be required to determine fitness to plead under section 4 of the Criminal Procedure (Insanity) Act 1964(a). It may be required also under section 11 of the Powers of Criminal Courts (Sentencing) Act 2000(b), under Part III of the Mental Health Act 1983(c) or under Part 12 of the Criminal Justice Act 2003(d). Those Acts contain requirements about the qualification of medical experts.]

Expert's duty to the court

19.2.—(1) An expert must help the court to achieve the overriding objective—

- (a) by giving opinion which is—
 - (i) objective and unbiased, and
 - (ii) within the expert's area or areas of expertise; and
- (b) by actively assisting the court in fulfilling its duty of case management under rule 3.2, in particular by—
 - (i) complying with directions made by the court, and
 - (ii) at once informing the court of any significant failure (by the expert or another) to take any step required by such a direction.

(2) This duty overrides any obligation to the person from whom the expert receives instructions or by whom the expert is paid.

(3) This duty includes obligations—

- (a) to define the expert's area or areas of expertise—

(a) 1964 c. 84; section 4 was substituted, together with section 4A, for section 4 as originally enacted, by section 2 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), and amended by section 22 of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(b) 2000 c. 6.

(c) 1983 c. 20.

(d) 2003 c. 44.

- (i) in the expert's report, and
- (ii) when giving evidence in person;
- (b) when giving evidence in person, to draw the court's attention to any question to which the answer would be outside the expert's area or areas of expertise; and
- (c) to inform all parties and the court if the expert's opinion changes from that contained in a report served as evidence or given in a statement.

Introduction of expert evidence

19.3.—(1) A party who wants another party to admit as fact a summary of an expert's conclusions must serve that summary—

- (a) on the court officer and on each party from whom that admission is sought;
 - (b) as soon as practicable after the defendant whom it affects pleads not guilty.
- (2) A party on whom such a summary is served must—
- (a) serve a response stating—
 - (i) which, if any, of the expert's conclusions are admitted as fact, and
 - (ii) where a conclusion is not admitted, what are the disputed issues concerning that conclusion; and
 - (b) serve the response—
 - (i) on the court officer and on the party who served the summary,
 - (ii) as soon as practicable, and in any event not more than 14 days after service of the summary.
- (3) A party who wants to introduce expert evidence otherwise than as admitted fact must—
- (a) serve a report by the expert which complies with rule 19.4 (Content of expert's report) on—
 - (i) the court officer, and
 - (ii) each other party;
 - (b) serve the report as soon as practicable, and in any event with any application in support of which that party relies on that evidence;
 - (c) serve with the report notice of anything of which the party serving it is aware which might reasonably be thought capable of detracting substantially from the credibility of that expert;
 - (d) if another party so requires, give that party a copy of, or a reasonable opportunity to inspect—
 - (i) a record of any examination, measurement, test or experiment on which the expert's findings and opinion are based, or that were carried out in the course of reaching those findings and opinion, and
 - (ii) anything on which any such examination, measurement, test or experiment was carried out.
- (4) Unless the parties otherwise agree or the court directs, a party may not—
- (a) introduce expert evidence if that party has not complied with paragraph (3);
 - (b) introduce in evidence an expert report if the expert does not give evidence in person.

[Note. A party who accepts another party's expert's conclusions may admit them as fact under section 10 of the Criminal Justice Act 1967(a).]

(a) 1967 c. 80.

Under section 81 of the Police and Criminal Evidence Act 1984(a), and under section 20(3) of the Criminal Procedure and Investigations Act 1996(b), Criminal Procedure Rules may require the disclosure of expert evidence before it is introduced as part of a party's case and prohibit its introduction without the court's permission, if it was not disclosed as required.

Under section 30 of the Criminal Justice Act 1988(c), an expert report is admissible in evidence whether or not the person who made it gives oral evidence, but if that person does not give oral evidence then the report is admissible only with the court's permission.]

Content of expert's report

19.4. Where rule 19.3(3) applies, an expert's report must—

- (a) give details of the expert's qualifications, relevant experience and accreditation;
- (b) give details of any literature or other information which the expert has relied on in making the report;
- (c) contain a statement setting out the substance of all facts given to the expert which are material to the opinions expressed in the report, or upon which those opinions are based;
- (d) make clear which of the facts stated in the report are within the expert's own knowledge;
- (e) say who carried out any examination, measurement, test or experiment which the expert has used for the report and—
 - (i) give the qualifications, relevant experience and accreditation of that person,
 - (ii) say whether or not the examination, measurement, test or experiment was carried out under the expert's supervision, and
 - (iii) summarise the findings on which the expert relies;
- (f) where there is a range of opinion on the matters dealt with in the report—
 - (i) summarise the range of opinion, and
 - (ii) give reasons for the expert's own opinion;
- (g) if the expert is not able to give an opinion without qualification, state the qualification;
- (h) include such information as the court may need to decide whether the expert's opinion is sufficiently reliable to be admissible as evidence;
- (i) contain a summary of the conclusions reached;
- (j) contain a statement that the expert understands an expert's duty to the court, and has complied and will continue to comply with that duty; and
- (k) contain the same declaration of truth as a witness statement.

[Note. Part 16 contains rules about written witness statements. Declarations of truth in witness statements are required by section 9 of the Criminal Justice Act 1967(d). Evidence of examinations etc. on which an expert relies may be admissible under section 127 of the Criminal Justice Act 2003(e).]

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- (a) 1984 c. 60; section 81 was amended by section 109(1) of, and paragraph 286 of Schedule 8 to, the Courts Act 2003 (c. 39).
 - (b) 1996 c. 25; section 20(3) was amended by section 109(1) of, and paragraph 378 of Schedule 8 to, the Courts Act 2003 (c. 39).
 - (c) 1988 c. 33; section 30 was amended by section 47 of, and paragraph 32 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25) and paragraph 60 of Schedule 3 and Schedule 37 to the Criminal Justice Act 2003 (c. 44).
 - (d) 1967 c. 80; section 9 was amended by section 56 of, and paragraph 49 of Schedule 8 to, the Courts Act 1971 (c. 23), section 168 of, and paragraph 6 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 69 of the Criminal Procedure and Investigations Act 1996 (c. 25), regulation 9 of, and paragraph 4 of Schedule 5 to, S.I. 2001/1090, paragraph 43 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), section 26 of, and paragraph 7 of Schedule 2 to, the Armed Forces Act 2011 (c. 18) and section 80 of the Deregulation Act 2015 (c. 20). It is further amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54) and section 65 of, and paragraph 1 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from dates to be appointed.
 - (e) 2003 c. 44; section 127 was amended by article 3 of, and paragraphs 45 and 50 of the Schedule to, S.I. 2004/2035.

Expert to be informed of service of report

19.5. A party who serves on another party or on the court a report by an expert must, at once, inform that expert of that fact.

Pre-hearing discussion of expert evidence

19.6.—(1) This rule applies where more than one party wants to introduce expert evidence.

(2) The court may direct the experts to—

- (a) discuss the expert issues in the proceedings; and
- (b) prepare a statement for the court of the matters on which they agree and disagree, giving their reasons.

(3) Except for that statement, the content of that discussion must not be referred to without the court's permission.

(4) A party may not introduce expert evidence without the court's permission if the expert has not complied with a direction under this rule.

[Note. At a pre-trial hearing, a court may make binding rulings about the admissibility of evidence and about questions of law under section 9 of the Criminal Justice Act 1987(a); sections 31 and 40 of the Criminal Procedure and Investigations Act 1996(b); and section 8A of the Magistrates' Courts Act 1980(c).]

Court's power to direct that evidence is to be given by a single joint expert

19.7.—(1) Where more than one defendant wants to introduce expert evidence on an issue at trial, the court may direct that the evidence on that issue is to be given by one expert only.

(2) Where the co-defendants cannot agree who should be the expert, the court may—

- (a) select the expert from a list prepared or identified by them; or
- (b) direct that the expert be selected in another way.

Instructions to a single joint expert

19.8.—(1) Where the court gives a direction under rule 19.7 for a single joint expert to be used, each of the co-defendants may give instructions to the expert.

(2) A co-defendant who gives instructions to the expert must, at the same time, send a copy of the instructions to each other co-defendant.

(3) The court may give directions about—

- (a) the payment of the expert's fees and expenses; and
- (b) any examination, measurement, test or experiment which the expert wishes to carry out.

(4) The court may, before an expert is instructed, limit the amount that can be paid by way of fees and expenses to the expert.

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- (a) 1987 c. 38; section 9 was amended by section 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 6 of the Criminal Justice Act 1993 (c. 36), sections 72, 74 and 80 of, and paragraph 3 of Schedule 3 and Schedule 5 to, Criminal Procedure and Investigations Act 1996 (c. 25), sections 45 and 310 of, and paragraphs 18, 52 and 54 of Schedule 36 and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), article 3 of, and paragraphs 21 and 23 of S.I. 2004/2035, section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9). The amendment made by section 45 of the Criminal Justice Act 2003 (c. 44) is in force for certain purposes; for remaining purposes it has effect from a date to be appointed.
- (b) 1996 c. 25; section 31 was amended by sections 310, 331 and 332 of, and paragraphs 20, 36, 65 and 67 of Schedule 36 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44).
- (c) 1980 c. 43; section 8A was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by SI 2006/2493 and paragraphs 12 and 14 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(5) Unless the court otherwise directs, the instructing co-defendants are jointly and severally liable for the payment of the expert's fees and expenses.

Court's power to vary requirements under this Part

19.9.—(1) The court may extend (even after it has expired) a time limit under this Part.

(2) A party who wants an extension of time must—

- (a) apply when serving the report, summary or notice for which it is required; and
- (b) explain the delay.

PART 24

TRIAL AND SENTENCE IN A MAGISTRATES' COURT

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Statutory declaration of ignorance of proceedings	rule 24.17
Setting aside a conviction or varying a costs, etc. order	rule 24.18

[Note. Part 3 contains rules about case management that apply at trial as well as during preparation for trial. The rules in this Part must be read in conjunction with those rules.]

When this Part applies

24.1.—(1) This Part applies in a magistrates' court where—

- (a) the court tries a case;
- (b) the defendant pleads guilty;
- (c) under section 14 or section 16E of the Magistrates' Courts Act 1980(a), the defendant makes a statutory declaration of not having found out about the case until after the trial began;
- (d) under section 142 of the 1980 Act(b), the court can—
 - (i) set aside a conviction, or
 - (ii) vary or rescind a costs order, or an order to which Part 31 applies (Behaviour orders).

(2) Where the defendant is under 18, in this Part—

- (a) a reference to convicting the defendant includes a reference to finding the defendant guilty of an offence; and
- (b) a reference to sentence includes a reference to an order made on a finding of guilt.

[Note. A magistrates' court's powers to try an allegation of an offence are contained in section 2 of the Magistrates' Courts Act 1980(a). In relation to a defendant under 18, they are contained in sections 45, 46 and 48 of the Children and Young Persons Act 1933(b).]

(a) 1980 c. 43; section 14 was amended by section 109 of, and paragraph 205 of Schedule 8 to, the Courts Act 2003 (c. 39). Section 16E was inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2).

(b) 1980 c. 43; section 142 was amended by sections 26 and 29 of, and Schedule 3 to, the Criminal Appeal Act 1995 (c. 35).

See also section 18 of the Children and Young Persons Act 1963(c), section 47 of the Crime and Disorder Act 1998(d) and section 9 of the Powers of Criminal Courts (Sentencing) Act 2000(e).

The exercise of the court's powers is affected by—

- (a) the classification of the offence (and the general rule, subject to exceptions, is that a magistrates' court must try—
 - (i) an offence classified as one that can be tried only in a magistrates' court (in other legislation, described as triable only summarily), and
 - (ii) an offence classified as one that can be tried either in a magistrates' court or in the Crown Court (in other legislation, described as triable either way) that has been allocated for trial in a magistrates' court); and
- (b) the defendant's age (and the general rule, subject to exceptions, is that an allegation of an offence against a defendant under 18 must be tried in a magistrates' court sitting as a youth court, irrespective of the classification of the offence and without allocation for trial there).

Under sections 10, 14, 27A, 121 and 148 of the Magistrates' Courts Act 1980(f) and the Justices of the Peace (Size and Chairmanship of Bench) Rules 2005(g), the court—

- (a) must comprise at least two but not more than three justices, or a District Judge (Magistrates' Courts) (but a single member can adjourn the hearing);
- (b) must not include any member who adjudicated at a hearing to which rule 24.17 applies (defendant's declaration of no knowledge of hearing);
- (c) when reaching a verdict, must not include any member who was absent from any part of the hearing;
- (d) when passing sentence, need not include any of the members who reached the verdict (but may do so).

Under section 16A of the Magistrates' Courts Act 1980(h), the court may comprise a single justice where—

- (a) the offence charged is a summary offence not punishable with imprisonment;
- (b) the defendant was at least 18 years old when charged;

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- (a) 1980 c. 43; section 2 was substituted by section 44 of the Courts Act 2003 (c. 39) and amended by section 41 of, and paragraph 51 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44).
 - (b) 1933 c. 12; section 45 was substituted by section 50 of the Courts Act 2003 (c. 39) and amended by section 15 of, and paragraph 20 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4); section 46 was amended by section 46 of, and Schedule 7 to, the Justices of the Peace Act 1949 (c. 101), section 72 of, and paragraph 4 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54), section 154 of, and paragraph 6 of Schedule 7 to, the Magistrates' Courts Act 1980 (c. 43), sections 68 and 100 of, and paragraph 1 of Schedule 8 and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53) and section 109 of, and paragraph 74 of Schedule 8 to, the Courts Act 2003 (c. 39); and section 48 was amended by section 79 of, and Schedule 9 to, the Criminal Justice Act 1948 (c. 58), section 132 of, and Schedule 6 to, the Magistrates' Courts Act 1952 (c. 55), section 64 of, and paragraph 12 of Schedule 3 and Schedule 5 to, the Children and Young Persons Act 1963 (c. 37), sections 72, 79 and 83 of, and Schedules 6, 9 and 10 to, the Children and Young Persons Act 1969 (c. 54), sections 68 and 100 of, and paragraph 1 of Schedule 8 and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53), section 106 of, and Schedule 15 to, the Access to Justice Act 1999 (c. 22) and section 109 of, and paragraph 75 of Schedule 8 to, the Courts Act 2003 (c. 39).
 - (c) 1963 c. 37; section 18 was amended by section 100 of, and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53) and section 168 of, and paragraph 5 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33).
 - (d) 1998 c. 37; section 47 was amended by section 165 of, and Schedule 12 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 332 of, and Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and article 2 of, and paragraph 59 of the Schedule to S.I. 2005/886.
 - (e) 2000 c. 6; section 9 was amended by article 2 of, and paragraph 63 of the Schedule to S.I. 2005/886.
 - (f) 1980 c. 43; section 10 was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53) and section 47 of the Crime and Disorder Act 1998 (c. 37). Section 14 was amended by section 109 of, and paragraph 205 of Schedule 8 to, the Courts Act 2003 (c. 39). Section 27A was inserted by section 46 of the Courts Act 2003 (c. 39). Section 121 was amended by section 61 of the Criminal Justice Act 1988 (c. 33), section 92 of, and paragraph 8 of Schedule 11 to, the Children Act 1989 (c. 41), section 109 of, and paragraph 237 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39). Section 148 was amended by section 109 of, and paragraph 248 of Schedule 8 to, the Courts Act 2003 (c. 39).
 - (g) S.I. 2005/553.
 - (h) 1980 c. 43; section 16A was inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2).

- (c) *the court is satisfied that specified documents giving notice of the procedure under that section and containing other specified information have been served on the defendant; and*
- (d) *the defendant has not served notice of an intention to plead not guilty, or of a desire not to be tried in accordance with that section.*

Under the Youth Courts (Constitution of Committees and Right to Preside) Rules 2007(a), where the court is a youth court comprising justices—

- (a) *each member must be qualified to sit as a member of that youth court; and*
- (b) *the members must include at least one man and one woman, unless—*
 - (i) *either is unavailable, and*
 - (ii) *the members present decide that the hearing will be delayed unreasonably if they do not proceed.*

Under section 150 of the Magistrates' Courts Act 1980(b), where two or more justices are present one may act on behalf of all.

Section 59 of the Children and Young Persons Act 1933(c) requires that—

- (a) *the expressions 'conviction' and 'sentence' must not be used by a magistrates' court dealing with a defendant under 18; and*
- (b) *a reference in legislation to a defendant who is convicted, to a conviction, or to a sentence, must be read as including a reference to a defendant who is found guilty of an offence, a finding of guilt, or an order made on a finding of guilt, respectively.*

Under section 14 of the Magistrates' Courts Act 1980, proceedings which begin with a summons or requisition will become void if the defendant, at any time during or after the trial, makes a statutory declaration that he or she did not know of them until a date after the trial began. See rule 24.17.

Under section 142 of the Magistrates' Courts Act 1980—

- (a) *where a defendant is convicted by a magistrates' court, the court may order that the case should be heard again by different justices; and*
- (b) *the court may vary or rescind an order which it has made when dealing with a convicted defendant,*

if in either case it appears to the court to be in the interests of justice to do so. See rule 24.18.

See also Part 32 (Breach, revocation and amendment of community and other orders). Rule 32.4 (Procedure on application by responsible officer) applies rules in this Part to the procedure with which that rule deals.]

General rules

24.2.—(1) Where this Part applies—

- (a) the general rule is that the hearing must be in public; but
- (b) the court may exercise any power it has to—
 - (i) impose reporting restrictions,
 - (ii) withhold information from the public, or
 - (iii) order a hearing in private; and

(a) S.I. 2007/1611.

(b) 1980 c. 43; section 150 has been amended but none is relevant to the note to this rule.

(c) 1933 c. 12; section 59 was amended by sections 79 and 83 of, and Schedules 9 and 10 to, the Criminal Justice Act 1948 (c. 58) and section 18 of the Costs in Criminal Cases Act 1952 (c. 48).

- (c) unless the court otherwise directs, only the following may attend a hearing in a youth court—
- (i) the parties and their legal representatives,
 - (ii) a defendant's parents, guardian or other supporting adult,
 - (iii) a witness,
 - (iv) anyone else directly concerned in the case, and
 - (v) a representative of a news-gathering or reporting organisation.
- (2) Unless already done, the justices' legal adviser or the court must—
- (a) read the allegation of the offence to the defendant;
 - (b) explain, in terms the defendant can understand (with help, if necessary)—
 - (i) the allegation, and
 - (ii) what the procedure at the hearing will be;
 - (c) ask whether the defendant has been advised about the potential effect on sentence of a guilty plea;
 - (d) ask whether the defendant pleads guilty or not guilty; and
 - (e) take the defendant's plea.
- (3) The court may adjourn the hearing—
- (a) at any stage, to the same or to another magistrates' court; or
 - (b) to a youth court, where the court is not itself a youth court and the defendant is under 18.
- (4) Paragraphs (1) and (2) of this rule do not apply where the court tries a case under rule 24.9 (Single justice procedure: special rules).

[Note. See sections 10, 16A, 27A, 29 and 121 of the Magistrates' Courts Act 1980(a) and sections 46 and 47 of the Children and Young Persons Act 1933.

Where the case has been allocated for trial in a magistrates' court, part of the procedure under rule 24.2(2) will have taken place.

Part 6 contains rules about reporting, etc. restrictions. For a list of the court's powers to impose reporting and access restrictions, see the note to rule 6.1.

Under section 34A of the Children and Young Persons Act 1933(b), the court—

- (a) *may require the defendant's parents or guardian to attend court with the defendant, where the defendant is under 18; and*
- (b) *must do so, where the defendant is under 16,*

unless satisfied that that would be unreasonable.

Part 7 contains rules about (among other things) the issue of a summons to a parent or guardian.

Part 46 (Representatives) contains rules allowing a parent, guardian or other supporting adult to help a defendant under 18.]

Procedure on plea of not guilty

24.3.—(1) This rule applies—

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- (a) 1980 c. 43; section 29 was amended by sections 68 and 100 of, and paragraph 6 of Schedule 8 and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53), section 168 of, and paragraph 41 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33) and section 41 of, and paragraph 51 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44). Section 16A was inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2).
 - (b) 1933 c. 12; section 34A was inserted by section 56 of the Criminal Justice Act 1991 (c. 53) and amended by section 107 of, and paragraph 1 of Schedule 5 to, the Local Government Act 2000 (c. 22).

- (a) if the defendant has—
 - (i) entered a plea of not guilty, or
 - (ii) not entered a plea; or
 - (b) if, in either case, it appears to the court that there may be grounds for making a hospital order without convicting the defendant.
- (2) If a not guilty plea was taken on a previous occasion, the justices' legal adviser or the court must ask the defendant to confirm that plea.
- (3) In the following sequence—
- (a) the prosecutor may summarise the prosecution case, identifying the relevant law and facts;
 - (b) the prosecutor must introduce the evidence on which the prosecution case relies;
 - (c) at the conclusion of the prosecution case, on the defendant's application or on its own initiative, the court—
 - (i) may acquit on the ground that the prosecution evidence is insufficient for any reasonable court properly to convict, but
 - (ii) must not do so unless the prosecutor has had an opportunity to make representations;
 - (d) the justices' legal adviser or the court must explain, in terms the defendant can understand (with help, if necessary)—
 - (i) the right to give evidence, and
 - (ii) the potential effect of not doing so at all, or of refusing to answer a question while doing so;
 - (e) the defendant may introduce evidence;
 - (f) a party may introduce further evidence if it is then admissible (for example, because it is in rebuttal of evidence already introduced);
 - (g) the prosecutor may make final representations in support of the prosecution case, where—
 - (i) the defendant is represented by a legal representative, or
 - (ii) whether represented or not, the defendant has introduced evidence other than his or her own; and
 - (h) the defendant may make final representations in support of the defence case.
- (4) Where a party wants to introduce evidence or make representations after that party's opportunity to do so under paragraph (3), the court—
- (a) may refuse to receive any such evidence or representations; and
 - (b) must not receive any such evidence or representations after it has announced its verdict.
- (5) If the court—
- (a) convicts the defendant; or
 - (b) makes a hospital order instead of doing so,
- it must give sufficient reasons to explain its decision.
- (6) If the court acquits the defendant, it may—
- (a) give an explanation of its decision; and
 - (b) exercise any power it has to make—
 - (i) a behaviour order,
 - (ii) a costs order.

[Note. See section 9 of the Magistrates' Courts Act 1980(a).

Under section 37(3) of the Mental Health Act 1983(b), if the court is satisfied that the defendant did the act or made the omission alleged, then it may make a hospital order without convicting the defendant.

Under section 35 of the Criminal Justice and Public Order Act 1994(c), the court may draw such inferences as appear proper from a defendant's failure to give evidence, or refusal without good cause to answer a question while doing so. The procedure set out in rule 37.3(3)(d) is prescribed by that section.

The admissibility of evidence that a party introduces is governed by rules of evidence.

Section 2 of the Criminal Procedure Act 1865(d) and section 3 of the Criminal Evidence Act 1898(e) restrict the circumstances in which the prosecutor may make final representations without the court's permission.

See rule 24.11 for the procedure if the court convicts the defendant.

Part 31 contains rules about behaviour orders.]

Evidence of a witness in person

24.4.—(1) This rule applies where a party wants to introduce evidence by calling a witness to give that evidence in person.

(2) Unless the court otherwise directs—

- (a) a witness waiting to give evidence must not wait inside the courtroom, unless that witness is—
 - (i) a party, or
 - (ii) an expert witness;
- (b) a witness who gives evidence in the courtroom must do so from the place provided for that purpose; and
- (c) a witness' address must not be announced unless it is relevant to an issue in the case.

(3) Unless other legislation otherwise provides, before giving evidence a witness must take an oath or affirm.

(4) In the following sequence—

- (a) the party who calls a witness must ask questions in examination-in-chief;
- (b) every other party may ask questions in cross-examination;
- (c) the party who called the witness may ask questions in re-examination.

(5) If other legislation so permits, at any time while giving evidence a witness may refer to a record of that witness' recollection of events.

(6) The justices' legal adviser or the court may—

- (a) ask a witness questions; and in particular
- (b) where the defendant is not represented, ask any question necessary in the defendant's interests.

(a) 1980 c. 43.

(b) 1983 c. 20; section 37(3) was amended by sections 1 and 55 of, and paragraphs 1 and 7 of Schedule 1 and Schedule 11 to, the Mental Health Act 2007 (c. 12). 37(3) was amended by sections 1 and 55 of, and paragraphs 1 and 7 of Schedule 1 and Schedule 11 to, the Mental Health Act 2007 (c. 12).

(c) 1994 c. 33; section 35 was amended by sections 35 and 120 of, and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37). The Criminal Justice Act 2003 (c. 44) amendment to section 35 is not relevant to procedure in magistrates' courts.

(d) 1865 c. 18; section 2 was amended by section 10(2) of, and Part III of Schedule 3 to, the Criminal Law Act 1967 (c. 58).

(e) 1898 c. 36; section 3 was amended by section 1(2) of the Criminal Procedure (Right of Reply) Act 1964 (c. 34).

[Note. Section 53 of the Youth Justice and Criminal Evidence Act 1999(a) provides that everyone is competent to give evidence in criminal proceedings unless unable to understand questions put or give intelligible answers. See also section 1 of the Criminal Evidence Act 1898(b).

Sections 1, 3, 5 and 6 of the Oaths Act 1978(c) provide for the taking of oaths and the making of affirmations, and for the words that must be used. Section 28 of the Children and Young Persons Act 1963(d) provides that in a youth court, and where a witness in any court is under 18, an oath must include the words ‘I promise’ in place of the words ‘I swear’. Under sections 55 and 56 of the Youth Justice and Criminal Evidence Act 1999, a person may give evidence without taking an oath, or making an affirmation, where that person (i) is under 14 or (ii) has an insufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth which is involved in taking an oath.

The questions that may be put to a witness—

- (a) by a party are governed by rules of evidence, for example—*
 - (i) the rule that a question must be relevant to what is in issue,*
 - (ii) the rule that the party who calls a witness must not ask that witness a leading question about what is in dispute, and*
 - (iii) the rule that a party who calls a witness may contradict that witness only in limited circumstances (see section 3 of the Criminal Procedure Act 1865)(e);*
- (b) by the justices’ legal adviser or the court are in their discretion, but that is subject to—*
 - (i) rules of evidence, and*
 - (ii) rule 1.3 (the application by the court of the overriding objective).*

Under sections 34, 35 and 36 of the Youth Justice and Criminal Evidence Act 1999(f), a defendant who is not represented may not cross-examine a witness where—

- (a) the defendant is charged with a sexual offence against the witness;*
- (b) the defendant is charged with a sexual offence, or one of certain other offences, and the witness is a child; or*
- (c) the court prohibits the defendant from cross-examining the witness.*

Part 23 contains rules relevant to restrictions on cross-examination.

Under section 139 of the Criminal Justice Act 2003(g), a witness may refresh his or her memory by referring to a record made before the hearing, either contained in a document made or verified by the witness, or in the transcript of a sound recording, if—

- (a) the witness states that it records his or her recollection of events at that earlier time; and*
- (b) that recollection is likely to have been significantly better when the record was made than at the time of the hearing.*

In some circumstances, a witness may give evidence in accordance with special measures directed by the court under section 19 of the Youth Justice and Criminal Evidence Act 1999(a), or by live

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- (a) 1999 c. 23.*
 - (b) 1898 c. 36; section 1 was amended by section 1 of the Criminal Evidence Act 1979 (c. 16), section 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), sections 80(9) and 119(2) of, and Schedule 7 to, the Police and Criminal Evidence Act 1984 (c. 60), sections 31 and 168 of, and paragraph 2 of Schedule 10, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 67 of, and paragraph 1 of Schedule 4, and Schedule 6 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23) and sections 331 and 332 of, and paragraph 80 of Schedule 36, and Part 5 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44).*
 - (c) 1978 c. 19.*
 - (d) 1963 c. 37; section 28 was amended by section 2 of the Oaths Act 1978 (c. 19) and section 100 of, and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53).*
 - (e) 1865 c. 18.*
 - (f) 1999 c. 23; section 35 was amended by sections 139 and 140 of, and paragraph 41 of Schedule 6 and Schedule 7 to, the Sexual Offences Act 2003 (c. 42) and section 148 of, and paragraphs 35 and 36 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4).*
 - (g) 2003 c. 44.*

link under section 32 of the Criminal Justice Act 1988(b) or section 51 of the Criminal Justice Act 2003. Part 18 contains relevant rules.]

Evidence of a witness in writing

24.5.—(1) This rule applies where a party wants to introduce in evidence the written statement of a witness to which applies—

- (a) Part 16 (Written witness statements);
- (b) Part 19 (Expert evidence); or
- (c) Part 20 (Hearsay evidence).

(2) If the court admits such evidence—

- (a) the court must read the statement; and
- (b) unless the court otherwise directs, if any member of the public, including any reporter, is present, each relevant part of the statement must be read or summarised aloud.

[Note. See Parts 16, 19 and 20, and the other legislation to which those Parts apply. The admissibility of evidence that a party introduces is governed by rules of evidence.]

Evidence by admission

24.6.—(1) This rule applies where—

- (a) a party introduces in evidence a fact admitted by another party; or
- (b) parties jointly admit a fact.

(2) Unless the court otherwise directs, a written record must be made of the admission.

[Note. See section 10 of the Criminal Justice Act 1967(c). The admissibility of evidence that a party introduces is governed by rules of evidence.]

Procedure on plea of guilty

24.7.—(1) This rule applies if—

- (a) the defendant pleads guilty; and
- (b) the court is satisfied that the plea represents a clear acknowledgement of guilt.

(2) The court may convict the defendant without receiving evidence.

[Note. See section 9 of the Magistrates' Courts Act 1980(d).]

Written guilty plea: special rules

24.8.—(1) This rule applies where—

- (a) the offence alleged—
 - (i) can be tried only in a magistrates' court, and
 - (ii) is not one specified under section 12(1)(a) of the Magistrates' Courts Act 1980(e);
- (b) the defendant is at least 16 years old;

(a) 1999 c. 23.

(b) 1988 c. 33; section 32 was amended by section 55 of the Criminal Justice Act 1991 (c. 53), section 29 of, and paragraph 16 of Schedule 2 to, the Criminal Appeal Act 1995 (c. 35), section 62 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 67 of, and Schedule 6 and paragraph 3 of Schedule 7 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23) and paragraphs 24 and 26 of the Schedule to S.I. 2004/2035.

(c) 1967 c. 80.

(d) 1980 c. 43.

(e) 1980 c. 43; section 12(1)(a) was amended by sections 308 and 332 of, and Part 12 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

- (c) the prosecutor has served on the defendant—
 - (i) the summons or requisition,
 - (ii) the material listed in paragraph (2) on which the prosecutor relies to set out the facts of the offence,
 - (iii) the material listed in paragraph (3) on which the prosecutor relies to provide the court with information relevant to sentence,
 - (iv) a notice that the procedure set out in this rule applies, and
 - (v) a notice for the defendant's use if the defendant wants to plead guilty without attending court; and
 - (d) the prosecutor has served on the court officer—
 - (i) copies of those documents, and
 - (ii) a certificate of service of those documents on the defendant.
- (2) The material that the prosecutor must serve to set out the facts of the offence is—
- (a) a summary of the evidence on which the prosecution case is based;
 - (b) any—
 - (i) written witness statement to which Part 16 (Written witness statements) applies, or
 - (ii) document or extract setting out facts; or
 - (c) any combination of such a summary, statement, document or extract.
- (3) The material that the prosecutor must serve to provide information relevant to sentence is—
- (a) details of any previous conviction of the defendant which the prosecutor considers relevant, other than any conviction listed in the defendant's driving record;
 - (b) if applicable, a notice that the defendant's driving record will be made available to the court;
 - (c) a notice containing or describing any other information about the defendant, relevant to sentence, which will be made available to the court.
- (4) A defendant who wants to plead guilty without attending court must, before the hearing date specified in the summons or requisition—
- (a) serve a notice of guilty plea on the court officer; and
 - (b) include with that notice—
 - (i) any representations that the defendant wants the court to consider, and
 - (ii) a statement of the defendant's assets and other financial circumstances.
- (5) A defendant who wants to withdraw such a notice must notify the court officer in writing before the hearing date.
- (6) If the defendant does not withdraw the notice before the hearing date, then on or after that date—
- (a) to establish the facts of the offence and other information about the defendant relevant to sentence, the court may take account only of—
 - (i) information contained in a document served by the prosecutor under paragraph (1),
 - (ii) any previous conviction listed in the defendant's driving record, where the offence is under the Road Traffic Regulation Act 1984(**a**), the Road Traffic Act 1988(**b**), the Road Traffic (Consequential Provisions) Act 1988(**c**) or the Road Traffic (Driver Licensing and Information Systems) Act 1989(**d**),

(a) 1984 c. 27.
(b) 1988 c. 52.
(c) 1988 c. 54.
(d) 1989 c. 22.

- (iii) any other information about the defendant, relevant to sentence, of which the prosecutor served notice under paragraph (1), and
 - (iv) any representations and any other information served by the defendant under paragraph (4) and rule 24.11(3) to (9) inclusive must be read accordingly;
 - (b) unless the court otherwise directs, the prosecutor need not attend; and
 - (c) the court may accept such a guilty plea and pass sentence in the defendant's absence.
- (7) With the defendant's agreement, the court may deal with the case in the same way as under paragraph (6) where the defendant is present and—
- (a) has served a notice of guilty plea under paragraph (4); or
 - (b) pleads guilty there and then.

[Note. The procedure set out in this rule is prescribed by sections 12 and 12A of the Magistrates' Courts Act 1980(a). Under section 12(1)(a), the Secretary of State can specify offences to which the procedure will not apply. None has been specified.]

Under section 1 of the Magistrates' Courts Act 1980(b) a justice of the peace may issue a summons requiring a defendant to attend court to answer an allegation of an offence. Under section 29 of the Criminal Justice Act 2003(c) a prosecutor authorised under that section may issue a written charge alleging an offence and a requisition requiring a defendant to attend court. Part 7 contains relevant rules.

For the court's power, where this rule applies, to take account of a previous conviction listed in a defendant's driving record, see section 13(3A) of the Road Traffic Offenders Act 1988(d).

The Practice Direction sets out forms of notice for use in connection with this rule.]

Single justice procedure: special rules

- 24.9.**—(1) This rule applies where—
- (a) the offence alleged—
 - (i) can be tried only in a magistrates' court, and
 - (ii) is not one punishable with imprisonment;
 - (b) the defendant is at least 18 years old;
 - (c) the prosecutor has served on the defendant—
 - (i) a written charge,
 - (ii) the material listed in paragraph (2) on which the prosecutor relies to set out the facts of the offence,

(a) 1980 c. 43; section 12 was amended by section 45 of, and paragraph 1 of Schedule 5 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 1 of the Magistrates' Courts (Procedure) Act 1998 (c. 15), section 109 of, and paragraph 203 of Schedule 8 to, the Courts Act 2003 (c. 39), section 308 of, and Part 12 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and section 81 of the Deregulation Act 2015 (c. 20). Section 12A was inserted by section 45 of, and paragraph 2 of Schedule 5 to, the Criminal Justice and Public Order Act 1994 (c. 33) and amended by section 109 of, and paragraph 204 of Schedule 8 to, the Courts Act 2003 (c. 39).

(b) 1980 c. 43; section 1 was amended by section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), sections 43 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39), section 31 of, and paragraph 12 of Schedule 7 to, the Criminal Justice Act 2003 (c. 44) and section 153 of the Police Reform and Social Responsibility Act 2011. It is further amended by paragraphs 7 and 8 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(c) 2003 c. 44; section 29 has been brought into force for certain purposes only (see S.I. 2007/1999, 2008/1424, 2009/2879, 2010/3005, 2011/2188, 2012/825 and 2014/633). It was amended by section 50 of, and paragraph 130 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11), section 59 of, and paragraph 196 of Schedule 4 to, the Serious Organised Crime and Police Act 2005 (c. 15), section 15 of, and paragraph 187 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22), S.I. 2014/834 and section 46 of the Criminal Justice and Courts Act 2015 (c. 2).

(d) 1988 c. 53; section 13(3A) was inserted by section 2 of the Magistrates' Courts (Procedure) Act 1998 (c. 15).

- (iii) the material listed in paragraph (3) on which the prosecutor relies to provide the court with information relevant to sentence,
 - (iv) a notice that the procedure set out in this rule applies,
 - (v) a notice for the defendant's use if the defendant wants to plead guilty,
 - (vi) a notice for the defendant's use if the defendant wants to plead guilty but wants the case dealt with at a hearing by a court comprising more than one justice, and
 - (vii) a notice for the defendant's use if the defendant wants to plead not guilty; and
- (d) the prosecutor has served on the court officer—
- (i) copies of those documents, and
 - (ii) a certificate of service of those documents on the defendant.
- (2) The material that the prosecutor must serve to set out the facts of the offence is—
- (a) a summary of the evidence on which the prosecution case is based;
 - (b) any—
 - (i) written witness statement to which Part 16 (Written witness statements) applies, or
 - (ii) document or extract setting out facts; or
 - (c) any combination of such a summary, statement, document or extract.
- (3) The material that the prosecutor must serve to provide information relevant to sentence is—
- (a) details of any previous conviction of the defendant which the prosecutor considers relevant, other than any conviction listed in the defendant's driving record;
 - (b) if applicable, a notice that the defendant's driving record will be made available to the court;
 - (c) a notice containing or describing any other information about the defendant, relevant to sentence, which will be made available to the court.
- (4) Not more than 21 days after service on the defendant of the documents listed in paragraph (1)(c)—
- (a) a defendant who wants to plead guilty must serve a notice to that effect on the court officer and include with that notice—
 - (i) any representations that the defendant wants the court to consider, and
 - (ii) a statement of the defendant's assets and other financial circumstances;
 - (b) a defendant who wants to plead guilty but wants the case dealt with at a hearing by a court comprising more than one justice must serve a notice to that effect on the court officer;
 - (c) a defendant who wants to plead not guilty must serve a notice to that effect on the court officer.
- (5) If within 21 days of service on the defendant of the documents listed in paragraph (1)(c) the defendant serves a notice to plead guilty under paragraph (4)(a)—
- (a) the court officer must arrange for the court to deal with the case in accordance with that notice; and
 - (b) the time for service of any other notice under paragraph (4) expires at once.
- (6) If within 21 days of service on the defendant of the documents listed in paragraph (1)(c) the defendant wants to withdraw a notice which he or she has served under paragraph (4)(b) (notice to plead guilty at a hearing) or under paragraph (4)(c) (notice to plead not guilty), the defendant must—
- (a) serve notice of that withdrawal on the court officer; and
 - (b) serve any substitute notice under paragraph (4).
- (7) Paragraph (8) applies where by the date of trial the defendant has not—

- (a) served notice under paragraph (4)(b) or (c) of wanting to plead guilty at a hearing, or wanting to plead not guilty; or
 - (b) given notice to that effect under section 16B(2) of the Magistrates' Courts Act 1980(a).
- (8) Where this paragraph applies—
- (a) the court may try the case in the parties' absence and without a hearing;
 - (b) the court may accept any guilty plea of which the defendant has given notice under paragraph (4)(a);
 - (c) to establish the facts of the offence and other information about the defendant relevant to sentence, the court may take account only of—
 - (i) information contained in a document served by the prosecutor under paragraph (1),
 - (ii) any previous conviction listed in the defendant's driving record, where the offence is under the Road Traffic Regulation Act 1984, the Road Traffic Act 1988, the Road Traffic (Consequential Provisions) Act 1988 or the Road Traffic (Driver Licensing and Information Systems) Act 1989,
 - (iii) any other information about the defendant, relevant to sentence, of which the prosecutor served notice under paragraph (1), and
 - (iv) any representations and any other information served by the defendant under paragraph (4)(a)
- and rule 24.11(3) to (9) inclusive must be read accordingly.
- (9) Paragraph (10) applies where—
- (a) the defendant serves on the court officer a notice under paragraph (4)(b) or (c); or
 - (b) the court which tries the defendant under paragraph (8) adjourns the trial for the defendant to attend a hearing by a court comprising more than one justice.
- (10) Where this paragraph applies, the court must exercise its power to issue a summons and—
- (a) the rules in Part 7 apply (Starting a prosecution in a magistrates' court) as if the prosecutor had just served an information in the same terms as the written charge;
 - (b) the rules in Part 8 (Initial details of the prosecution case) apply as if the documents served by the prosecutor under paragraph (1) had been served under that Part;
 - (c) except for rule 24.8 (Written guilty plea: special rules) and this rule, the rules in this Part apply.

[Note. The procedure set out in this rule is prescribed by sections 16A to 16D of the Magistrates' Courts Act 1980(b) and section 29 of the Criminal Justice Act 2003(c). Under section 16A of the 1980 Act, the court may comprise a single justice. Under section 29 of the 2003 Act, a prosecutor authorised under that section may issue a written charge alleging an offence and a single justice procedure notice. Part 7 contains relevant rules.

Under section 1 of the Magistrates' Courts Act 1980(d) a justice of the peace may issue a summons requiring a defendant to attend court to answer an allegation of an offence. Under sections 16C and 16D of the 1980 Act, a justice may issue a summons requiring a defendant to attend court in the circumstances listed in rule 24.9(9).

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- (a) 1980 c. 43; section 16B was inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2).
 - (b) 1980 c. 43; sections 16A to 16D were inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2).
 - (c) 2003 c. 44; section 29 has been brought into force for certain purposes only (see S.I. 2007/1999, 2008/1424, 2009/2879, 2010/3005, 2011/2188, 2012/825 and 2014/633). It was amended by section 50 of, and paragraph 130 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11), section 59 of, and paragraph 196 of Schedule 4 to, the Serious Organised Crime and Police Act 2005 (c. 15), section 15 of, and paragraph 187 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22), S.I. 2014/834 and section 46 of the Criminal Justice and Courts Act 2015 (c. 2).
 - (d) 1980 c. 43; section 1 was amended by section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), sections 43 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39), section 31 of, and paragraph 12 of Schedule 7 to, the Criminal Justice Act 2003 (c. 44) and section 153 of the Police Reform and Social Responsibility Act 2011. It is further amended by paragraphs 7 and 8 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

For the court's power, where this rule applies, to take account of—

- (a) *information contained or described in a document served by the prosecutor under rule 24.9(1), see section 16F of the Magistrates' Courts Act 1980(a);*
- (b) *a previous conviction listed in a defendant's driving record, see section 13(3A) of the Road Traffic Offenders Act 1988(b).*

The Practice Direction sets out forms of notice for use in connection with this rule.]

Application to withdraw a guilty plea

- 24.10.**—(1) This rule applies where the defendant wants to withdraw a guilty plea.
- (2) The defendant must apply to do so—
- (a) as soon as practicable after becoming aware of the reasons for doing so; and
 - (b) before sentence.
- (3) Unless the court otherwise directs, the application must be in writing and the defendant must serve it on—
- (a) the court officer; and
 - (b) the prosecutor.
- (4) The application must—
- (a) explain why it would be unjust not to allow the defendant to withdraw the guilty plea;
 - (b) identify—
 - (i) any witness that the defendant wants to call, and
 - (ii) any other proposed evidence; and
 - (c) say whether the defendant waives legal professional privilege, giving any relevant name and date.

Procedure if the court convicts

- 24.11.**—(1) This rule applies if the court convicts the defendant.
- (2) The court—
- (a) may exercise its power to require—
 - (i) a statement of the defendant's assets and other financial circumstances,
 - (ii) a pre-sentence report; and
 - (b) may (and in some circumstances must) remit the defendant to a youth court for sentence where—
 - (i) the defendant is under 18, and
 - (ii) the convicting court is not itself a youth court.
- (3) The prosecutor must—
- (a) summarise the prosecution case, if the sentencing court has not heard evidence;
 - (b) identify any offence to be taken into consideration in sentencing;
 - (c) provide information relevant to sentence, including any statement of the effect of the offence on the victim, the victim's family or others; and
 - (d) where it is likely to assist the court, identify any other matter relevant to sentence, including—
 - (i) the legislation applicable,

(a) 1980 c. 43; section 16F was inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2).

(b) 1988 c. 53; section 13(3A) was inserted by section 2 of the Magistrates' Courts (Procedure) Act 1998 (c. 15).

- (ii) any sentencing guidelines, or guideline cases,
 - (iii) aggravating and mitigating features affecting the defendant's culpability and the harm which the offence caused, was intended to cause or might foreseeably have caused, and
 - (iv) the effect of such of the information listed in paragraph (2)(a) as the court may need to take into account.
- (4) The defendant must provide details of financial circumstances—
- (a) in any form required by the court officer;
 - (b) by any date directed by the court or by the court officer.
- (5) Where the defendant pleads guilty but wants to be sentenced on a different basis to that disclosed by the prosecution case—
- (a) the defendant must set out that basis in writing, identifying what is in dispute;
 - (b) the court may invite the parties to make representations about whether the dispute is material to sentence; and
 - (c) if the court decides that it is a material dispute, the court must—
 - (i) invite such further representations or evidence as it may require, and
 - (ii) decide the dispute.
- (6) Where the court has power to order the endorsement of the defendant's driving record, or power to order the defendant to be disqualified from driving—
- (a) if other legislation so permits, a defendant who wants the court not to exercise that power must introduce the evidence or information on which the defendant relies;
 - (b) the prosecutor may introduce evidence; and
 - (c) the parties may make representations about that evidence or information.
- (7) Before the court passes sentence—
- (a) the court must—
 - (i) give the defendant an opportunity to make representations and introduce evidence relevant to sentence, and
 - (ii) where the defendant is under 18, give the defendant's parents, guardian or other supporting adult, if present, such an opportunity as well; and
 - (b) the justices' legal adviser or the court must elicit any further information relevant to sentence that the court may require.
- (8) If the court requires more information, it may exercise its power to adjourn the hearing for not more than—
- (a) 3 weeks at a time, if the defendant will be in custody; or
 - (b) 4 weeks at a time.
- (9) When the court has taken into account all the evidence, information and any report available, the court must—
- (a) as a general rule, pass sentence there and then;
 - (b) when passing sentence, explain the reasons for deciding on that sentence, unless neither the defendant nor any member of the public, including any reporter, is present;
 - (c) when passing sentence, explain to the defendant its effect, the consequences of failing to comply with any order or pay any fine, and any power that the court has to vary or review the sentence, unless—
 - (i) the defendant is absent, or
 - (ii) the defendant's ill-health or disorderly conduct makes such an explanation impracticable;

- (d) give any such explanation in terms the defendant, if present, can understand (with help, if necessary); and
- (e) consider exercising any power it has to make a costs or other order.

(10) Despite the general rule—

- (a) the court must adjourn the hearing if the defendant is absent, the case started with a summons, requisition or single justice procedure notice, and either—
 - (i) the court considers passing a custodial sentence (where it can do so), or
 - (ii) the court considers imposing a disqualification (unless it has already adjourned the hearing to give the defendant an opportunity to attend);
- (b) the court may exercise any power it has to—
 - (i) commit the defendant to the Crown Court for sentence (and in some cases it must do so), or
 - (ii) defer sentence for up to 6 months.

[Note. See sections 9, 10 and 11 of the Magistrates' Courts Act 1980(a), and sections 143, 158, 164, 172 and 174 of the Criminal Justice Act 2003(b).

Under section 11(3A) of the 1980 Act, a custodial sentence passed in the defendant's absence does not take effect until the defendant is brought before the court.

Under sections 57D and 57E of the Crime and Disorder Act 1998(c), the court may require a defendant to attend a sentencing hearing by live link.

Under section 162 of the Criminal Justice Act 2003(d), the court may require a defendant who is an individual to provide a statement of assets and other financial circumstances if the defendant—

- (a) serves notice of guilty plea, where rule 24.8 (Written guilty plea: special rules) applies; or
- (b) is convicted.

Under section 20A of the Criminal Justice Act 1991(e), it is an offence for a defendant knowingly or recklessly to make a false or incomplete statement of assets or other financial circumstances, or to fail to provide such a statement, in response to a request by a court officer on behalf of the court.

Under section 156 of the Criminal Justice Act 2003(f), the general rule (subject to exceptions) is that the court must obtain and consider a pre-sentence report—

- (a) where it is considering a custodial sentence or a community sentence;

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- (a) 1980 c. 43; section 10 was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53) and section 47 of the Crime and Disorder Act 1998 (c. 37). Section 11 was amended by section 123 of, and paragraph 1 of Schedule 8 to, the Criminal Justice Act 1988 (c. 33), section 168 of, and paragraph 39 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 39 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 304 of, and paragraphs 25 and 26 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44) and section 54 of the Criminal Justice and Immigration Act 2008 (c. 4).
 - (b) 2003 c. 44; section 143 was amended by section 378 of, and paragraph 216 of Schedule 16 to the Armed Forces Act 2006 (c. 52). Section 158 was amended by section 64 of, and Part 4 of Schedule 5 to, the Children Act 2004 (c. 31), article 3 of, and paragraph 19 of Schedule 1 to, S.I. 2008/912 and section 12 of the Criminal Justice and Immigration Act 2008 (c. 4). Section 164 was amended by section 14 of the Domestic Violence, Crime and Victims Act 2004 (c. 28). Section 174 was substituted by section 64 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
 - (c) 1998 c. 37; sections 57A to 57E were substituted for section 57 as originally enacted by section 45 of the Police and Justice Act 2006 (c. 48), and amended by sections 106, 109 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).
 - (d) 2003 c. 44; section 162 was amended by paragraph 24 of Schedule 16 to the Crime and Courts Act 2013 (c. 22).
 - (e) 1991 c. 53; section 20A was inserted by section 168 of, and paragraph 43 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33) and amended by sections 95 and 109 of, and paragraph 350 of Schedule 8 to, the Courts Act 2003 (c. 39) and section 44 of, and paragraph 26 of Schedule 16 to, the Crime and Courts Act 2013 (c. 22).
 - (f) 2003 c. 44; section 156 was amended by sections 6 and 149 of, and paragraphs 71 and 77 of Schedule 4 and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraphs 8 and 13 of Schedule 19, and paragraphs 20 and 22 of Schedule 21, to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(b) where it thinks the defendant may pose a significant risk of causing serious harm to the public by further offending.

Under section 159 of the Criminal Justice Act 2003(a), where the court obtains a written pre-sentence report about a defendant who is under 18, it may direct that information in it must be withheld, if it would be likely to create a risk of significant harm to the defendant.

For the circumstances in which a magistrates' court may (and in some cases must) remit the defendant to a youth court for sentence, see section 8 of the Powers of Criminal Courts (Sentencing) Act 2000(b).

The Sentencing Council may issue sentencing guidelines under section 120 of the Coroners and Justice Act 2009(c).

For the circumstances in which a court may (and in some cases must) order the endorsement of a defendant's driving record, or the disqualification of a defendant from driving, see sections 34, 35 and 44 of the Road Traffic Offenders Act 1988(d). Under that legislation, in some circumstances the court has discretion not to make such an order. See also rule 29.1.

The evidence that may be introduced is subject to rules of evidence.

In addition to the specific powers to which this rule applies, the court has a general power to adjourn a trial: see rule 24.2.

Under section 174(4) of the Criminal Justice Act 2003(e), Criminal Procedure Rules may prescribe cases in which there do not apply the court's usual duties to give reasons and explanations. Written notice of the effect of some sentences is required by rule 28.2 (Notice of requirements of suspended sentence or community, etc. order), rule 28.3 (Notification requirements) and rule 30.2 (notice of fine or other financial order).

For the circumstances in which a magistrates' court may (and in some cases must) commit a defendant to the Crown Court for sentence, see sections 3, 3A, 3B, 3C, 4, 4A and 6 of the Powers of Criminal Courts (Sentencing) Act 2000(f).

Under section 1 of the 2000 Act(g), if (among other things) the defendant consents, the court may defer sentence for up to 6 months, for the purpose of allowing it to take account of the defendant's conduct after conviction, or any change in the defendant's circumstances.]

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- (a) 2003 c. 44; section 159 was amended by section 208 of, and paragraphs 145 and 147 of Schedule 21 to, the Legal Services Act 2007 (c. 29).
- (b) 2000 c. 6; section 8 was amended by section 41 of, and paragraph 74 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44) and article 2 of, and paragraph 62 of the Schedule to S.I. 2005/886).
- (c) 2009 c. 25.
- (d) 1988 c. 53; section 34 was amended by section 29 of the Road Traffic Act 1991 (c. 40), section 3 of the Aggravated Vehicle-Taking Act 1992 (c. 11), section 165 of, and paragraph 121 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), sections 56 and 107 of, and Schedule 8 to, the Police Reform Act 2002 (c. 30), section 25 of the Road Safety Act 2006 (c. 49), article 2 of S.I. 2007/3480, paragraphs 2 and 5 of Schedule 27 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and section 56 of, and paragraphs 9 and 12 of Schedule 22 to, the Crime and Courts Act 2013 (c. 22). It is further amended by section 177 of, and paragraph 90 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25) with effect from a date to be appointed. Section 35 was amended by section 48 of, and paragraph 95 of Schedule 4 to, the Road Traffic Act 1991 (c. 40), and section 165 of, and paragraph 122 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6). It is further amended by section 177 of, and 90 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed. Section 44 was amended by regulations 2 and 3 of, and paragraph 10 of Schedule 2 to, S.I. 1990/144 and section 9 of the Road Safety Act 2006 (c. 49). It is further amended by sections 10 and 59 of, and Schedule 7 to, the Road Safety Act 2006 (c. 49), with effect from a date to be appointed.
- (e) 2003 c. 44; section 174 was substituted by section 64 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
- (f) 2000 c. 6; sections 3, 4 and 6 were amended, and sections 3A, 3B, 3C and 4A inserted, by paragraphs 21, 22A, 23, 24, 25 and 28 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 3A was amended by section 53 of, and paragraphs 1 and 9 of Schedule 13 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraphs 7 and 8 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 3C was amended by paragraphs 7 and 9 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 6 was further amended by paragraphs 90 and 91 of Schedule 32, and Parts 7 and 9 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).
- (g) 2000 c. 6; section 1 was substituted, together with sections 1A to 1D, by section 278 of, and paragraph 1 of Schedule 23 to, the Criminal Justice Act 2003 (c. 44) and amended by article 3 of, and paragraph 14 of Schedule 1 to, S.I. 2008/912.

Procedure where a party is absent

24.12.—(1) This rule—

- (a) applies where a party is absent; but
- (b) does not apply where—
 - (i) the defendant has served a notice of guilty plea under rule 24.8 (Written guilty plea: special rules), or
 - (ii) the court tries a case under rule 24.9 (Single justice procedure: special rules).

(2) Where the prosecutor is absent, the court may—

- (a) if it has received evidence, deal with the case as if the prosecutor were present; and
- (b) in any other case—
 - (i) enquire into the reasons for the prosecutor's absence, and
 - (ii) if satisfied there is no good reason, exercise its power to dismiss the allegation.

(3) Where the defendant is absent—

- (a) the general rule is that the court must proceed as if the defendant—
 - (i) were present, and
 - (ii) had pleaded not guilty (unless a plea already has been taken)and the court must give reasons if it does not do so; but
- (b) the general rule does not apply if the defendant is under 18;
- (c) the general rule is subject to the court being satisfied that—
 - (i) any summons or requisition was served on the defendant a reasonable time before the hearing, or
 - (ii) in a case in which the hearing has been adjourned, the defendant had reasonable notice of where and when it would resume;
- (d) the general rule is subject also to rule 24.11(10)(a) (restrictions on passing sentence in the defendant's absence).

(4) Where the defendant is absent, the court—

- (a) must exercise its power to issue a warrant for the defendant's arrest, if it passes a custodial sentence; and
- (b) may exercise its power to do so in any other case, if it does not apply the general rule in paragraph (3)(a) of this rule about proceeding in the defendant's absence.

[Note. See sections 11, 15 and 16 of the Magistrates' Courts Act 1980(a).]

Under section 27 of the 1980 Act, where a magistrates' court dismisses an allegation of an offence classified as one that can be tried either in a magistrates' court or in the Crown Court (in other legislation, described as triable either way), that dismissal has the same effect as an acquittal in the Crown Court.

Under section 11 of the 1980 Act, the court may pass a custodial sentence in the defendant's absence if the case started with the defendant's arrest and charge (and not with a summons or requisition). Section 11(3A) requires that, in that event, the defendant must be brought before the court before being taken to a prison or other institution to begin serving that sentence. Under section 7(1) of the Bail Act 1976(b), the court has power to issue a warrant for the arrest of a defendant released on bail who has failed to attend court when due to do so.

(a) 1980 c. 43; section 14 was amended by section 109 of, and paragraph 205 of Schedule 8 to, the Courts Act 2003 (c. 39).

(b) 1976 c. 63.

Under section 13 of the 1980 Act(a), the court has power to issue a warrant for the arrest of an absent defendant, instead of proceeding, where—

- (1) the case started with—*
 - (a) the defendant's arrest and charge, or*
 - (b) a summons or requisition, if—*
 - (i) the court is satisfied that that summons or requisition was served on the defendant a reasonable time before the hearing, or*
 - (ii) the defendant was present when the hearing was arranged; and*
- (2) the offence is punishable with imprisonment; or*
- (3) the defendant has been convicted and the court considers imposing a disqualification.]*

Provision of documents for the court

24.13.—(1) A party who introduces a document in evidence, or who otherwise uses a document in presenting that party's case, must provide a copy for—

- (a) each other party;
- (b) any witness that party wants to refer to that document;
- (c) the court; and
- (d) the justices' legal adviser.

(2) Unless the court otherwise directs, on application or on its own initiative, the court officer must provide for the court—

- (a) any copy received under paragraph (1) before the hearing begins; and
- (b) a copy of the court officer's record of—
 - (i) information supplied by each party for the purposes of case management, including any revision of information previously supplied,
 - (ii) each pre-trial direction for the management of the case,
 - (iii) any pre-trial decision to admit evidence,
 - (iv) any pre-trial direction about the giving of evidence, and
 - (v) any admission to which rule 24.6 applies.

(3) Where rule 24.8 (Written guilty plea: special rules) applies, the court officer must provide for the court—

- (a) each document served by the prosecutor under rule 24.8(1)(d);
- (b) the defendant's driving record, where the offence is under the Road Traffic Regulation Act 1984(b), the Road Traffic Act 1988(c), the Road Traffic (Consequential Provisions) Act 1988(d) or the Road Traffic (Driver Licensing and Information Systems) Act 1989(e);
- (c) any other information about the defendant, relevant to sentence, of which the prosecutor served notice under rule 24.8(1); and
- (d) the notice of guilty plea and any representations and other information served by the defendant under rule 24.8(4).

(a) 1980 c. 43; section 13 was amended by section 45 of, and paragraph 3 of Schedule 5 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 48 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 3 of the Magistrates' Courts (Procedure) Act 1998 (c. 15), sections 31 and 332 of, and Part 12 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and sections 54 and 149 of, and Part 4 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(b) 1984 c. 27.

(c) 1988 c. 52.

(d) 1988 c. 54.

(e) 1989 c. 22.

(4) Where the court tries a case under rule 24.9 (Single justice procedure: special rules), the court officer must provide for the court—

- (a) each document served by the prosecutor under rule 24.9(1)(d);
- (b) the defendant's driving record, where the offence is under the Road Traffic Regulation Act 1984, the Road Traffic Act 1988, the Road Traffic (Consequential Provisions) Act 1988 or the Road Traffic (Driver Licensing and Information Systems) Act 1989;
- (c) any other information about the defendant, relevant to sentence, of which the prosecutor served notice under rule 24.9(1); and
- (d) any notice, representations and other information served by the defendant under rule 24.9(4)(a).

[Note. A written witness statement to which Part 16 applies may only be introduced in evidence if there has been no objection within the time limit to which rule 16.4 refers.]

An expert report to which Part 19 applies may only be introduced in evidence if it has been served in accordance with rule 19.3.

See also rule 20.3 for the procedure where a party objects to the introduction of hearsay evidence, including such evidence in a document, and rules 21.3 and 21.4 for the procedure where a party objects to the introduction of evidence of bad character.

A direction about the giving of evidence may be made on an application to which Part 18 applies (Measures to assist a witness or defendant to give evidence).]

Place of trial

24.14.—(1) The hearing must take place in a courtroom provided by the Lord Chancellor, unless—

- (a) the court otherwise directs; or
- (b) the court tries a case under rule 24.9 (Single justice procedure: special rules).

(2) Where the hearing takes place in Wales—

- (a) any party or witness may use the Welsh language; and
- (b) if practicable, at least one member of the court must be Welsh-speaking.

[Note. See section 3 of the Courts Act 2003(a), section 16A of the Magistrates' Courts Act 1980(b) and section 22 of the Welsh Language Act 1993(c).]

In some circumstances the court may conduct all or part of the hearing outside a courtroom. The members of the court may discuss the verdict and sentence outside the courtroom.]

Duty of justices' legal adviser

24.15.—(1) A justices' legal adviser must attend the court and carry out the duties listed in this rule, as applicable, unless the court—

- (a) includes a District Judge (Magistrates' Courts); and
- (b) otherwise directs.

(2) A justices' legal adviser must—

- (a) before the hearing begins, by reference to what is provided for the court under rule 24.13 (Provision of documents for the court) draw the court's attention to—
 - (i) what the prosecutor alleges,

(a) 2003 c. 39.

(b) 1980 c. 43; section 16A was inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2).

(c) 1993 c. 38.

- (ii) what the parties say is agreed,
 - (iii) what the parties say is in dispute, and
 - (iv) what the parties say about how each expects to present the case, especially where that may affect its duration and timetabling;
- (b) whenever necessary, give the court legal advice and—
- (i) if necessary, attend the members of the court outside the courtroom to give such advice, but
 - (ii) inform the parties (if present) of any such advice given outside the courtroom; and
- (c) assist the court, where appropriate, in the formulation of its reasons and the recording of those reasons.
- (3) A justices' legal adviser must—
- (a) assist an unrepresented defendant;
 - (b) assist the court by—
 - (i) making a note of the substance of any oral evidence or representations, to help the court recall that information,
 - (ii) if the court rules inadmissible part of a written statement introduced in evidence, marking that statement in such a way as to make that clear,
 - (iii) ensuring that an adequate record is kept of the court's decisions and the reasons for them, and
 - (iv) making any announcement, other than of the verdict or sentence.
- (4) Where the defendant has served a notice of guilty plea to which rule 24.8 (Written guilty plea: special rules) applies, a justices' legal adviser must—
- (a) unless the court otherwise directs, if any member of the public, including any reporter, is present, read aloud to the court—
 - (i) the material on which the prosecutor relies to set out the facts of the offence and to provide information relevant to sentence (or summarise any written statement included in that material, if the court so directs), and
 - (ii) any written representations by the defendant;
 - (b) otherwise, draw the court's attention to—
 - (i) what the prosecutor alleges, and any significant features of the material listed in paragraph (4)(a)(i), and
 - (ii) any written representations by the defendant.
- (5) Where the court tries a case under rule 24.9 (Single justice procedure: special rules), a justices' legal adviser must draw the court's attention to—
- (a) what the prosecutor alleges, and any significant features of the material on which the prosecutor relies to prove the alleged offence and to provide information relevant to sentence; and
 - (b) any representations served by the defendant.

[Note. Section 28 of the Courts Act 2003(a) provides for the functions of a justices' legal adviser. See also sections 12 and 16A of the Magistrates' Courts Act 1980(b).]

(a) 2003 c. 39; section 28 was amended by section 15 of, and paragraphs 308 and 327 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).

(b) 1980 c. 43; section 12 was amended by section 45 of, and paragraph 1 of Schedule 5 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 1 of the Magistrates' Courts (Procedure) Act 1998 (c. 15), section 109 of, and paragraph 203 of Schedule 8 to, the Courts Act 2003 (c. 39), section 308 of, and Part 12 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) and section 81 of the Deregulation Act 2015 (c. 20). Section 16A was inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2).

Under section 12(7ZA) of the 1980 Act(a), Criminal Procedure Rules may specify which of the documents listed in section 12(7) of that Act(b), if any, must be read aloud, and may require them to be read aloud only in circumstances specified in the rules.]

Duty of court officer

24.16. The court officer must—

- (a) serve on each party notice of where and when an adjourned hearing will resume, unless—
 - (i) the party was present when that was arranged,
 - (ii) the defendant has served a notice of guilty plea to which rule 24.8 (Written guilty plea: special rules) applies, and the adjournment is for not more than 4 weeks, or
 - (iii) the court tries a case under rule 24.9 (Single justice procedure: special rules), and the adjourned trial will resume under that rule;
- (b) if the reason for the adjournment was to postpone sentence, include that reason in any such notice to the defendant;
- (c) unless the court otherwise directs, make available to the parties any written report to which rule 24.11 (Procedure if the court convicts) applies;
- (d) where the court has ordered a defendant to provide information under section 25 of the Road Traffic Offenders Act 1988(c), serve on the defendant notice of that order unless the defendant was present when it was made;
- (e) serve on the prosecutor—
 - (i) any notice of guilty plea to which rule 24.8 (Written guilty plea: special rules) applies,
 - (ii) any declaration served under rule 24.17 (Statutory declaration of ignorance of proceedings) that the defendant did not know about the case;
- (f) serve on the prosecutor notice of any hearing date arranged in consequence of such a declaration, unless—
 - (i) the prosecutor was present when that was arranged, or
 - (ii) the court otherwise directs;
- (g) serve on the prosecutor—
 - (i) notice of any hearing date arranged in consequence of the issue of a summons under rule 37.9 (Single justice procedure: special rules), and in that event
 - (ii) any notice served by the defendant under rule 37.9(2)(b) or (c);
- (h) record the court's reasons for not proceeding in the defendant's absence where rule 24.12(3)(a) applies; and
- (i) give the court such other assistance as it requires.

[Note. See sections 10, 11 and 12 of the Magistrates' Courts Act 1980(d).

Under section 25 of the Road Traffic Offenders Act 1988, where the court does not know a defendant's sex or date of birth, then on convicting the defendant of an offence involving obligatory or discretionary disqualification, the court must order the defendant to provide that information.

(a) 1980 c. 43; section 12(7ZA) was inserted by section 81 of the Deregulation Act 2015 (c. 20).

(b) 1980 c. 43; section 12(7) was amended by section 81 of the Deregulation Act 2015 (c. 20).

(c) 1988 c. 53; section 25 was amended by section 90 of, and paragraphs 140 and 142 of Schedule 13 to, the Access to Justice Act 1999 (c. 22), section 165 of, and paragraph 118 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 109 of, and paragraph 311 of Schedule 8 to, the Courts Act 2003 (c. 39).

(d) 1980 c. 43; section 10 was amended by section 59 of, and paragraph 1 of Schedule 9 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53) and section 47 of the Crime and Disorder Act 1998 (c. 37).

Under Part 5, the magistrates' court officer must record details of a case and of the court's decisions.]

Statutory declaration of ignorance of proceedings

24.17.—(1) This rule applies where—

- (a) the case started with—
 - (i) an information and summons,
 - (ii) a written charge and requisition, or
 - (iii) a written charge and single justice procedure notice; and
- (b) under section 14 or section 16E of the Magistrates' Courts Act 1980(a), the defendant makes a statutory declaration of not having found out about the case until after the trial began.

(2) The defendant must—

- (a) serve such a declaration on the court officer—
 - (i) not more than 21 days after the date of finding out about the case, or
 - (ii) with an explanation for the delay, if serving it more than 21 days after that date;
- (b) serve with the declaration one of the following, as appropriate, if the case began with a written charge and single justice procedure notice—
 - (i) a notice under rule 24.9(4)(a) (notice of guilty plea), with any representations that the defendant wants the court to consider and a statement of the defendant's assets and other financial circumstances, as required by that rule,
 - (ii) a notice under rule 24.9(4)(b) (notice of intention to plead guilty at a hearing before a court comprising more than one justice), or
 - (iii) a notice under rule 24.9(4)(c) (notice of intention to plead not guilty).

(3) The court may extend that time limit, even after it has expired—

- (a) at a hearing, in public or in private; or
- (b) without a hearing.

(4) Where the defendant serves such a declaration, in time or with an extension of time in which to do so, and the case began with a summons or requisition—

- (a) the court must treat the summons or requisition and all subsequent proceedings as void (but not the information or written charge with which the case began);
- (b) if the defendant is present when the declaration is served, the rules in this Part apply as if the defendant had been required to attend the court on that occasion;
- (c) if the defendant is absent when the declaration is served—
 - (i) the rules in Part 7 apply (Starting a prosecution in a magistrates' court) as if the prosecutor had just served an information in the same terms as the original information or written charge;
 - (ii) the court may exercise its power to issue a summons in accordance with those rules; and
 - (iii) except for rule 24.8 (Written guilty plea: special rules), the rules in this Part then apply.

(5) Where the defendant serves such a declaration, in time or with an extension of time in which to do so, and the case began with a single justice procedure notice—

(a) 1980 c. 43; section 14 was amended by section 109 of, and paragraph 205 of Schedule 8 to, the Courts Act 2003 (c. 39). Section 16E was inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2).

- (a) the court must treat the single justice procedure notice and all subsequent proceedings as void (but not the written charge with which the case began);
 - (b) rule 24.9 (Single justice procedure: special rules) applies as if the defendant had served the notice required by paragraph (2)(b) of this rule within the time allowed by rule 24.9(4); and
 - (c) where that notice is under rule 24.9(4)(b) (notice of intention to plead guilty at a hearing before a court comprising more than one justice) or under rule 24.9(4)(c) (notice of intention to plead not guilty), then—
 - (i) if the defendant is present when the declaration is served, the rules in this Part apply as if the defendant had been required to attend the court on that occasion,
 - (ii) if the defendant is absent when the declaration is served, paragraph (6) of this rule applies.
- (6) Where this paragraph applies, the court must exercise its power to issue a summons and—
- (a) the rules in Part 7 apply (Starting a prosecution in a magistrates' court) as if the prosecutor had just served an information in the same terms as the written charge;
 - (b) except for rule 24.8 (Written guilty plea: special rules) and rule 24.9 (Single justice procedure: special rules), the rules in this Part apply.

[Note. Under sections 14 and 16E of the Magistrates' Courts Act 1980, proceedings which begin with a summons, requisition or single justice procedure notice will become void if the defendant, at any time during or after the trial, makes a statutory declaration that he or she did not know of them until a date after the trial began.]

Under section 14(3) or section 16E(9) of the 1980 Act, the court which decides whether or not to extend the time limit for serving a declaration under this rule may comprise a single justice.

The Practice Direction sets out a form of declaration for use in connection with this rule.]

Setting aside a conviction or varying a costs etc. order

24.18.—(1) This rule applies where under section 142 of the Magistrates' Courts Act 1980(a), the court can—

- (a) set aside a conviction, or
 - (b) vary or rescind—
 - (i) a costs order, or
 - (ii) an order to which Part 31 applies (Behaviour orders).
- (2) The court may exercise its power—
- (a) on application by a party, or on its own initiative;
 - (b) at a hearing, in public or in private, or without a hearing.
- (3) The court must not exercise its power in a party's absence unless—
- (a) the court makes a decision proposed by that party;
 - (b) the court makes a decision to which that party has agreed in writing; or
 - (c) that party has had an opportunity to make representations at a hearing (whether or not that party in fact attends).
- (4) A party who wants the court to exercise its power must—
- (a) apply in writing as soon as reasonably practicable after the conviction or order that that party wants the court to set aside, vary or rescind;
 - (b) serve the application on—

(a) 1980 c. 43; section 142 was amended by sections 26 and 29 of, and Schedule 3 to, the Criminal Appeal Act 1995 (c. 35).

- (i) the court officer, and
- (ii) each other party; and
- (c) in the application—
 - (i) explain why, as appropriate, the conviction should be set aside, or the order varied or rescinded,
 - (ii) specify any variation of the order that the applicant proposes,
 - (iii) identify any witness that the defendant wants to call, and any other proposed evidence,
 - (iv) say whether the defendant waives legal professional privilege, giving any relevant name and date, and
 - (v) if the application is late, explain why.

(5) The court may—

- (a) extend (even after it has expired) the time limit under paragraph (4), unless the court's power to set aside the conviction, or vary the order, can no longer be exercised;
- (b) allow an application to be made orally.

[Note. Under section 142 of the Magistrates' Courts Act 1980—

- (a) where a defendant is convicted by a magistrates' court, the court may order that the case should be heard again by different justices; and*
- (b) the court may vary or rescind an order which it has made when dealing with a convicted defendant,*

if in either case it appears to the court to be in the interests of justice to do so.

The power cannot be exercised if the Crown Court or the High Court has determined an appeal about that conviction or order.

See also rule 28.4 (Variation of sentence), which applies to an application under section 142 of the 1980 Act to vary or rescind a sentence.]

PART 25

TRIAL AND SENTENCE IN THE CROWN COURT

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[Note. Part 3 contains rules about case management that apply during preparation for trial and at trial. The rules in this Part must be read in conjunction with those rules.]

When this Part applies

25.1. This Part applies in the Crown Court where—

- (a) the court tries a case; or
- (b) the defendant pleads guilty.

[Note. The Crown Court's powers to try an allegation of an offence are contained in sections 45 and 46 of the Senior Courts Act 1981(a).]

The exercise of the court's powers is affected by—

- (a) *the classification of the offence (and the general rule, subject to exceptions, is that the Crown Court must try—*
 - (i) *an offence classified as one that can be tried only in the Crown Court (in other legislation, described as triable only on indictment), and*
 - (ii) *an offence classified as one that can be tried either in a magistrates' court or in the Crown Court (in other legislation, described as triable either way) that has been allocated for trial in the Crown Court); and*
- (b) *the defendant's age (and the general rule is that an allegation of an offence against a defendant under 18 must be tried in a magistrates' court sitting as a youth court, irrespective of the classification of the offence and without allocation for trial there, unless the offence is—*

(a) 1981 c. 54.

- (i) one of homicide,
- (ii) one for which a convicted adult could be imprisoned for 14 years or more,
- (iii) one of certain specified offences involving firearms, or
- (iv) one of certain specified sexual offences).

See sections 17 and 24 of the Magistrates' Courts Act 1980(a) and section 51A of the Crime and Disorder Act 1998(b).

Under section 34A of the Children and Young Persons Act 1933(c), the court—

- (a) may require the defendant's parents or guardian to attend court with the defendant, where the defendant is under 18; and
- (b) must do so, where the defendant is under 16,

unless satisfied that that would be unreasonable. Part 46 (Representatives) contains rules allowing a parent, guardian or other supporting adult to help a defendant under 18.]

General powers and requirements

25.2.—(1) Where this Part applies, the general rule is that—

- (a) the trial must be in public, but that is subject to the court's power to—
 - (i) impose a restriction on reporting what takes place at a public hearing, or public access to what otherwise would be a public hearing,
 - (ii) withhold information from the public during a public hearing, or
 - (iii) order a trial in private;
 - (b) the court must not proceed if the defendant is absent, unless the court is satisfied that—
 - (i) the defendant has waived the right to attend, and
 - (ii) the trial will be fair despite the defendant's absence;
 - (c) the court must not sentence the defendant to imprisonment or detention unless—
 - (i) the defendant has a legal representative,
 - (ii) the defendant has been sentenced to imprisonment or detention on a previous occasion in the United Kingdom, or
 - (iii) the defendant could have been represented under legal aid but is not because section 83(3) of the Powers of Criminal Courts (Sentencing) Act 2000(d) applies to him or her.
- (2) The court may adjourn the trial at any stage.

[Note. See section 83 of the Powers of Criminal Courts (Sentencing) Act 2000(e). Section 83(3) applies to a defendant if—

-
- (a) 1980 c. 43; section 24 was amended by paragraph 47 of Schedule 14 to the Criminal Justice Act 1982 (c. 48), sections 17, 68 and 101 of, and paragraph 6 of Schedule 8 and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), paragraph 40 of Schedule 10, and Schedule 11, to the Criminal Justice and Public Order Act 1994 (c. 33), sections 47 and 119 of, and paragraph 40 of Schedule 8, to the Crime and Disorder Act 1998 (c. 37), paragraph 64 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 42 of, and paragraphs 1 and 9 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44) and sections 49 and 65 of, and paragraph 1 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38).
 - (b) 1998 c. 37; section 51A was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 6 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
 - (c) 1933 c. 12; section 34A was inserted by section 56 of the Criminal Justice Act 1991 (c. 53) and amended by section 107 of, and paragraph 1 of Schedule 5 to, the Local Government Act 2000 (c. 22).
 - (d) 2000 c. 6; section 83(3) was amended by section 4 of the Criminal Defence Service Act 2006 (c. 9) and section 39 of, and paragraphs 52 and 53 of Schedule 5 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
 - (e) 2000 c. 6; section 83 was amended by section 4 of the Criminal Defence Service Act 2006 (c. 9) and section 39 of, and paragraphs 52 and 53 of Schedule 5 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is

- (a) representation was made available to the defendant for the purposes of the proceedings under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 but was withdrawn because of the defendant's conduct or because it appeared that the defendant's financial resources were such that he or she was not eligible for such representation;
- (b) the defendant applied for such representation and the application was refused because it appeared that the defendant's financial resources were such that he or she was not eligible for such representation; or
- (c) having been informed of the right to apply for such representation and having had the opportunity to do so, the defendant refused or failed to apply.

Part 6 contains rules about reporting, etc. restrictions. For a list of the court's powers to impose reporting and access restrictions, see the note to rule 6.1.]

Application for ruling on procedure, evidence or other question of law

25.3.—(1) This rule applies to an application—

- (a) about—
 - (i) case management, or any other question of procedure, or
 - (ii) the introduction or admissibility of evidence, or any other question of law;
- (b) that has not been determined before the trial begins.

(2) The application is subject to any other rule that applies to it (for example, as to the time and form in which the application must be made).

(3) Unless the court otherwise directs, the application must be made, and the court's decision announced, in the absence of the jury (if there is one).

[*Note. See also rule 3.13 (Pre-trial hearings).*]

Procedure on plea of guilty

25.4.—(1) This rule applies if—

- (a) the defendant pleads guilty to an offence; and
- (b) the court is satisfied that the plea represents a clear acknowledgement of guilt.

(2) The court need not receive evidence unless rule 25.16(4) applies (determination of facts for sentencing).

[*Note. See also rule 3.24 (Arraigning the defendant on the indictment).*]

Application to vacate a guilty plea

25.5.—(1) This rule applies where a party wants the court to vacate a guilty plea.

(2) Such a party must—

- (a) apply in writing—
 - (i) as soon as practicable after becoming aware of the grounds for doing so, and
 - (ii) in any event, before the final disposal of the case, by sentence or otherwise; and
- (b) serve the application on—
 - (i) the court officer, and
 - (ii) the prosecutor.

further amended by section 74 of, and paragraphs 160 and 178 of Schedule 7 to, the Criminal Justice and Court Services Act 2000 (c 43), with effect from a date to be appointed.

- (3) Unless the court otherwise directs, the application must—
- (a) explain why it would be unjust for the guilty plea to remain unchanged;
 - (b) indicate what, if any, evidence the applicant wishes to call;
 - (c) identify any proposed witness; and
 - (d) indicate whether legal professional privilege is waived, specifying any material name and date.

Selecting the jury

25.6.—(1) This rule—

- (a) applies where—
 - (i) the defendant pleads not guilty,
 - (ii) the defendant declines to enter a plea and the court treats that as a not guilty plea, or
 - (iii) the court determines that the defendant is not fit to be tried;
- (b) does not apply where—
 - (i) the court orders a trial without a jury because of a danger of jury tampering or where jury tampering appears to have taken place, or
 - (ii) the court tries without a jury counts on an indictment after a trial of sample counts with a jury.

(2) The court must select a jury to try the case from the panel, or part of the panel, of jurors summoned by the Lord Chancellor to attend at that time and place.

(3) Where it appears that too few jurors to constitute a jury will be available from among those so summoned, the court—

- (a) may exercise its own power to summon others in the court room, or in the vicinity, up to the number likely to be required, and add their names to the panel summoned by the Lord Chancellor; but
- (b) must inform the parties, if they are absent when the court exercises that power.

(4) The court must select the jury by drawing at random each juror's name from among those so summoned and—

- (a) announcing each name so drawn; or
- (b) announcing an identifying number assigned by the court officer to that person, where the court is satisfied that that is necessary.

(5) If too few jurors to constitute a jury are available from the panel after all their names have been drawn, the court may—

- (a) exercise its own power to summon others in the court room, or in the vicinity, up to the number required; and
- (b) announce—
 - (i) the name of each person so summoned, or
 - (ii) an identifying number assigned by the court officer to that person, where the court is satisfied that that is necessary.

(6) The jury the court selects—

- (a) must comprise no fewer than 12 jurors;
- (b) may comprise as many as 14 jurors to begin with, where the court expects the trial to last for more than 4 weeks.

(7) Where the court selects a jury comprising more than 12 jurors, the court must explain to them that—

- (a) the purpose of selecting more than 12 jurors to begin with is to fill any vacancy or vacancies caused by the discharge of any of the first 12 before the prosecution evidence begins;
 - (b) any such vacancy or vacancies will be filled by the extra jurors in order of their selection from the panel;
 - (c) the court will discharge any extra juror or jurors remaining by no later than the beginning of the prosecution evidence; and
 - (d) any juror who is discharged for that reason then will be available to be selected for service on another jury, during the period for which that juror has been summoned.
- (8) Each of the 12 or more jurors the court selects—
- (a) must take an oath or affirm; and
 - (b) becomes a full jury member until discharged.
- (9) The oath or affirmation must be in these terms, or in any corresponding terms that the juror declares to be binding on him or her—

“I swear by Almighty God [*or I do solemnly, sincerely and truly declare and affirm*] that I will faithfully try the defendant and give a true verdict according to the evidence.”

[Note. See sections 2, 5, 6, and 11 of the Juries Act 1974(a). See also rule 38.7 (Discharging jurors).

Under sections 44 and 46 of the Criminal Justice Act 2003(b), the court may try a case without a jury where there is a danger of jury tampering, or where jury tampering appears to have taken place. Under section 17 of the Domestic Violence, Crime and Victims Act 2004(c), the court may try sample counts with a jury and other counts without a jury. Part 3 (preparation for trial in the Crown Court) contains rules about an application for such a trial.

Sections 1, 3, 4, 5 and 6 of the Oaths Act 1978(d) provide for the taking of oaths and the making of affirmations, and for the words that must be used.

Part 26 contains other rules about jurors.]

Discharging jurors

- 25.7.**—(1) The court may exercise its power to discharge a juror at any time—
- (a) after the juror completes the oath or affirmation; and
 - (b) before the court discharges the jury.
- (2) No later than the beginning of the prosecution evidence, if the jury then comprises more than 12 jurors the court must discharge any in excess of 12 in reverse order of their selection from the panel.
- (3) The court may exercise its power to discharge the jury at any time—
- (a) after each juror has completed the oath or affirmation; and
 - (b) before the jury has delivered its verdict on each offence charged in the indictment.
- (4) The court must exercise its power to discharge the jury when, in respect of each offence charged in the indictment, either—
- (a) the jury has delivered its verdict on that offence; or

(a) 1974 c. 23; section 2 was amended by section 61 of the Administration of Justice Act 1982 (c. 53) and Part 10 of Schedule 37 to the Criminal Justice Act 2003 (c. 44). Section 5 was amended by section 15 of, and paragraphs 77 and 78 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4). Section 6 was amended by paragraph 45 of Schedule 15 to the Criminal Justice Act 1988 (c. 33). Section 11 was amended by section 58 of, and paragraph 8 of Schedule 10 and Schedule 11 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(b) 2003 c. 44.

(c) 2004 c. 28.

(d) 1978 c. 19.

- (b) the court has discharged the jury from reaching a verdict.

[*Note. See sections 16 and 18 of the Juries Act 1974(a).*]

Objecting to jurors

25.8.—(1) A party who objects to the panel of jurors must serve notice explaining the objection on the court officer and on the other party before the first juror's name or number is drawn.

(2) A party who objects to the selection of an individual juror must—

- (a) tell the court of the objection—
- (i) after the juror's name or number is announced, and
 - (ii) before the juror completes the oath or affirmation; and
- (b) explain the objection.

(3) A prosecutor who exercises the prosecution right without giving reasons to prevent the court selecting an individual juror must announce the exercise of that right before the juror completes the oath or affirmation.

(4) The court must determine an objection under paragraph (1) or (2)—

- (a) at a hearing, in public or in private; and
- (b) in the absence of the jurors, unless the court otherwise directs.

[*Note. See section 29 of the Juries Act 1825(b) and section 12 of the Juries Act 1974(c).*]

Procedure on plea of not guilty

25.9.—(1) This rule applies where—

- (a) the defendant pleads not guilty; or
- (b) the defendant declines to enter a plea and the court treats that as a not guilty plea.

(2) In the following sequence—

- (a) where there is a jury, the court must—
- (i) inform the jurors of each offence charged in the indictment to which the defendant pleads not guilty, and
 - (ii) explain to the jurors that it is their duty, after hearing the evidence, to decide whether the defendant is guilty or not guilty of each offence;
- (b) the prosecutor may summarise the prosecution case;
- (c) the prosecutor must introduce the evidence on which the prosecution case relies;
- (d) subject to paragraph (3), at the end of the prosecution evidence, on the defendant's application or on its own initiative, the court—
- (i) may direct the jury (if there is one) to acquit on the ground that the prosecution evidence is insufficient for any reasonable court properly to convict, but
 - (ii) must not do so unless the prosecutor has had an opportunity to make representations;
- (e) subject to paragraph (4), at the end of the prosecution evidence, the court must ask whether the defendant intends to give evidence in person and, if the answer is 'no', then the court must satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary)—
- (i) the right to give evidence in person, and

(a) 1974 c. 23; section 16 was amended by sections 121 and 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33).

(b) 1825 c. 50; section 29 was amended by section 40 of, and paragraph 3 of Schedule 4 to, the Courts Act 1971 (c. 23). There are other amendments not relevant to this rule.

(c) 1974 c. 23; section 12 was amended by section 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33).

- (ii) that if the defendant does not give evidence in person, or refuses to answer a question while giving evidence, the court may draw such inferences as seem proper;
- (f) the defendant may summarise the defence case, if he or she intends to call at least one witness other than him or herself to give evidence in person about the facts of the case;
- (g) in this order (or in a different order, if the court so directs) the defendant may—
 - (i) give evidence in person,
 - (ii) call another witness, or witnesses, to give evidence in person, and
 - (iii) introduce any other evidence;
- (h) a party may introduce further evidence if it is then admissible (for example, because it is in rebuttal of evidence already introduced);
- (i) the prosecutor may make final representations, where—
 - (i) the defendant has a legal representative,
 - (ii) the defendant has called at least one witness, other than the defendant him or herself, to give evidence in person about the facts of the case, or
 - (iii) the court so permits; and
- (j) the defendant may make final representations.

(3) Paragraph (2)(d) does not apply in relation to a charge of murder, manslaughter, attempted murder, or causing harm contrary to section 18 or 20 of the Offences against the Person Act 1861(a) until the court has heard all the evidence (including any defence evidence), where the defendant is charged with—

- (a) any of those offences; and
- (b) an offence of causing or allowing a child or vulnerable adult to die or to suffer serious physical harm, contrary to section 5 of the Domestic Violence, Crime and Victims Act 2004(b).

(4) Paragraph (2)(e) does not apply where it appears to the court that, taking account of all the circumstances, the defendant's physical or mental condition makes it undesirable for the defendant to give evidence in person.

(5) Where there is more than one defendant, this rule applies to each in the order their names appear in the indictment, or in an order directed by the court.

(6) Unless the jury (if there is one) has retired to consider its verdict, the court may allow a party to introduce evidence, or make representations, after that party's opportunity to do so under paragraph (2).

(7) Unless the jury has already reached a verdict on a count, the court may exercise its power to—

- (a) discharge the jury from reaching a verdict on that count;
- (b) direct the jury to acquit the defendant on that count; or
- (c) invite the jury to convict the defendant, if the defendant pleads guilty to the offence charged by that count.

[Note. See also rule 3.24 (Arraigning the defendant on the indictment).

The admissibility of evidence that a party introduces is governed by rules of evidence.

Under section 35 of the Criminal Justice and Public Order Act 1994(a), the court may draw such inferences as appear proper from a defendant's failure to give evidence, or refusal without good

(a) 1861 c. 100; section 18 was amended by the Statute Law Revision Act 1892 (c. 19), the Statute Law Revision (No 2) Act 1893 (c. 54) and section 10 of, and Part III of Schedule 3 to, the Criminal Law Act 1967 (c. 58). Section 20 was amended by the Statute Law Revision Act 1892 (c. 19).

(b) 2004 c. 28; section 5 was amended by section 1 of the Domestic Violence, Crime and Victims (Amendment) Act 2012 (c. 4).

cause to answer a question while doing so. The procedure set out in rule 25.9(2)(e) and (4) is prescribed by that section.

Section 2 of the Criminal Evidence Act 1898(b) restricts the circumstances in which the defendant may summarise the defence case before introducing evidence.

Section 79 of the Police and Criminal Evidence Act 1984(c) requires a defendant who wishes to give evidence in person to do so before calling any other witness, unless the court otherwise permits.

Section 2 of the Criminal Procedure Act 1865(d) and section 3 of the Criminal Evidence Act 1898(e) restrict the circumstances in which the prosecutor may make final representations without the court's permission. See also section 1 of the Criminal Procedure (Right of Reply) Act 1964(f).

The procedure set out in rule 25.9(3) is prescribed by sections 6 and 6A of the Domestic Violence, Crime and Victims Act 2004(g).

Under section 17 of the Criminal Justice Act 1967(h), the court may direct the jury to acquit where the prosecutor offers no evidence.

See rule 25.14 for the procedure on taking the verdict and rule 25.16 for the procedure if the court convicts the defendant.]

Defendant unfit to plead

25.10.—(1) This rule applies where—

- (a) it appears to the court, on application or on its own initiative, that the defendant may not be fit to be tried; and
- (b) the defendant has not by then been acquitted of each offence charged by the indictment.

(2) The court—

- (a) must exercise its power to decide, without a jury, whether the defendant is fit to be tried;
- (b) may postpone the exercise of that power until immediately before the opening of the defence case.

(3) Where the court determines that the defendant is not fit to be tried—

- (a) the court must exercise its power to appoint a person to put the case for the defence, taking account of all the circumstances and in particular—
 - (i) the willingness and suitability (including the qualifications and experience) of that person,
 - (ii) the nature and complexity of the case,
 - (iii) any advantage of continuity of representation, and
 - (iv) the defendant's wishes and needs;
- (b) the court must select a jury, if none has been selected yet; and
- (c) rule 25.9 (Procedure on plea of not guilty) applies, if the steps it lists have not already been taken, except that—

(a) 1994 c. 33; section 35 was amended by sections 35 and 120 of, and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37) and paragraphs 62 and 63 of Schedule 36 to the Criminal Justice Act 2003 (c. 44).

(b) 1898 c. 36.

(c) 1984 c. 60.

(d) 1865 c. 18; section 2 was amended by section 10(2) of, and Part III of Schedule 3 to, the Criminal Law Act 1967 (c. 58).

(e) 1898 c. 36; section 3 was amended by section 1(2) of the Criminal Procedure (Right of Reply) Act 1964 (c. 34).

(f) 1964 c. 34; section 1 was amended by section 1 of, and the Schedule to, the Statute Law (Repeals) Act 1974 (c. 22).

(g) 2004 c. 28; section 6 was amended by section 3 of, and paragraphs 7 and 8 of the Schedule to, the Domestic Violence, Crime and Victims (Amendment) Act 2012 (c. 4) and section 6A was inserted by section 2 of that Act.

(h) 1967 c. 80; section 17 was amended by paragraph 42 of Schedule 36 to the Criminal Justice Act 2003 (c. 44).

- (i) everything which that rule requires to be done by the defendant may be done instead by the person appointed to put the case for the defence,
- (ii) under rule 25.9(2)(a), the court must explain to the jurors that their duty is to decide whether or not the defendant did the act or made the omission charged as an offence, not whether the defendant is guilty of that offence, and
- (iii) rule 25.9(2)(e) does not apply (warning of consequences of defendant not giving evidence).

[Note. See sections 4 and 4A of the Criminal Procedure (Insanity) Act 1964(a).

Under section 4 of the 1964 Act, the court must not determine the defendant's fitness to be tried except on the evidence of two or more registered medical practitioners, at least one of whom is approved as having special experience in the diagnosis or treatment of mental disorder. Under section 4A, if satisfied that the defendant did the act or made the omission charged as an offence the jury must make a finding to that effect, and if not so satisfied must acquit the defendant.]

Evidence of a witness in person

25.11.—(1) This rule applies where a party wants to introduce evidence by calling a witness to give that evidence in person.

(2) Unless the court otherwise directs—

- (a) a witness waiting to give evidence must not wait inside the courtroom, unless that witness is—
 - (i) a party, or
 - (ii) an expert witness;
- (b) a witness who gives evidence in the courtroom must do so from the place provided for that purpose; and
- (c) a witness' address—
 - (i) must not be given in public unless the address is relevant to an issue in the case,
 - (ii) may be given in writing to the court, parties and jury.

(3) Unless other legislation otherwise provides, before giving evidence a witness must take an oath or affirm.

(4) In the following sequence—

- (a) the party who calls a witness may ask questions in examination-in-chief;
- (b) if the witness gives evidence for the prosecution—
 - (i) the defendant, if there is only one, may ask questions in cross-examination, or
 - (ii) subject to the court's directions, each defendant, if there is more than one, may ask such questions, in the order their names appear in the indictment or as directed by the court;
- (c) if the witness gives evidence for a defendant—
 - (i) subject to the court's directions, each other defendant, if there is more than one, may ask questions in cross-examination, in the order their names appear in the indictment or as directed by the court, and
 - (ii) the prosecutor may ask such questions;
- (d) the party who called the witness may ask questions in re-examination arising out of any cross-examination.

(a) 1964 c. 84; sections 4 and 4A were substituted for section 4 as originally enacted by section 2 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), and amended by section 22 of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(5) If other legislation so permits, at any time while giving evidence a witness may refer to a record of that witness' recollection of events.

(6) The court may—

- (a) ask a witness questions; and in particular
- (b) where the defendant is not represented, ask a witness any question necessary in the defendant's interests.

[Note. Section 53 of the Youth Justice and Criminal Evidence Act 1999(a) provides that everyone is competent to give evidence in criminal proceedings unless unable to understand questions put or give intelligible answers. See also section 1 of the Criminal Evidence Act 1898(b).

Sections 1, 3, 5 and 6 of the Oaths Act 1978(c) provide for the taking of oaths and the making of affirmations, and for the words that must be used. Section 28 of the Children and Young Persons Act 1963(d) provides that in a youth court, and where a witness in any court is under 18, an oath must include the words 'I promise' in place of the words 'I swear'. Under sections 55 and 56 of the Youth Justice and Criminal Evidence Act 1999, a person may give evidence without taking an oath, or making an affirmation, where that person (i) is under 14 or (ii) has an insufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth which is involved in taking an oath.

The questions that may be put to a witness—

- (a) *by a party are governed by rules of evidence, for example—*
 - (i) *the rule that a question must be relevant to what is in issue,*
 - (ii) *the rule that the party who calls a witness must not ask that witness a leading question about what is in dispute, and*
 - (iii) *the rule that a party who calls a witness may contradict that witness only in limited circumstances (see section 3 of the Criminal Procedure Act 1865)(e);*
- (b) *by the court are in its discretion, but that is subject to—*
 - (i) *rules of evidence, and*
 - (ii) *rule 1.3 (the application by the court of the overriding objective).*

Under sections 34, 35 and 36 of the Youth Justice and Criminal Evidence Act 1999(f), a defendant who is not represented may not cross-examine a witness where—

- (a) *the defendant is charged with a sexual offence against the witness;*
- (b) *the defendant is charged with a sexual offence, or one of certain other offences, and the witness is a child; or*
- (c) *the court prohibits the defendant from cross-examining the witness.*

Part 23 contains rules relevant to restrictions on cross-examination.

(a) 1999 c. 23.

(b) 1898 c. 36; section 1 was amended by section 1 of the Criminal Evidence Act 1979 (c. 16), section 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), sections 80(9) and 119(2) of, and Schedule 7 to, the Police and Criminal Evidence Act 1984 (c. 60), sections 31 and 168 of, and paragraph 2 of Schedule 10, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 67 of, and paragraph 1 of Schedule 4, and Schedule 6 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23) and sections 331 and 332 of, and paragraph 80 of Schedule 36, and Part 5 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

(c) 1978 c. 19.

(d) 1963 c. 37; section 28 was amended by section 2 of the Oaths Act 1978 (c. 19) and section 100 of, and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53).

(e) 1865 c. 18.

(f) 1999 c. 23; section 35 was amended by sections 139 and 140 of, and paragraph 41 of Schedule 6 and Schedule 7 to, the Sexual Offences Act 2003 (c. 42) and section 148 of, and paragraphs 35 and 36 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4).

Under section 139 of the Criminal Justice Act 2003(a), a witness may refresh his or her memory by referring to a record made earlier, either contained in a document made or verified by the witness, or in the transcript of a sound recording, if—

- (a) the witness states that it records his or her recollection of events at that earlier time; and*
- (b) that recollection is likely to have been significantly better when the record was made than by the time the witness gives evidence in person.*

In some circumstances, a witness may give evidence in accordance with special measures directed by the court under section 19 of the Youth Justice and Criminal Evidence Act 1999(b), or by live link under section 32 of the Criminal Justice Act 1988(c) or section 51 of the Criminal Justice Act 2003. Part 18 contains relevant rules.]

Evidence of a witness in writing

25.12.—(1) This rule applies where a party wants to introduce in evidence the written statement of a witness to which applies—

- (a) Part 16 (Written witness statements);
- (b) Part 19 (Expert evidence); or
- (c) Part 20 (Hearsay evidence).

(2) If the court admits such evidence—

- (a) the court and the jury (if there is one) must read the statement;
- (b) the gist of the statement must be summarised aloud; and
- (c) unless the court otherwise directs, if any member of the public, including any reporter, is present, each relevant part of the statement must be read or summarised aloud.

[Note. See Parts 16, 19 and 20, and the other legislation to which those Parts apply. The admissibility of evidence that a party introduces is governed by rules of evidence.

A written witness statement to which Part 16 applies may only be introduced in evidence if there has been no objection within the time limit to which rule 16.4 refers.

An expert report to which Part 19 applies may only be introduced in evidence if it has been served in accordance with rule 19.3.

Rule 20.3 provides for opposing the introduction of hearsay evidence, including such evidence in a document.

Where a witness gives evidence in person, a previous written statement by that witness may be admissible as evidence under section 119 (Inconsistent statements) or under section 120 (Other previous statements of witnesses) of the Criminal Justice Act 2003.]

Evidence by admission

25.13.—(1) This rule applies where—

- (a) a party introduces in evidence a fact admitted by another party; or
- (b) parties jointly admit a fact.

(2) Unless the court otherwise directs, a written record must be made of the admission.

(a) 2003 c. 44.

(b) 1999 c. 23.

(c) 1988 c. 33; section 32 was amended by section 55 of the Criminal Justice Act 1991 (c. 53), section 29 of, and paragraph 16 of Schedule 2 to, the Criminal Appeal Act 1995 (c. 35), section 62 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 67 of, and Schedule 6 and paragraph 3 of Schedule 7 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23) and paragraphs 24 and 26 of the Schedule to S.I. 2004/2035.

[Note. See section 10 of the Criminal Justice Act 1967(a). The admissibility of evidence that a party introduces is governed by rules of evidence.]

Directions to the jury and taking the verdict

25.14.—(1) This rule applies where there is a jury.

(2) The court must give the jury directions about the relevant law at any time at which to do so will assist jurors to evaluate the evidence.

(3) After following the sequence in rule 25.9 (Procedure on plea of not guilty), the court must—

- (a) summarise for the jury, to such extent as is necessary, the evidence relevant to the issues they must decide;
- (b) give the jury such questions, if any, as the court invites jurors to answer in coming to a verdict;
- (c) direct the jury to retire to consider its verdict;
- (d) if necessary, recall the jury to answer jurors' questions;
- (e) if appropriate, recall the jury to give directions for a verdict by a majority; and
- (f) recall the jury when it informs the court that it has reached a verdict.

(4) The court may give the jury directions, questions or other assistance in writing.

(5) When the court recalls the jury to deliver its verdict, the court must ask the foreman chosen by the jury, in respect of each count—

- (a) whether the jury has reached a verdict on which all the jurors agree;
- (b) if so, whether that verdict is guilty or not guilty;
- (c) if not, where the jury has deliberated for at least 2 hours and if the court decides to invite a majority verdict, then—
 - (i) whether at least 10 (of 11 or 12 jurors), or 9 (of 10 jurors), agreed on a verdict,
 - (ii) if so, is that verdict guilty or not guilty, and
 - (iii) if (and only if) such a verdict is guilty, how many jurors agreed to that verdict and how many disagreed.

(6) Where evidence has been given that the defendant was insane, so as not to be responsible for the act or omission charged as the offence, then under paragraph (4)(b) the court must ask whether the jury's verdict is guilty, not guilty, or not guilty by reason of insanity.

[Note. Under section 17 of the Juries Act 1974(b), the court may accept the verdict of a majority, as long as the jury has had at least 2 hours for deliberation.]

Under section 6 of the Criminal Law Act 1967, the jury may convict a defendant of an offence other than one charged by the indictment if that offence is proved by the evidence.

The verdict to which rule 25.14(5) refers is provided for by section 2 of the Trial of Lunatics Act 1883(c). The evidence required before such a verdict may be reached is prescribed by section 1 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991(d).]

Conviction or acquittal without a jury

25.15.—(1) This rule applies where—

- (a) the court tries the case without a jury; and

(a) 1967 c. 80.

(b) 1974 c. 23.

(c) 1883 c. 38; section 2 was amended by section 17 of, and Schedule 2 to, the Criminal Lunatics Act 1884 (c. 64) and sections 1 and 8 of the Criminal Procedure (Insanity) Act 1964 (c. 84).

(d) 1991 c. 25.

(b) after following the sequence in rule 25.9 (Procedure on plea of not guilty).

(2) In respect of each count, the court must give reasons for its decision to convict or acquit.

[Note. Under sections 44 and 46 of the Criminal Justice Act 2003(a), the court may try a case without a jury where there is a danger of jury tampering, or where jury tampering appears to have taken place. Under section 17 of the Domestic Violence, Crime and Victims Act 2004(b), the court may try sample counts with a jury and other counts without a jury. Part 3 (preparation for trial in the Crown Court) contains rules about an application for such a trial.]

Procedure if the court convicts

25.16.—(1) This rule applies where, in respect of any count in the indictment—

- (a) the defendant pleads guilty; or
- (b) the court convicts the defendant.

(2) The court may exercise its power—

- (a) if the defendant is an individual—
 - (i) to require a pre-sentence report,
 - (ii) to request a medical report,
 - (iii) to require a statement of the defendant's assets and other financial circumstances;
- (b) if the defendant is a corporation, to require such information as the court directs about the defendant's corporate structure and financial resources;
- (c) to adjourn sentence pending—
 - (i) receipt of any such report, statement or information,
 - (ii) the verdict in a related case.

(3) The prosecutor must—

- (a) summarise the prosecution case, if the sentencing court has not heard evidence;
- (b) identify in writing any offence that the prosecutor proposes should be taken into consideration in sentencing;
- (c) provide information relevant to sentence, including—
 - (i) any previous conviction of the defendant, and the circumstances where relevant,
 - (ii) any statement of the effect of the offence on the victim, the victim's family or others;
and
- (d) identify any other matter relevant to sentence, including—
 - (i) the legislation applicable,
 - (ii) any sentencing guidelines, or guideline cases,
 - (iii) aggravating and mitigating features affecting the defendant's culpability and the harm which the offence caused, was intended to cause or might foreseeably have caused, and
 - (iv) the effect of such of the information listed in paragraph (2) as the court may need to take into account.

(4) Where the defendant pleads guilty, the court may give directions for determining the facts on the basis of which sentence must be passed if—

- (a) the defendant wants to be sentenced on a basis agreed with the prosecutor; or
- (b) in the absence of such agreement, the defendant wants to be sentenced on the basis of different facts to those disclosed by the prosecution case.

(a) 2003 c. 44.

(b) 2004 c. 28.

(5) Where the court has power to order the endorsement of the defendant's driving record, or power to order the defendant to be disqualified from driving—

- (a) if other legislation so permits, a defendant who wants the court not to exercise that power must introduce the evidence or information on which the defendant relies;
- (b) the prosecutor may introduce evidence; and
- (c) the parties may make representations about that evidence or information.

(6) Before passing sentence—

- (a) the court must give the defendant an opportunity to make representations and introduce evidence relevant to sentence;
- (b) where the defendant is under 18, the court may give the defendant's parents, guardian or other supporting adult, if present, such an opportunity as well; and
- (c) if the court requires more information, it may exercise its power to adjourn the hearing.

(7) When the court has taken into account all the evidence, information and any report available, the court must—

- (a) as a general rule, pass sentence at the earliest opportunity;
- (b) when passing sentence—
 - (i) explain the reasons,
 - (ii) explain to the defendant its effect, the consequences of failing to comply with any order or pay any fine, and any power that the court has to vary or review the sentence, unless the defendant is absent or the defendant's ill-health or disorderly conduct makes such an explanation impracticable, and
 - (iii) give any such explanation in terms the defendant, if present, can understand (with help, if necessary); and
- (c) deal with confiscation, costs and any behaviour order.

(8) The general rule is subject to the court's power to defer sentence for up to 6 months.

[Note. See sections 143, 158, 164, 172 and 174 of the Criminal Justice Act 2003(a).

Under sections 57D and 57E of the Crime and Disorder Act 1998(b), the court may require a defendant to attend a sentencing hearing by live link.

Under section 156 of the Criminal Justice Act 2003(c), the general rule (subject to exceptions) is that the court must obtain and consider a pre-sentence report—

- (a) *where it is considering a custodial sentence or a community sentence;*
- (b) *where it thinks the defendant may pose a significant risk of causing serious harm to the public by further offending.*

Under section 159 of the Criminal Justice Act 2003(d), where the court obtains a written pre-sentence report about a defendant who is under 18, it may direct that information in it must be withheld, if it would be likely to create a risk of significant harm to the defendant.

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- (a) 2003 c. 44; section 143 was amended by section 378 of, and paragraph 216 of Schedule 16 to the Armed Forces Act 2006 (c. 52). Section 158 was amended by section 64 of, and Part 4 of Schedule 5 to, the Children Act 2004 (c. 31), article 3 of, and paragraph 19 of Schedule 1 to, S.I. 2008/912 and section 12 of the Criminal Justice and Immigration Act 2008 (c. 4). Section 164 was amended by section 14 of the Domestic Violence, Crime and Victims Act 2004 (c. 28). Section 174 was substituted by section 64 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
 - (b) 1998 c. 37; sections 57A to 57E were substituted for section 57 as originally enacted by section 45 of the Police and Justice Act 2006 (c. 48), and amended by sections 106, 109 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25). Section 57A was further amended by paragraphs 36 and 39 of Schedule 12 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
 - (c) 2003 c. 44; section 156 was amended by sections 6 and 149 of, and paragraphs 71 and 77 of Schedule 4 and Part 1 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraphs 8 and 13 of Schedule 19, and paragraphs 20 and 22 of Schedule 21, to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
 - (d) 2003 c. 44; section 159 was amended by section 208 of, and paragraphs 145 and 147 of Schedule 21 to, the Legal Services Act 2007 (c. 29).

Rule 28.8 of these Rules applies to requests for medical reports.

Under section 162 of the Criminal Justice Act 2003(a), the court may require a defendant who is an individual to provide a statement of assets and other financial circumstances if the defendant is convicted.

Under section 20A of the Criminal Justice Act 1991(b), it is an offence for a defendant knowingly or recklessly to make a false or incomplete statement of assets or other financial circumstances, or to fail to provide such a statement, in response to a request by a court officer on behalf of the court.

The Sentencing Council may issue sentencing guidelines under section 120 of the Coroners and Justice Act 2009(c).

For the circumstances in which a court may (and in some cases must) order the endorsement of a defendant's driving record, or the disqualification of a defendant from driving, see sections 34, 35 and 44 of the Road Traffic Offenders Act 1988(d). Under that legislation, in some circumstances the court has discretion not to make such an order. See also rule 29.1.

The evidence that may be introduced is subject to rules of evidence.

In addition to the specific powers to which this rule applies, the court has a general power to adjourn a trial: see rule 25.2.

Part 28 contains rules about sentencing procedure in special cases. Part 31 contains rules about behaviour orders. Part 33 contains rules about confiscation and related orders. Part 45 contains rules about costs.

Under section 1 of the Powers of Criminal Courts (Sentencing) Act 2000(e), if (among other things) the defendant consents, the court may defer sentence for up to 6 months, for the purpose of allowing it to take account of the defendant's conduct after conviction, or any change in the defendant's circumstances.]

Provision of documents for the court

25.17.—(1) Unless the court otherwise directs, a party who introduces a document in evidence, or who otherwise uses a document in presenting that party's case, must provide a copy for—

- (a) each other party;
- (b) any witness that party wants to refer to the document; and
- (c) the court.

(2) If the court so directs, a party who introduces or uses a document for such a purpose must provide a copy for the jury.

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- (a) 2003 c. 44; section 162 was amended by paragraph 24 of Schedule 16 to the Crime and Courts Act 2013 (c. 22).
- (b) 1991 c. 53; section 20A was inserted by section 168 of, and paragraph 43 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33) and amended by sections 95 and 109 of, and paragraph 350 of Schedule 8 to, the Courts Act 2003 (c. 39) and section 44 of, and paragraph 26 of Schedule 16 to, the Crime and Courts Act 2013 (c. 22).
- (c) 2009 c. 25.
- (d) 1988 c. 53; section 34 was amended by section 29 of the Road Traffic Act 1991 (c. 40), section 3 of the Aggravated Vehicle-Taking Act 1992 (c. 11), section 165 of, and paragraph 121 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), sections 56 and 107 of, and Schedule 8 to, the Police Reform Act 2002 (c. 30), section 25 of the Road Safety Act 2006 (c. 49), article 2 of S.I. 2007/3480, paragraphs 2 and 5 of Schedule 27 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and section 56 of, and paragraphs 9 and 12 of Schedule 22 to, the Crime and Courts Act 2013 (c. 22). It is further amended by section 177 of, and paragraph 90 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25) with effect from a date to be appointed. Section 35 was amended by section 48 of, and paragraph 95 of Schedule 4 to, the Road Traffic Act 1991 (c. 40), and section 165 of, and paragraph 122 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6). It is further amended by section 177 of, and 90 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed. Section 44 was amended by regulations 2 and 3 of, and paragraph 10 of Schedule 2 to, S.I. 1990/144 and section 9 of the Road Safety Act 2006 (c. 49). It is further amended by sections 10 and 59 of, and Schedule 7 to, the Road Safety Act 2006 (c. 49), with effect from a date to be appointed.
- (e) 2000 c. 6; section 1 was substituted, together with sections 1A to 1D, for this section by section 278 of, and paragraph 1 of Schedule 23 to, the Criminal Justice Act 2003 (c. 44).

(3) Unless the court otherwise directs, on application or on its own initiative, the court officer must provide for the court—

- (a) any copy received under paragraph (1) before the trial begins; and
- (b) a copy of the court officer's record of—
 - (i) information supplied by each party for the purposes of case management, including any revision of information previously supplied,
 - (ii) each pre-trial direction for the management of the case,
 - (iii) any pre-trial decision to admit evidence,
 - (iv) any pre-trial direction about the giving of evidence, and
 - (v) any admission to which rule 25.13 (Evidence by admission) applies; and
- (c) any other document served on the court officer for the use of the court.

Duty of court officer

25.18. The court officer must—

- (a) serve on each party notice of where and when an adjourned hearing will resume, unless that party was present when that was arranged;
- (b) if the reason for the adjournment was to postpone sentence, include that reason in any such notice to the defendant;
- (c) unless the court otherwise directs, make available to the parties any written report to which rule 25.16(2) applies (pre-sentence and medical reports);
- (d) where the court has ordered a defendant to provide information under section 25 of the Road Traffic Offenders Act 1988(a), serve on the defendant notice of that order unless the defendant was present when it was made;
- (e) give the court such other assistance as it requires, including—
 - (i) selecting jurors from the panel summoned by the Lord Chancellor, under rule 25.6 (Selecting the jury),
 - (ii) taking the oaths or affirmations of jurors and witnesses, under rules 25.6 and 25.11 (Evidence of a witness in person),
 - (iii) informing the jurors of the offence or offences charged in the indictment, and of their duty, under rule 25.9 (Procedure on plea of not guilty),
 - (iv) recording the date and time at which the court gives the jury oral directions under rule 25.14(2) (directions about the law),
 - (v) recording the date and time at which the court gives the jury any written directions, questions or other assistance under rule 25.14(4), and
 - (vi) asking the jury foreman to deliver the verdict, under rule 25.14(5).

[Note. See also section 82 of the Senior Courts Act 1981(b) (Duties of officers of Crown Court).

Under Part 5, the court officer must—

- (a) record details of a case and of the court's decisions; and
- (b) give public notice of specified details about a trial, including by such arrangements as the Lord Chancellor directs.

(a) 1988 c. 53; section 25 was amended by section 90 of, and paragraphs 140 and 142 of Schedule 13 to, the Access to Justice Act 1999 (c. 22), section 165 of, and paragraph 118 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and section 109 of, and paragraph 311 of Schedule 8 to, the Courts Act 2003 (c. 39).

(b) 1981 c. 54; section 82 was amended by section 15 of, and paragraphs 114 and 135 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4) and sections 116 and 178 of, and Part 3 of Schedule 3 to, the Coroners and Justice Act 2009 (c. 25).

Under section 25 of the Road Traffic Offenders Act 1988, where the court does not know a defendant's sex or date of birth, then on convicting the defendant of an offence involving obligatory or discretionary disqualification, the court must order the defendant to provide that information.]



NOTIFICATION AND CONFIRMATION OF CASE FROM CENTRAL CASEWORK
DIVISION/COMPLEX CASEWORK UNIT
(SENT TO COURT AND DEFENCE)

Defendant/s		
Charges		
CPS CONTACT DETAILS		
Prosecutor		
CPS caseworker		
Counsel		
SUMMARY OF CASE		
Please see attached Case Summary dated.....		

PROPOSED STRUCTURE OF THE CASE
Please see attached Case Structure document dated.....
<i>This is useful if case is to be served in sections such as:</i>
<ul style="list-style-type: none">• <i>Surveillance evidence</i>• <i>Phone evidence</i>• <i>Witness statements</i>• <i>Computer evidence</i>• <i>Evidence from abroad</i>• <i>Forensic evidence</i>• <i>Fingerprint evidence</i>• <i>DNA evidence</i>• <i>Expert evidence</i>• <i>FEL analysis</i>• <i>Interviews etc</i>

TIMETABLE FOR THE PHASED SERVICE OF THE EVIDENCE

Set out clear timetable with an explanation as to why time required. Please also factor in time for CPS review

For example:

- *Interview evidence to be served by.....as these are still being transcribed by police and due for submission to CPS on..... and will need to be considered by CPS RL before service*
- *Expert evidence by..... as expert report due to be received by CPS on and then will need to be considered by CPS RL and counsel before service*

EVIDENTIAL/PRESENTATIONAL ISSUES

Set out any issues such as:

- *witness protection—whether special measures applications may be made*
- *witnesses from abroad—whether tv link applications may be made*
- *interpreters –what language and whether any particular dialect is required*

POTENTIAL LEGAL ISSUES

Include issues such as:

- *Abuse of process*
- *Inadmissibility of evidence etc*

DISCLOSURE TIMETABLE

Set out proposed timetable for service of

- *Initial disclosure*
- *Defence statement*

- *Disclosure Strategy Document if appropriate*
- *Continuing disclosure by the prosecution*

Suggested date for the case management hearing

CTL expiry date for each defendant

Estimated trial date and length

CPS Disclosure Management Document

Template

THE DISCLOSURE MANAGEMENT DOCUMENT

Doc No:

R v [Name]

PROSECUTION DISCLOSURE MANAGEMENT DOCUMENT

Prosecutor:

Disclosure officer:

Leading counsel:

Junior counsel:

Defendant:

This management document is served to provide an open and transparent basis for disclosure decisions and to encourage disclosure discussions at an early stage for relevant non-sensitive material. (Relevant sensitive material satisfying the disclosure test will be handled in accordance with the Criminal Procedure and Investigations Act 1996 (as amended), the Code, and the Disclosure Manual). Any representations the defence wish to make on this management document should be forwarded to the prosecutor at the earliest convenience. This document has been prepared by the prosecutor.

This management document accompanies the schedule of non-sensitive material.

1. The Crown will apply the CPIA in discharging its disclosure obligations, including the duty for continuing review. Only unused material that requires to be disclosed under the Act will be disclosed.
2. Unless otherwise indicated all the material on the non-sensitive schedule has been inspected by the disclosure officer(s). It has also been inspected by CPS prosecutor/prosecuting advocate/disclosure counsel as evidenced on the endorsed schedule in accordance with the Disclosure Manual.

(If disclosure counsel has been instructed, the extent and scope of counsel's duties should be recorded here)

3. The following material has been inspected by utilising the following means:

(i) Electronically stored data

This section should cover some or all of the following issues:

- *Identify the items of electronically stored data with reference to the non-sensitive schedule.*
- *Set out the extent to which the material has been examined by the prosecution, and by whom e.g. investigator, disclosure officer, disclosure counsel etc.*
- *Set out the method of examination e.g. through the use of software search tools or dip sampling. If particular key words have been used, these should be set out in full, save for those that may be sensitive. It may be appropriate to invite the defence to suggest additional key words.*
- *Set out the extent to and method by which the defence will be given disclosure of material that satisfies the disclosure test.*

(ii) Video footage

This section should cover some or all of the following issues:

- *Identify the material with reference to the non-sensitive schedule.*
- *Setting out the extent to which the material has been examined by the prosecution, and by whom e.g. investigator, disclosure officer, disclosure counsel etc.*
- *Set out the method of examination.*
- *Set out the extent to and method by which the defence will be given disclosure of material that satisfies the disclosure test.*

(iii) Linked investigations

This section should cover some or all of the following issues:

- *The reasons why the investigations are considered to be linked for the disclosure purposes*
- *Whether there is an Operational Memorandum of Understanding or disclosure agreement between the investigators (see annexes F and G)*
- *Set out what the prosecution believes its disclosure obligations to be in relation to material from linked investigations (e.g. is the material in any linked investigation prima facie considered to be CPIA-relevant? Should it included on the non-sensitive schedule and, if so, how? Are case summaries to be cross disclosed?)*
- *Setting out the method by which these disclosure obligations will be discharged e.g. disclosure officer/counsel to examine all material.*

(iv) Other categories of material

4. The prosecution believe that the following third parties have relevant non sensitive material or information that might satisfy the disclosure test if it were in the hands of the prosecution:

The reason for this belief is ...

The type of relevant material is...

The following steps have been taken to obtain this material:

If obtained, the material has been/will be reviewed in the following way:

- *inspection of material by disclosure officer/reviewing prosecutor/disclosure counsel*
- *case summary provided to third party with request to disclose material that satisfies the disclosure test*
- *other option*

5. The Crown's understanding of the defence case is as follows: (*if applicable, eg the defendant has raised his defence in interview*).

If no such defence is evident then the whole paragraph can be removed and replaced by:

The Crown is complying with its duty of continuing review and on receipt of a defence case statement all relevant material will be reviewed by the prosecution team in accordance with the Act.

6. *Any other issues.*

Signed

Dated: