

**PART 7 CRIMINAL PROCEDURE RULES  
OBSERVATIONS OF THE CRIMINAL SUB COMMITTEE OF THE  
COUNCIL OF HM CIRCUIT JUDGES**

- 1 We support this initiative to clarify and simplify the procedure for the commencement of proceedings in a Magistrates Court which, in practical terms, will deal with the way in which criminal process is instituted. It does not appear to us that any of these proposals makes a significant difference to the practices that are currently in place.
- 2 We agree with the proposal that each of the three ways in which proceedings may commence in a Magistrates Court should be brought together in Rule 7.1 and that Part 7 should then apply equally to all.
- 3 Both the proposed Rule 7.2 and the proposed Rule 7.3 represent a considerable improvement. Rule 7.4 conveniently consolidates the provisions of the existing Rules 7.7 and 7.8.

**QUESTION 1 Is it desirable that the Part 7 Rules should correspond to the extent suggested with the Part 14 Rules about Indictments?**

- 4 We agree with the suggestion. We believe that consistency of approach is desirable in the interests of simplicity and clarity.

**QUESTION 2 Are the suggested requirements for the formulation of a charge consistent with current practice?**

**QUESTION 3 If so is that desirable?**

- 5 We do not believe that there is any significant departure from current practice.

**QUESTION 4 Should Parts 7 and 14 each contain the same formulation of the rule against duplicity?**

- 6 Yes.

**QUESTION 5 Are the powers conferred on the Court by Part 3 of the Criminal Procedure Rules adequate as substitutes for the current Rule 7.3?**

- 7 We agree that there is no need to provide for what are, in reality, case management powers in Part 7 when Part 3 sets out detailed case management powers referable to all situations.

**QUESTION 6 Is it helpful for the proposed rules to refer explicitly to prescribed forms of Information?**

- 8 We are generally in favour of the use of prescribed forms. Such forms ensure that the attention of a party is drawn to the matters that ought to be dealt with. Further when prescribed forms are used the consistency of format facilitates dealing with the information. We can see that there may be a difficulty with that in the commencement of proceedings in the Magistrates Court where the facility to make an oral application is preserved. If, as we believe to be desirable, prescribed forms are to be adopted then the note referred to in Rule 7.3 (1)(a)(ii) should be in a prescribed form that contains, in the same format, the particulars required in a written information. As we understand it the use of oral

applications is generally limited to urgent applications for warrants and often in circumstances where considerable discretion is required. That need not prevent the use of an appropriate prescribed form which can be produced at the hearing and then retained in a sealed envelope in a secure location.

**Question 7 Should the Part 7 rules use the expressions “present an information” and serve a “written information” in place of “lay an information”?**

**Question 8 Should the word “information” still be used at all?**

- 9 We agree that the continued use of the term “information” is appropriate. It is well understood and it is very difficult to come up with another term that identifies the process as well. We agree that the phrases suggested should replace the use of the phrase “lay an information”.

**Question 9 Is it helpful to duplicate as suggested the time limit for which section 127 of the Magistrates Courts Act 1980 provides?**

- 10 Yes.

**Question 10 Is it helpful to duplicate as suggested the provision for issuing a replacement summons for which section 47 of the Magistrates Courts Act 1980 provides?**

- 11 Yes.

**Question 11 Would it be helpful to include in Part 2 of the Criminal Procedure Rules the suggested general rule about representatives?**

- 12 In reality the acts of a representative will be treated as the acts of a party unless the party can demonstrate that the representative acted outside his authority or acted negligently or improperly and the interests of justice require otherwise. We agree that a rule to this effect could be included in Part 2 although we would insert that at 2.3 renumbering the later Rules. It might be worded more elegantly.

**Question 12 Is it helpful to relocate as suggested current rules 7.4, 7.5, 7.6 and 7.9?**

- 13 Yes.

Chairman  
Criminal Sub Committee  
Council of HM Circuit Judges  
21<sup>st</sup> April 2008