

1988 No. 1695 (L.20)

SUPREME COURT OF ENGLAND AND WALES

**The Criminal Justice Act 1987
(Dismissal of Transferred Charges) Rules 1988**

<i>Made</i> - - - -	<i>3rd October 1988</i>
<i>Laid before Parliament</i>	<i>7th October 1988</i>
<i>Coming into force</i>	<i>31st October 1988</i>

We the Crown Court Rule Committee, in exercise of the powers conferred upon us by sections 84 (1) and 86 of the Supreme Court Act 1981(a) and section 6(6) of the Criminal Justice Act 1987(b), hereby make the following Rules:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Criminal Justice Act 1987 (Dismissal of Transferred Charges) Rules 1988 and shall come into force on 31st October 1988.

(2) In these Rules, “the Act” means the Criminal Justice Act 1987.

Oral applications for dismissal

2.—(1) Where notice of transfer has been given by the prosecution under section 4 of the Act and a person to whom it relates proposes to apply orally under section 6(1) thereof for any charge in the case to be dismissed, he shall give notice in writing in Form 5301 of his intention to the appropriate officer of the Crown Court at the place specified by the notice of transfer as the proposed place of trial.

(2) A notice of intention to make such an application shall be given not later than 28 days after the day on which notice of transfer was given, and a copy thereof shall be given at the same time to the authority by or on behalf of whom notice of transfer was given and to any other person to whom the notice of transfer relates.

(3) The time for giving notice may be extended, either before or after it expires, by the Crown Court, on an application made in accordance with paragraph (4) below.

(4) An application for an extension of time for giving notice shall be made in writing in Form 5301 specifying the grounds of the application and shall be sent to the appropriate officer of the Crown Court; and a copy thereof shall be given at the same time to the authority by or on behalf of whom notice of transfer was given and to any other person to whom the notice of transfer relates.

(5) The appropriate officer of the Crown Court shall give notice in Form 5303 of the judge’s decision on an application under paragraph (3) above –

- (a) to the applicant;
- (b) to the authority by or on behalf of whom notice of transfer was given; and
- (c) to any other person to whom the notice of transfer relates.

(6) A notice of intention to make an application under section 6(1) of the Act shall be accompanied by a copy of any material on which the applicant relies and shall –

- (a) specify the charge or charges to which it relates; and
- (b) state whether the leave of the judge is sought under section 6(3) of the Act to adduce oral evidence on the application, indicating what witnesses it is proposed to call at the hearing.

(7) Where leave is sought from the judge for oral evidence to be given on an application, notice of his decision, indicating what witnesses are to be called if leave is granted, shall be given by the appropriate officer of the Crown Court in Form 5303 to the authority by or on behalf of whom the notice of transfer was given and to any other party to whom notice of transfer relates.

(8) Where an application for dismissal under section 6(1) of the Act is to be made orally, the appropriate officer of the Crown Court shall list the application for hearing before a judge of the Crown Court.

Written applications for dismissal

3.—(1) A written application for dismissal under section 6(1) of the Act shall be made in Form 5301.

(2) The application shall be sent to the appropriate officer of the Crown Court and shall be accompanied by a copy of any statement or other document, and identify any article, on which the applicant relies.

(3) A copy of the application and of any accompanying documents shall be given at the same time to the authority by or on behalf of whom notice of transfer was given and to any other person to whom the notice of transfer relates.

(4) A written application for dismissal shall be made not later than 28 days after the day on which notice of transfer was given unless the time for making the application is extended, either before or after it expires, by the Crown Court; and paragraphs (4) and (5) of rule 2 above shall apply for the purposes of this paragraph as if references therein to giving notice of intention to make an oral application were references to making a written application under this rule.

Prosecution reply

4.—(1) Not later than seven days from the date of service of notice of intention to apply orally for the dismissal of any charge contained in a notice of transfer, the authority by or on behalf of whom notice of transfer was given may apply to the Crown Court for leave under section 6(3) of the Act to adduce oral evidence at the hearing of the application, indicating what witnesses it is proposed to call.

(2) Not later than seven days from the date of receiving a copy of an application for dismissal under rule 3(2) above, the authority by or on behalf of whom notice of transfer was given may apply to the Crown Court for an oral hearing of the application.

(3) An application under paragraph (1) or (2) above shall be made in writing in Form 5302 to the appropriate officer of the Crown Court specifying the grounds of the application and, in the case of an application under paragraph (2) above, stating whether the leave of the judge is sought under section 6(3) of the Act to adduce oral evidence and, if so, indicating what witnesses it is proposed to call.

(4) Notice of the judge's determination upon an application under paragraph (1) or (2) above, indicating what witnesses (if any) are to be called shall be served in Form 5303 by the appropriate officer of the Crown Court on the authority making the application and on any other party to whom the notice of transfer relates.

(5) Where, having received the material specified in rule 2(6) or, as the case may be, rule 3(2) above, the authority by or on behalf of whom notice of transfer was given proposes to adduce in reply thereto any written comments or any further evidence, the authority shall serve any such comments, copies of the statements or other documents outlining the evidence of any proposed witnesses and copies of any further documents on the appropriate officer of the Crown Court not later than fourteen days from the date of receiving the said material, and shall at the same time serve copies thereof on all parties to whom the notice of transfer relates.

(6) The time for –

- (a) making an application under paragraph (1) or (2) above; or
- (b) serving any material on the appropriate officer of the Crown Court under paragraph (5) above,

may be extended, either before or after it expires, by the Crown Court, on an application made in accordance with paragraph (7) below.

(7) An application for an extension of time under paragraph (6) above shall be made in writing in Form 5302 and shall be served on the appropriate officer of the Crown Court; and a copy thereof shall be served at the same time on to the applicant for dismissal and on any other person to whom the notice of transfer relates.

Determination of applications for dismissal – procedural matters

5.—(1) A judge may grant leave for a witness to give oral evidence on an application for dismissal notwithstanding that notice of intention to call the witness has not been given in accordance with the foregoing provisions of these Rules.

(2) Where an application for dismissal is determined otherwise than at an oral hearing, the appropriate officer of the Crown Court shall as soon as practicable, send to all the parties to the case a notice, in Form 5304, of the outcome of the application.

Service of documents

6.—(1) Any notice or other document which is required by these Rules to be given to any person may be served personally on that person or sent to him by post at his usual or last known residence or place of business in England or Wales or, in the case of a company, at the company's registered office in England or Wales.

(2) If the person to be served is acting by a solicitor, the notice or other document may be served by delivering it, or sending it by post, to the solicitor's address for service.

Forms

7.—(1) Any reference in these Rules to a form is a reference to a form set out in the Schedule to these Rules.

(2) The forms set out in the Schedule to these Rules or forms substantially to the like effect may be used with such variations as the circumstances may require.

Dated 3rd October 1988

*Mackay of Clashfern, C.
Lane, C.J.
M. McKenzie
Stephen Brown, P.
Anthony McCowan, J.
Richard Lowry
Douglas Brown
M. J. Langton
David Jeffreys
L. Naylor*



**Application for dismissal of transferred charge(s)
under s.6 Criminal Justice Act 1987**

This form may be used to give notice of intention to apply orally, or to apply in writing, for dismissal of transferred charge(s), for application to call witnesses or for an extension of time within which to apply. Applications for dismissal must be received by the Court named in the notice of transfer, within 28 days of the date on that notice.
A copy of this form and of any statements or documentary evidence on which the applicant relies must be served at the same time on the authority by, or on behalf of whom, the notice of transfer was given and on any other person to whom the notice of transfer relates.

Case Details

Enter the name of the Court shown on the Notice of Transfer, the case no., and the date of the Notice

The Crown Court at

Crown Court Case Number

Date of notice of transfer

Designated Authority

State name and address of the applicant to whom this application relates.
(If in custody give address where detained).

Applicant Surname
Forenames
Address

Date of birth

Application

Tick box as appropriate

- Notice of intention to apply *orally* for dismissal s.6(2) CJA 1987
- Application to call witnesses in support of application for dismissal s.6(3) CJA 1987
- Application for extension of time within which to give notice of intention to make an oral application.
- Written* application for dismissal
- Application for extension of time within which to make a written application.

If applying for an extension only you will need to submit a complete form in due course.

Specify all charges and indicate those to which this application applies

(If applying only for an extension, you do not need to complete this section)

Charges

Grounds for applying

- a) Application for dismissal :
The evidence which has been disclosed would not be sufficient for a jury to properly convict.
- b) Application for extension of time :

If applying for an extension, state the grounds

For oral applications, indicate which witnesses you propose to call, if leave is given. For oral and written applications identify any material on which you rely

Witnesses and material on which you rely (copies of all documents must be attached)

Signature of applicant

Details of any person signing on behalf of applicant

Name

Date _____

Solicitor / Counsel*
Address

Reference



Application by prosecution for oral hearing of defence application for dismissal

This form may be used by the prosecution to apply for:

- an oral hearing of a defence application for dismissal;
 - an application for leave to call witnesses; or
 - an extension of time within which to apply for a) an oral hearing or b) to submit documents.
- An application by the prosecution for an oral hearing, or for an extension of time within which to apply for an oral hearing, must be made within 7 days of receipt of notice of the defence application for dismissal. Written comments or material must be submitted to the appropriate officer of the court within 14 days of the date of receipt of the defence application. A copy of this form must be given to the applicant for dismissal and to any other person to whom the application to dismiss relates.

Enter the name of the Court shown on the notice of transfer, the case no., and the date of receipt of the defence application

Case Details

The Crown Court at

Crown Court
Case Number:

Date of receipt of copy of defence application :

State the name(s) and address(es) of the defendant(s) to whom this application relates. If in custody, give address where detained.

Defendant(s)* Surname
Forename(s)
Address

Date of birth:

State the name, address and reference.

Application

Designated authority:

Ref:

Tick as appropriate.

- Application for an oral hearing
- Application for leave to call witnesses under s.6 (3) CJA 1987
- Application for extension of time within which to apply for oral hearing
- Application for extension of time within which to submit documents

Specify all charges and indicate those to which the application for dismissal applies and those on which the prosecution intend to respond.

Charges *

State the grounds on which the application is being made

Grounds for applying

Indicate which witnesses you propose to call, if leave is given.

Witnesses *

*(continue
overleaf
if necessary)

Signature

Date

Form 5302 Application by Prosecution for oral hearing or for extension of time

**In the Crown Court at
Notification of Court's Determination on Applications
under s.6 CJA 1987**



Case Number

This form shall be used for notifying all parties of the court's determination of the following applications:

- by the prosecution for oral hearing of a defence application for dismissal;
- by the defence or prosecution for leave to call witnesses;
- by the defence or prosecution for an extension of time within which to lodge an application for oral hearing; or
- by the prosecution for extension of time within which to submit material to the court.

Case Details

Defendant(s) Surname:
Forename(s):
Address:
(if in custody give
address where detained)

Date of birth :

Charges (indicate those to which the application applies)

Nature of Application

- Application by prosecution for oral hearing of application for dismissal of transferred charge(s) s.6(1)CJA 1987
- Defence*/Prosecution* application for leave to call witnesses s.6(3)CJA 1987
- Defence*/Prosecution* application for extension of time within which to lodge an application for oral hearing
- Prosecution application for extension of time within which to submit written comments or other material to the court.

* delete as appropriate

Court's Decision

(Specify court's decision on each application considered. Where an application is refused the reasons for refusal should be stated.)

Signed
(an Officer of the Court)

Date

In the Crown Court at

Notification of the Court's determination of a written application for dismissal of transferred charge(s) under s.6(1) Criminal Justice Act 1987



Case Number

Case Details

Defendant(s)* Surname:
 Forename(s):
 Address:
 (if in custody give
 address where detained) Date of birth:

Charges (*Those on which dismissal was sought to be separately identified*)*

Court's Decision (*Specify court's decision. Where an application is refused the reasons for refusal should be stated. Include details of any bail variations, and counts substituted, added or quashed.*)

Signed
(an Officer of the Court)

Date

*continue overleaf if necessary

Form 5304 Notification of Judge's determination of application for dismissal

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make provision for the purposes of section 6 of the Criminal Justice Act 1987 (c.38), which permits a person charged with an offence or offences of fraud whose case has been transferred to the Crown Court under section 4 of that Act to apply to a Crown Court judge for the charge or charges to be dismissed.

By virtue of rule 1(1), the Rules come into force on 31st October 1988.

Rule 2 makes provision for oral applications for dismissal. Rule 3 relates to written applications. Rule 4 makes provision for the prosecution response. Rule 5 provides for the notification of determinations on applications where there is no oral hearing and permits witnesses to be heard by leave of the judge notwithstanding failure to give proper notice. Rule 6 provides for the service of documents, and rule 7 and the Schedule provide for the necessary forms for use in connection with applications.

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