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STATUTORY INSTRUMENTS

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**1997 No. 706 (L.12)**

**MAGISTRATES' COURTS  
PROCEDURE**

**The Magistrates' Courts (Amendment) Rules 1997**

*Made* - - - - *10th March 1997*  
*Laid before Parliament* *11th March 1997*  
*Coming into force* - - *1st April 1997*

The Lord Chancellor, in exercise of the power conferred on him by section 144 of the Magistrates' Courts Act 1980(1), and after consultation with the Rules Committee appointed under the said section 144, hereby makes the following Rules:—

**Citation and commencement**

1.—(1) These Rules may be cited as the Magistrates' Courts (Amendment) Rules 1997 and, subject to paragraph (2) below, shall come into force on 1st April 1997.

(2) These Rules shall have effect in the same way as Schedules 1 and 2 to the Criminal Procedure and Investigations Act 1996(2) have effect.

**Interpretation**

2. —In these Rules any reference to a rule is a reference to a rule contained in the Magistrates' Courts Rules 1981(3), and any reference in a rule to a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph of that rule.

**Amendment of Magistrates' Courts Rules 1981**

3. After rule 4 (information and complaint) there shall be inserted—

**“Deposition etc. of reluctant witness**

4A.—(1) Where a person attends before a justice of the peace in pursuance of section 97A of the Act of 1980 the justice shall—

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(1) 1980 c. 43; as extended by section 145 of that Act (which is in turn amended by section 65(3) of, and schedule 5 to, the Criminal Procedure and Investigations Act 1996).  
(2) 1996 c. 25.  
(3) S.I. 1981/552; the relevant amending instruments are S.I. 1983/523; 1990/1190, 2260.

- (a) where that person attends for the purpose of giving evidence, cause his evidence to be put in writing;
- (b) where that person attends for the purpose of producing a document or other exhibit, cause the document or exhibit to be handed over for examination and any evidence given by that person in respect of it to be put in writing;
- (c) where that person refuses to have his evidence taken or to produce the document or other exhibit, as the case may be, explain to him the consequences of so refusing without just excuse, and ask him to explain why he has so refused; and
- (d) cause a record of any such refusal to be made in writing.

(2) As soon as practicable after the examination by the prosecutor of a witness whose evidence is put in writing the justice shall cause his deposition to be read to him, and shall require the witness to sign the deposition.

(3) Any such deposition shall be authenticated by a certificate signed by the justice.

(4) Subject to rule 11 the clerk of the justice concerned, on sending a copy of any deposition or documentary exhibit to the prosecutor under section 97A(9) or (10) of the Act of 1980, as the case may be—

- (a) shall retain the original deposition or documentary exhibit, and
- (b) may retain any other exhibit produced in pursuance of that section.

Prosecutor's notice to other party: right to object to written evidence being read at trial without further evidence.

**4B.**—(1) The prosecutor shall, when he serves on any other party a copy of the evidence to be tendered in committal proceedings, notify that party that if he is committed for trial he has the right to object, by written notification to the prosecutor and the Crown Court within 14 days of being so committed unless the court in its discretion permits such an objection to be made outside that period, to a statement or deposition being read as evidence at the trial without oral evidence being given by the person who made the statement or deposition and without the opportunity to cross-examine that person.

(2) The prosecutor shall, on notifying a party as indicated in paragraph (1) above, send a copy of such notification to the clerk of the magistrates' court.”.

**4.** In rule 5 (restrictions on reports of committal proceedings) for the word “given” there shall be substituted the word “tendered”, and for the words “in evidence any written statement or taking depositions of witnesses in accordance with rule 7” there shall be substituted the words “any evidence”.

**5.**—(1) In rule 6 (committal for trial without consideration of evidence)—

- (a) in paragraph (1) the words “(whether present in court or not)” shall be omitted, and for the words “for the prosecution” to the end there shall be substituted “falls within section 5A(2) of the Act of 1980”;
- (b) in paragraph (2) the words from “(a) object” to “; or (c)” shall be omitted and for the words “the prosecution statements disclose” there shall be substituted the words “there is,”; and
- (c) in paragraph (3) for the words “take any of the steps mentioned in sub-paragraphs (a), (b) and (c) of” to the end there shall be substituted “make such a submission as is referred to in paragraph (2) it shall, after receiving any written evidence falling within section 5A(3) of the Act of 1980, determine whether or not to commit the accused for trial without consideration of the evidence, and where it determines not to so commit the accused it shall proceed in accordance with rule 7”; and
- (d) paragraphs (4) and (5) shall be omitted.

6. For the heading to rule 7 (taking depositions of witnesses and statement of accused) there shall be substituted “Consideration of evidence at committal proceedings”.

7.—(1) In rule 7 for paragraphs (2) to (13) there shall be substituted—

“(2) A magistrates' court inquiring into an offence as examining justices, having ascertained—

- (a) that the accused has no legal representative acting for him in the case; or
- (b) that the accused's legal representative has requested the court to consider a submission that there is insufficient evidence to put the accused on trial by jury for the offence with which he is charged, as the case may be,

shall permit the prosecutor to make an opening address to the court, if he so wishes, before any evidence is tendered.

(3) After such opening address, if any, the court shall cause evidence to be tendered in accordance with sections 5B(4), 5C(4), 5D(5) and 5E(3) of the Act of 1980, that is to say by being read out aloud, except where the court otherwise directs or to the extent that it directs that an oral account be given of any of the evidence.

(4) The court may view any exhibits produced before the court and may take possession of them.

(5) After the evidence has been tendered the court shall hear any submission which the accused may wish to make as to whether there is sufficient evidence to put him on trial by jury for any indictable offence.

(6) The court shall permit the prosecutor to make a submission—

- (a) in reply to any submission made by the accused in pursuance of paragraph (5); or
- (b) where the accused has not made any such submission but the court is nevertheless minded not to commit him for trial.

(7) After hearing any submission made in pursuance of paragraph (5) or (6) the court shall, unless it decides not to commit the accused for trial, cause the charge to be written down, if this has not already been done, and, if the accused is not represented by counsel or a solicitor, shall read the charge to him and explain it in ordinary language.”.

8. For rule 8 (order for attendance of witnesses at court of trial) there shall be substituted—

**“Court's reminder to a defendant: right to object to written evidence being read at trial without further proof**

8. A magistrates' court which commits a person for trial shall forthwith remind him of his right to object, by written notification to the prosecutor and the Crown Court within 14 days of being committed unless that court in its discretion permits such an objection to be made outside that period, to a statement or deposition being read as evidence at the trial without oral evidence being given by the person who made the statement or deposition, and without the opportunity to cross-examine that person.”.

9. In the heading to rule 11 for the words “Documents and exhibits to be retained and” there shall be substituted “Material to be”.

10. In rule 11 (Material to be sent to court of trial)—

- (a) paragraph (1) shall be omitted;
- (b) in paragraph (2)—
  - (i) for the words “section 5 of the Prosecution of Offences Act 1979” there shall be substituted “section 7 of the Prosecution of Offences Act 1985”;

- (ii) for sub-paragraph (b) there shall be substituted—
    - “(b) (i) the evidence tendered in accordance with section 5A of the Act of 1980 and, where any of that evidence consists of a copy of a deposition or documentary exhibit which is in the possession of the court, any such deposition or documentary exhibit; and
    - (ii) a certificate to the effect that that evidence was so tendered.”.
  - (iii) for sub-paragraph (c) there shall be substituted—
    - “(c) any notification by the prosecutor under section 5D(2) regarding the admissibility of a statement under section 23 or 24 of the Criminal Justice Act 1988(4);”;
  - (iv) sub-paragraph (d) shall be omitted;
  - (v) in sub-paragraphs (g) and (h) for the words “documents and articles” there shall be substituted “exhibits”; and
  - (vi) for sub-paragraph (i) there shall be substituted—
    - “(i) The names and addresses of any interpreters engaged for the defendant for the purposes of the committal proceedings, together with any telephone numbers at which they can be readily contacted, and details of the languages or dialects in connection with which they have been so engaged”;
  - (vii) in sub-paragraph (1) for the words “(Form B in the Schedule to the Costs in Criminal Cases Regulations 1908)” there shall be substituted “The Costs in Criminal Cases (General) Regulations 1986(5)”.
  - (viii) in sub-paragraph (o) for the words “section 7 of the Legal Aid Act 1982” there shall be substituted “section 23 of the Legal Aid Act 1988”; and
- (c) Paragraph (3) shall be omitted.

**11.** Rule 21 (duty to recall witnesses who have given evidence before examining justices) shall be omitted.

**12.** Rule 33 (deposition of person dangerously ill) shall be omitted.

**13.** For the heading to rule 70 (written statements in committal proceedings or summary trial) there shall be substituted “Evidence in committal proceedings and written statements in summary trial”.

**14.** In rule 70—

- (a) in paragraph (1) for the words “under section 102” there shall be substituted “in accordance with section 5B”;
- (b) in paragraph (2)—
  - (i) for the words “when a copy of such statement” there shall be substituted—
    - “When a copy of any of the following evidence, namely—
    - (a) evidence tendered in accordance with section 5A of the Act of 1980, or
    - (b) a written statement tendered in evidence under section 9 of the Criminal Justice Act 1967,”;
  - (ii) for the words “statement and of any exhibit which accompanied it” there shall be substituted “evidence in question”; and

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(4) 1988 c. 33.

(5) S.I. 1986/1335, as amended by the Costs in criminal Cases (General)(Amendment) Regulations 1991 (S.I. 1991/789)

- (iii) after the words “any such statement” there shall be inserted “as is referred to in sub-paragraph (b)”;
- (c) paragraph (3) shall be omitted;
- (d) in paragraph (4)—
  - (i) for the words from the beginning to “or 9” there shall be substituted—
    - “Where—
    - (a) a statement or deposition to be tendered in evidence in accordance with section 5A of the Act of 1980; or
    - (b) a written statement to be tendered in evidence under section 9 of the Criminal Justice Act 1967.”;
  - (ii) after the word “statement”, wherever else it occurs, there shall be inserted “or deposition”;
  - (iii) the word “written”, in the second place where it occurs, shall be omitted;
- (e) in paragraph (5)—
  - (i) for the words “written statement” where they first appear there shall be substituted “any evidence tendered in accordance with the said section 5A or a written statement tendered in evidence under section 9 of the Criminal Justice Act 1967”; and
  - (ii) in sub-paragraph (a) for the words from the beginning to “section 102” there shall be substituted “in the case of any evidence tendered in accordance with the said section 5A, but subject to paragraph (5A),” and for the words “the statement” there shall be substituted the words “the evidence”;
- (f) after paragraph (5) there shall be inserted—
  - “(5A) where the nature of the evidence referred to in paragraph (5)(a) is such that it is not possible to write on it, the words set out in that sub-paragraph shall instead be written on a label or other mark of identification which clearly identifies the part of the evidence to which the words relate and contains the signature and name of an examining justice in accordance with that sub-paragraph.”;
- (g) for paragraph (6) there shall be substituted—
  - “(6) Where, before a magistrates' court,—
  - (a) a statement or deposition is tendered in evidence in accordance with the said section 5A, or
  - (b) a written statement is tendered in accordance with the said section 9,the name of the maker of the statement or deposition shall be read aloud unless the court otherwise directs.”.
- (h) for paragraph (7) there shall be substituted—
  - “(7) Where—
  - (a) under section 5B(4), 5C(4), 5D(5) or 5E(3) of the Act of 1980; or
  - (b) under sub-section (6) of the said section 9,in any proceedings before a magistrates' court any part of the evidence has to be read out aloud, or an account has to be given orally of so much of any evidence as is not read out aloud, the evidence shall be read or the account given by or on behalf of the party which has tendered the evidence.”;

- (i) in paragraph (8) for the words “written statements tendered in evidence under the said section 102” there shall be substituted “statements and depositions tendered in evidence in accordance with the said section 5A”;
- (j) for paragraph (9) there shall be substituted—
  - “(9) Where, before a magistrates' court—
    - (a) evidence is tendered as indicated in paragraph (2)(a), retained by the court, and not sent to the Crown Court under rule 11, or
    - (b) a written statement is tendered in evidence as indicated in paragraph (2)(b) and not sent to the Crown Court under rule 17 or 18,all such evidence shall, subject to any direction of the court in respect of non-documentary exhibits falling within sub-paragraph (a), be preserved for a period of three years by the clerk of the magistrates' court.”.

**15.** In rule 71 (proof by formal admission) the words “or proceedings before a magistrates' court acting as examining justices” shall be omitted.

**16.** In rule 107 (application for summons to witness or warrant for his arrest) after the words “section 97” there shall be inserted “or 97A”.

Dated 10th March 1997

*Mackay of Clashfern, C.*

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules amend the Magistrates' Courts Rules 1981 (“the 1981 Rules”) to take account of the changes in magistrates' courts' procedures in respect of committal for trial in the Crown Court (“committal proceedings”) effected by the Criminal Procedure and Investigations Act 1996 (c. 25) (“the 1996 Act”). Unless otherwise indicated any reference in this note to a rule is a reference to one of these Rules.

Rule 3 indicates the procedure to be followed where, prior to committal proceedings, evidence is taken from a reluctant witness who has been summonsed to attend before a justice for that purpose. This rule also indicates the stage at which the prosecution is to give a defendant notice of his right to object to a statement or deposition being read out at trial without oral evidence being given.

Rule 4 makes amendments in the provisions of the 1981 Rules dealing with reporting restrictions which are consequential on the changes made by the 1996 Act.

Rule 5 makes consequential amendments to the provisions of the 1981 Rules dealing with the procedures for committal without consideration of the evidence.

Rule 7 indicates the procedure to be followed, as a consequence of the 1996 Act, where evidence is considered at committal proceedings.

Rule 8 indicates the stage at which, if the accused is committed for trial, the magistrates' court is to remind him of his right to object to a statement or deposition being read out at the trial without oral evidence being given.

Rule 10 indicates the material which is to be sent by a magistrates' court to the Crown Court on committal of the accused, in light of the changes in committal procedures.

Rules 11 and 12 make amendments to the 1981 Rules which are consequential on the abolition of oral evidence in committal proceedings.

Rules 13, 14, 15 and 16 make further amendments to the 1981 Rules which are purely consequential on the changes effected by the 1996 Act.