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STATUTORY INSTRUMENTS

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**2005 No. 545 (L.10)**

**MAGISTRATES' COURTS**

**PROCEDURE**

**The Justices' Clerks Rules 2005**

<i>Made</i>	- - - -	<i>8th March 2005</i>
<i>Laid before Parliament</i>		<i>9th March 2005</i>
<i>Coming into force</i>	- -	<i>1st April 2005</i>

The Lord Chancellor, in exercise of the powers conferred upon him by section 144 of the Magistrates' Courts Act 1980<sup>(1)</sup> and section 28 of the Courts Act 2003<sup>(2)</sup>, after consultation with the Criminal Procedure Rule Committee, the Family Procedure Rule Committee and the Magistrates' Courts Rule Committee, hereby makes the following Rules:

1. These Rules may be cited as the Justices' Clerks Rules 2005 and shall come into force on 1 April 2005.
2. The things specified in the Schedule to these Rules, being authorised to be done by, to or before a single justice of the peace, may be done by, to or before a justices' clerk.
- 3.—(1) The things specified in paragraphs 1 to 36 in the Schedule to these Rules, being authorised to be done by, to or before a justices' clerk, may be done by, to or before an assistant clerk, provided that that person has been specifically authorised by the justices' clerk for that purpose, and any reference in the Schedule to a justices' clerk shall be taken to include such a person.  
(2) The powers authorised to be exercised by a justices' clerk at an early administrative hearing under section 50 of the Crime and Disorder Act 1998<sup>(3)</sup> may be exercised instead by an assistant clerk who has been specifically authorised by the justices' clerk for that purpose.  
(3) Any authorisation by the justices' clerk under paragraph (1) or (2) above shall be recorded in writing at the time the authority is given or as soon as practicable thereafter.
4. The Justices' Clerks Rules 1999<sup>(4)</sup> are hereby revoked.

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(1) 1980 c. 43.  
(2) 2003 c. 39.  
(3) 1998 c. 37.  
(4) S.I.1999/2784.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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8th March 2005

*Christopher Leslie*  
Parliamentary Under Secretary of State  
Department for Constitutional Affairs

## SCHEDULE

1. The laying of an information or the making of a complaint, other than an information or complaint substantiated on oath.
2. The issue of any summons, including a witness summons.
3. The issue of a warrant of arrest, whether or not endorsed for bail, for failure to surrender to the court, where there is no objection on behalf of the accused.
4. The marking of an information as withdrawn.
5. The dismissing of an information, or the discharging of an accused in respect of an information, or the discharging of an accused in respect of an information, where no evidence is offered by the prosecution.
6. The making of an order for the payment of defence costs out of central funds.
7. The adjournment of the hearing of a complaint if the parties to the complaint consent to the complaint being adjourned.
8. The extending of bail on the same conditions as those (if any) previously imposed, or, with the consent of the prosecutor and the accused, the imposing or varying of conditions of bail.
9. The further adjournment of criminal proceedings with the consent of the prosecutor and the accused, if but only if,
  - (a) the accused, not having been remanded on the previous adjournment, is not remanded on the further adjournment; or
  - (b) the accused, having been remanded on bail on the previous adjournment, is remanded on bail on the like terms and conditions, or, with the consent of the prosecutor and the accused, on other terms and conditions.
- 10.—(1) The further adjournment of criminal proceedings, where there has been no objection by the prosecutor, where the accused, having been remanded on bail on the previous adjournment, is remanded on bail on the like terms and conditions in his absence.
  - (2) The remand of the accused on bail in his absence at the time of further adjourning the proceedings in pursuance of sub-paragraph (1) above.
- 11.—(1) The appointment of a later time at which a person, who has been granted bail under the Police and Criminal Evidence Act 1984<sup>(5)</sup> subject to a duty to appear before a magistrates' court, is to appear, and the enlargement of any sureties for that person at that time, in accordance with section 43(1) of the Magistrates' Courts Act 1980, provided there is no objection by the prosecutor.
  - (2) Where a person has been granted police bail to appear at a magistrates' court, the appointment of an earlier time for his appearance.
12. The committal of a person for trial on bail in accordance with section 6(2) and (3)(b) of the Magistrates' Courts Act 1980 where, having been remanded on bail on the previous adjournment, he is released on bail on the like terms and conditions.
13. Where a case is to be tried on indictment, the granting of a representation order under Schedule 3 to the Access to Justice Act 1999<sup>(6)</sup> for the purposes of the proceedings of the Crown Court.

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(5) 1984 c. 60.

(6) 1999 c. 22.

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14. The asking of an accused whether he pleads guilty or not guilty to a charge, after having stated to him the substance of the information laid against him.

15. The fixing or setting aside of a date, time and place for the trial of an information.

16. The making of a direction in accordance with rule 93A(7) or (8) of the Magistrates' Courts Rules 1981(7).

17. The giving, variation or revocation of directions for the conduct of a criminal trial, including directions as to the following matters, namely—

the timetable for proceedings;

the attendance of the parties;

the service of documents (including summaries of any legal arguments relied on by the parties);

the manner in which evidence is to be given.

18. With the consent of the parties, the giving, variation or revocation of orders for separate or joint trials in the case of two or more accused or two or more informations.

19. The extension, with the consent of the accused, of an overall time limit under section 22 of the Prosecution of Offences Act 1985(8).

#### **Sentences etc.**

20. The request of a pre-sentence report following a plea of guilty.

21. The request of a medical report and, for that purpose, the remand of an accused on bail on the same conditions as those (if any) previously imposed, or, with the consent of the prosecutor and the accused, on other conditions.

22. The remitting of an offender to another court for sentence.

23. Where an accused has been convicted of an offence, the making of an order for him to produce his driving licence.

24. The giving of consent for another magistrates' court to deal with an offender for an earlier offence in respect of which, after the offender had attained the age of eighteen years, a court had made an order for conditional discharge, where the justices' clerk is the clerk of the court which made the order, or in the case of a community rehabilitation order, of that court or the supervising court.

25. The amending, in accordance with paragraph 15 of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000(9), of a community rehabilitation order or community punishment order by substituting for the local justice area specified in the order the other area in which the offender proposes to reside or is residing.

26. The varying, in accordance with paragraph 5(1) of Schedule 5 to the Powers of Criminal Courts (Sentencing) Act 2000, of an attendance centre order by—

(a) varying the day or hour specified in the order for the offender's first attendance at the relevant attendance centre; or

(b) substituting for the relevant attendance centre an attendance centre which the justices' clerk is satisfied is reasonably accessible to the offender, having regard to his age, the means of access available to him and any other circumstances.

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(7) S.I. 1981/552 as amended by S.I. 1982/245, 1983/523, 1984/1552, 1985/1695 and 1944, 1986/1332, 1988/2132, 1989/300 and 384, 1990/336, 1190 and 2260, 1991/1991, 1992/457, 729 and 2072, 1993/1183, 1994/1481 and 3154, 1995/585 and 2619, 1997/706 and 1998/2167.

(8) 1985 c. 23.

(9) 2000 c. 6.

27. The signing of a certificate given to the Crown Court under paragraph 4(6) of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000 as to non-compliance with a community order.

28. The acceptance under section 14 of the Magistrates Courts Act 1980 of service of such a statutory declaration as is mentioned in subsection (3) of that section.

## **Fines**

29. The issue of a warrant of distress.

30. The allowing of further time for payment of a sum enforceable by a magistrates' court.

31. The varying of the number of instalments payable, the amount of any instalment payable and the date on which any instalment becomes payable where a magistrates' court has ordered that a sum adjudged to be paid shall be paid by instalments.

32. The making of a transfer of fine order under section 89 of the Magistrates' Courts Act 1980.

33. The making of an order before an enquiry into the means of a person under section 82 of the Magistrates' Courts Act 1980 that that person shall furnish to the court a statement of his means under section 84 of that Act.

34. The fixing under section 86(3) of the Magistrates' Courts Act 1980 of a later day in substitution for a day previously fixed for the appearance of an offender to enable an enquiry into his means to be made under section 82 of that Act or to enable a hearing required by section 82(5) of that Act to be held.

35. The making or withdrawal of an application to the Secretary of State, pursuant to the Fines (Deductions from Income Support) Regulations 1992<sup>(10)</sup>, for deductions to be made from an offender's income support.

36. The doing of such other things as are required or permitted to be done by a magistrates' court under the Fines (Deductions from Income Support) Regulations 1992.

## **Family etc.**

37. The transfer of proceedings in accordance with any order made by the Lord Chancellor under Part I of Schedule 11 to the Children Act 1989<sup>(11)</sup>.

38. The appointment of a children's guardian or solicitor for a child under section 41 of the Children Act 1989.

39. The giving, variation or revocation of directions in accordance with rule 6 of the Family Proceedings Courts (Matrimonial Proceedings etc.) Rules 1991<sup>(12)</sup> or rule 14 of the Family Proceedings Courts (Children Act 1989) Rules 1991<sup>(13)</sup>.

40. The making of an order, in accordance with rule 28 of the Family Proceedings Courts (Children Act 1989) Rules 1991, under sections 11(3) or 38(1) of the Children Act 1989.

41. By virtue of rule 33 of the Family Proceedings Courts (Children Act 1989) Rules 1991, the issuing of a witness summons under section 97 of the Magistrates' Courts Act 1980 in relevant proceedings within the meaning of section 93(3) of the Children Act 1989.

42. The request of a welfare report under section 7 of the Children Act 1989.

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<sup>(10)</sup> S.I. 1992/2182 as amended by S.I. 1993/495, 1996/2344, 1997/827 and 1998/563.

<sup>(11)</sup> 1989 c. 41.

<sup>(12)</sup> S.I. 1991/1991 as amended by S.I. 1992/2068, 1993/627, 1994/809 and 1997/1894.

<sup>(13)</sup> S.I. 1991/1395 as amended by S.I. 1991/1991, 1992/2068, 1993/627, 1994/809, 2166 and 3156 and 1997/1895.

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**43.** By virtue of rule 16(2) of the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991, the issuing of a witness summons under section 97 of the Magistrates' Courts Act 1980 in proceedings under the Domestic Proceedings and Magistrates' Courts Act 1978<sup>(14)</sup>.

#### **Transitional Provisions**

**44.** Until the commencement of paragraph 125 of Schedule 32 to the Criminal Justice Act 2003<sup>(15)</sup>–

- (a) paragraph 25 of this Schedule shall have effect as if the words “paragraph 18” were substituted for the words “paragraph 15”; and
- (b) paragraph 27 of this Schedule shall have effect as if the words “paragraph 4(5)” were substituted for the words “paragraph 4(6)”.

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### **EXPLANATORY NOTE**

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

These Rules replace the Justices' Clerks Rules 1999. These Rules re-enact the 1999 rules with minor and consequential amendments necessary as a result of the Courts Act 2003.

Rule 2 of these Rules provides that the things specified in the Schedule which are authorised to be done by, to or before a single justice of the peace, may be done by, to or before a justices' clerk.

Rule 3(1) provides that the things specified in paragraphs 1 to 36 of the Schedule may be done instead by, to or before an assistant clerk and specifically authorised by him for the purpose.

Rule 3(2) provides that the power authorised to be exercised by a justices' clerk at an early administrative hearing under section 50 of the Crime and Disorder Act 1988 may be exercised instead by an assistant clerk.

Rule 3(3) provides for the manner of recording such specific authority.

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<sup>(14)</sup> 1978 c. 22.

<sup>(15)</sup> 2003 c. 44.