THE CONSOLIDATED CRIMINAL PRACTICE DIRECTION

This is a consolidation, with some amendments, of existing Practice Directions, Practice Statements and Practice Notes as they affect proceedings in the Court of Appeal (Criminal Division), the Crown Court and the magistrates' courts, with the exception of the Practice Directions which relate to costs. Practice Directions relating to costs are consolidated in the Practice Direction on Costs in Criminal Proceedings, handed down on 18 May 2004.

The following Practice Directions are included by way of cross-reference only:

(a) The Practice Direction relating to References to the European Court of Justice by the Court of Appeal and the High Court under Article 177 of the European Communities Treaty [1999] 1 WLR 260; [1999] 1 Cr App R 452.
(b) The Practice Direction relating to Devolution Issues [1999] 1 WLR 1592; [1999] 3 All ER 466; [1999] 2 Cr App R 486.
(c) The Practice Direction (Court of Appeal (Civil Division)) [1999] 1 WLR 1027; [1999] 2 All ER 490, paragraph 9 (relating to the availability of judgments given in the Court of Appeal and the High Court) and paragraph 10.1 (relating to the citation of judgments in court).

Guidelines issued by the Attorney General are not included.

Also excluded is the guidance given by the Court of Appeal (Civil Division) in *C v S (Money Laundering: Discovery of Documents)(Practice Direction)* [1991] 1 WLR 1551, which deals with the conflict which can arise between the interests of the state in combating crime on the one hand and, on the other hand, the entitlement of private bodies to obtain redress from the courts and the principles that justice should be administered in public and that a party should know the case advanced against him, should have the opportunity to reply to it and should know the reasons for the decision of the court. Though arising from crime, this was civil litigation.

Reference should also be made to the following Civil Procedure Practice Directions:

(a) Such parts of the Practice Direction - Addition and Substitution of Parties, supplementary to CPR Part 19, as may apply where a defendant makes a claim for a declaration of incompatibility in accordance with section 4 of the Human Rights Act 1998.
(b) The Practice Direction - Court Sittings, supplementary to CPR Part 39.

This consolidation is not a comprehensive statement of the practice and procedure of the criminal courts. For this reference must be made to the relevant Acts and Rules to which this Direction is supplementary and to the Attorney General's guidelines.

A list of the Practice Directions which are consolidated *for the purpose of criminal proceedings* is at Appendix A. Where appropriate, these Practice Directions have been brought up to date. Any changes were of a relatively minor nature.

The consolidation does not affect proceedings in the Court of Appeal (Civil Division) or in any division of the High Court. So, for example, in the Family Division, reference should still be made to such directions, etc as affect proceedings there. Some criminal cases come before the Administrative Court. These form a small part of the work of that court and are not affected by this consolidation. The Administrative Court Office has a list of the relatively few Practice Directions which apply there.

This Practice Direction is divided into the following Parts:

Part I	Directions of General Application
Part II	Further Directions applying in the Court of Appeal (Criminal Division)
Part III	Further Directions applying in the Crown Court and in magistrates' courts
Part IV	Further Directions applying in the Crown Court
Part V	Further Directions applying in magistrates' courts
Annex A	List of Practice Directions, Practice Notes and Practice Statements included in this consolidation
Annex B	List of Practice Directions, Practice Notes and Practice Statements not included in this consolidation, but no longer applicable in criminal proceedings
Annex C	Form of words recommended for use in explanations for the imposition of custodial sentences
Annex D	Forms for use in criminal proceedings
Annex E	Forms to facilitate case management

NOTE: Throughout this document words connoting the masculine include the feminine.

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PART I: DIRECTIONS OF GENERAL APPLICATION

I.1. COURT DRESS

I.1.1 In magistrates' courts, advocates appear without robes or wigs. In all other courts, Queen's Counsel wear a short wig and a silk (or stuff) gown over a court coat with bands, junior counsel wear a short wig and stuff gown with bands, and solicitors and other advocates authorised under the Courts and Legal Services Act 1990 wear a black stuff gown with bands.

I.2. UNOFFICIAL TAPE RECORDING OF PROCEEDINGS

I.2.1 Section 9 of the Contempt of Court Act 1981 contains provisions governing the unofficial use of tape recorders in court. Section 9(1) provides that it is a contempt of court (a) to use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the leave of the Court; (b) to publish a recording of legal proceedings made by means of any such instrument, or any recording derived directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or to dispose of it or any recording so derived, with a view to such publication; (c) to use any such recording in contravention of any conditions of leave granted under paragraph (a). These provisions do not apply to the making or use of sound recordings for purposes of official transcripts of the proceedings, upon which the Act imposes no restriction whatever.

I.2.2 The discretion given to the Court to grant, withhold or withdraw leave to use tape recorders or to impose conditions as to the use of the recording is unlimited, but the following factors may be relevant to its exercise: (a) the existence of any reasonable need on the part of the applicant for leave, whether a litigant or a person connected with the press or broadcasting, for the recording to be made; (b) the risk that the recording could be used for the purpose of briefing witnesses out of court; (c) any possibility that the use of the recorder would disturb the proceedings or distract or worry any witnesses or other participants.

I.2.3 Consideration should always be given whether conditions as to the use of a recording made pursuant to leave should be imposed. The identity and role of the applicant for leave and the nature of the subject matter of the proceedings may be relevant to this.

I.2.4 The particular restriction imposed by section 9(1)(b) applies in every case, but may not be present to the mind of every applicant to whom leave is given. It may therefore be desirable on occasion for this provision to be drawn to the attention of those to whom leave is given.

I.2.5 The transcript of a permitted recording is intended for the use of the person given leave to make it and is not intended to be used as, or to compete with, the official transcript mentioned in section 9(4).

I.3. RESTRICTIONS ON REPORTING PROCEEDINGS

I.3.1 Under section 4(2) of the Contempt of Court Act 1981 a court may, where it appears necessary for avoiding a substantial risk of prejudice to the administration of justice in the proceedings before it or in any others pending or imminent, order that publication of any report of the proceedings or part thereof be postponed for such time as the court thinks necessary for that purpose. Section 11 of the Act provides that a court may prohibit the publication of any name or other matter in connection with the proceedings before it which it has allowed to be withheld from the public.

I.3.2 When considering whether to make such an order there is nothing which precludes the court from hearing a representative of the press. Indeed it is likely that the court will wish to do so.

I.3.3 It is necessary to keep a permanent record of such orders for later reference. For this purpose all orders made under section 4(2) must be formulated in precise terms having regard to the decision in *R v Horsham Justices ex parte Farquharson* [1982] QB 762; 76 Cr App R 87, and orders under both sections must be committed to writing either by the judge personally or by the clerk of the court under the judge's directions. An order must state (a) its precise scope, (b) the time at which it shall cease to have effect, if appropriate, and (c) the specific purpose of making the order. Courts will normally give notice to the press in some form that an order has been made under either section of the Act and the court staff should be prepared to answer any enquiry about a specific case, but it is, and will remain, the responsibility of those reporting cases, and their editors, to ensure that no breach of any orders occurs and the onus rests on them to make enquiry in any case of doubt.

I.4. AVAILABILITY OF JUDGMENTS GIVEN IN THE COURT OF APPEAL AND THE HIGH COURT

I.4.1 Reference should be made to paragraph 9 of Practice Direction (Court of Appeal (Civil Division)) [1999]1 WLR 1027; [1999] 2 All ER 490.

I.5. WARDS OF COURT

I.5.1 Where a child has been interviewed by the police in connection with contemplated criminal proceedings and the child subsequently becomes a ward of court, no leave of the wardship court is required for the child to be called as a witness in those proceedings. Where, however, the police desire to interview a child who is already a ward of court, application must, other than in the exceptional cases referred to in paragraph I.5.3, be made to the wardship court, on summons and on notice to all parties, for leave for the police to do so. Where, however, a party may become the subject of a criminal investigation and it is considered necessary for the ward to be interviewed without that party knowing that the police are making inquiries, the application for leave may be made ex parte to a judge without notice to that party. Notice, should, where practicable, be given to the reporting officer.

I.5.2 Where leave is given the order should, unless some special reason requires the contrary, give leave for any number of interviews which may be required by the prosecution or the police. If it is desired to conduct any interview beyond what has been permitted by the order, a further application should be made.

I.5.3 The exceptional cases are those where the police need to deal with complaints or alleged offences concerning wards and it is appropriate, if not essential, for action to be taken straight away without the prior leave of the wardship court. Typical examples may be: (a) serious offences against the ward, such as rape, where medical examination and the collection of scientific evidence ought to be carried out promptly; (b) where the ward is suspected by the police of having committed a criminal act and the police wish to interview him about it; (c) where the police wish to interview the ward as a potential witness. The list is not exhaustive; there will inevitably be other instances where immediate action is appropriate. In such cases the police should notify the parent or foster parent with whom the ward is living or other "appropriate adult" within the Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers, so that that adult has the opportunity of being

present when the police interview the child. Additionally, if practicable, the reporting officer (if one has been appointed) should be notified and invited to attend the police interview or to nominate a third party to attend on his behalf. A record of the interview or a copy of any statement made by the ward should be supplied to the reporting officer. Where the ward has been interviewed without the reporting officer's knowledge, he should be informed at the earliest opportunity. So too, if it be the case that the police wish to conduct further interviews. The wardship court should be appraised of the situation at the earliest possible opportunity thereafter by the reporting officer, the parent, foster parent (through the local authority) or other responsible adult.

I.5.4 No evidence or documents in the wardship proceedings or information about the proceedings should be disclosed in the criminal proceedings without leave of the wardship court.

I.6. SPENT CONVICTIONS

I.6.1 The effect of section 4(1) of the Rehabilitation of Offenders Act 1974 is that a person who has become a rehabilitated person for the purpose of the Act in respect of a conviction (known as a 'spent' conviction) shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction.

I.6.2 Section 4(1) of the 1974 Act does not apply, however, to evidence given in criminal proceedings: section 7(2)(a). Convictions are often disclosed in such criminal proceedings. When the Bill was before the House of Commons on 28 June 1974 the hope was expressed that the Lord Chief Justice would issue a Practice Direction for the guidance of the Crown Court with a view to reducing disclosure of spent convictions to a minimum and securing uniformity of approach. The direction is set out in the following paragraphs. The same approach should be adopted in all courts of criminal jurisdiction.

I.6.3 During the trial of a criminal charge, reference to previous convictions (and therefore to spent convictions) can arise in a number of ways. The most common is when the character of the accused or a witness is sought to be attacked by reference to his criminal record, but there are, of course, cases where previous convictions are relevant and admissible as, for instance, to prove system.

I.6.4 It is not possible to give general directions which will govern all these different situations, but it is recommended that both court and advocates should give effect to the general intention of Parliament by never referring to a spent conviction when such reference can reasonably be avoided.

I.6.5 After a verdict of guilty the court must be provided with a statement of the defendant's record for the purposes of sentence. The record supplied should contain all previous convictions, but those which are spent should, so far as practicable, be marked as such.

I.6.6 No one should refer in open court to a spent conviction without the authority of the judge, which authority should not be given unless the interests of justice so require.

I.6.7 When passing sentence the judge should make no reference to a spent conviction unless it is necessary to do so for the purpose of explaining the sentence to be passed.

I.7. EXPLANATIONS FOR THE IMPOSITION OF CUSTODIAL SENTENCES

I.7.1 The practical effect of custodial sentences imposed by the courts is almost entirely governed by statutory provisions. Those statutory provisions, changed by Parliament from time to time, are not widely understood by the general public. It is desirable that when sentence is passed the practical effect of the sentence should be understood by the defendant, any victim and any member of the public who is present in court or reads a full report of the proceedings.

I.7.2 Whenever a custodial sentence is imposed on an offender the court should explain the practical effect of the sentence in addition to complying with existing statutory requirements. This will be no more than an explanation; the sentence will be that pronounced by the court.

I.7.3 Sentencers should give the explanation in terms of their own choosing, taking care to ensure that the explanation is clear and accurate. No form of words is prescribed. Annexed to this Practice Direction are short statements which may, adapted as necessary, be of value as models (see Annex C). These statements are based on the statutory provisions in force on 1 January 1998 and will, of course, require modification if those provisions are materially amended.

I.7.4 Sentencers will continue to give such explanation as they judge necessary

of ancillary orders relating to matters such as disqualification, compensation, confiscation, costs and so on.

I.7.5 The power of the Secretary of State to release a prisoner early under supervision is not part of the sentence. The judge is therefore not required in his sentencing remarks to provide an explanation of this power. However, in explaining the effect of custodial sentences the judge should not say anything which conflicts with the existence of this power.

I.8. WORDS TO BE USED WHEN PASSING SENTENCE

I.8.1 Where a court passes on a defendant more than one term of imprisonment the court should state in the presence of the defendant whether the terms are to be concurrent or consecutive. Should this not be done the court clerk should ask the court, before the defendant leaves court, to do so.

I.8.2 If a prisoner is, at the time of sentence, already serving two or more consecutive terms of imprisonment and the court intends to increase the total period of imprisonment, it should use the expression 'consecutive to the total period of imprisonment to which you are already subject' rather than 'at the expiration of the term of imprisonment you are now serving', lest the prisoner be not then serving the last of the terms to which he is already subject.

I.9. SUBSTITUTION OF SUSPENDED SENTENCES FOR IMMEDIATE CUSTODIAL SENTENCES

I.9.1 Where an appellate court substitutes a suspended sentence of imprisonment for one having immediate effect, the court should have in mind any period the appellant has spent in custody. If the court is of the opinion that it would be fair to do so, an approximate adjustment to the term of the suspended sentence should be made. Whether or not the court makes such adjustment, it should state that it had that period in mind. The court should further indicate that the operational period of suspension runs from the date the court passes the suspended sentence.

I.10. REFERENCES TO THE EUROPEAN COURT OF JUSTICE

I.10.1 These are the subject of Practice Direction: References to the European Court of Justice by the Court of Appeal and the High Court under Article 177 of the EC Treaty [1999] 1 WLR 260; [1999] 1 Cr App R 452, to which reference should be made.

I.11. DEVOLUTION ISSUES

I.11.1 These are the subject of Practice Direction: (Supreme Court)(Devolution Issues) [1999] 1WLR 1592; [1999] 3 All ER 466; [1999] 2 Cr App R 486, to which reference should be made.

I.12. PREPARATION OF JUDGMENTS: NEUTRAL CITATION

I.12.1 Since 11 January 2001 every judgment of the Court of Appeal, and of the Administrative Court, and since 14 January 2002 every judgment of the High Court, has been prepared and issued as approved with single spacing, paragraph numbering (in the margins) and no page numbers. In courts with more than one judge the paragraph numbering continues sequentially through each judgment and does not start again at the beginning of each judgment. Indented paragraphs are not numbered. A unique reference number is given to each judgment. For judgments of the Court of Appeal this number is given by the official shorthand writers. For judgments of the High Court it is provided by the Mechanical Recording Department at the Royal Courts of Justice. Such a number will also be furnished, on request to the Mechanical Recording Department, Royal Courts of Justice, Strand, London WC2A 2LL (Tel: 020 7947 7771), to High Court judgments delivered outside London.

I.12.2 Each Court of Appeal judgment starts with the year, followed by EW (for England and Wales), then CA (for Court of Appeal), followed by Civ or Crim and finally the sequential number. For example *Smith v Jones* [2001] EWCA Civ 10.

I.12.3 In the High Court, represented by HC, the number comes before the divisional abbreviation and, unlike Court of Appeal judgments, the latter is bracketed: (Ch), (Pat), (QB), (Admin), (Comm), (Admlty), (TCC) or (Fam) as appropriate. For example, [2002] EWHC 123 (Fam) or [2002] EWHC 124 (QB) or [2002] EWHC 125 (Ch).

I.12.4 This 'neutral citation', as it is called, is the official number attributed to the judgment and must always be used at least once when the judgment is cited in a later judgment. Once the judgment is reported this neutral citation appears in front of the familiar citation from the law reports series. Thus: *Smith v Jones* [2001] EWCA (Civ) 10; [2001] QB 124; [2001] 2 All ER 364, etc.

I.12.5 Paragraph numbers are referred to in square brackets. When citing a paragraph from a High Court judgment it is unnecessary to include the descriptive word in brackets: (Admin), (QB) or whatever. When citing a paragraph from a Court of Appeal judgment, however, Civ or Crim is included. If it is desired to cite more than one paragraph of a judgment each numbered paragraph should be enclosed with a square bracket. Thus paragraph 59 in *Green v White* [2002] EWHC 124 (QB) would be cited: *Green v White* [2002] EWHC 124 at [59]; paragraphs 30 – 35 in *Smith v Jones* would be *Smith v Jones* [2001] EWCA Civ 10 at [30] – [35]; similarly, where a number of paragraphs are cited: *Smith v Jones* [2001] EWCA Civ 10 at [30], [35] and [40 – 43].

I.12.6 If a judgment is cited more than once in a later judgment it is helpful if only one abbreviation is used, e.g. *Smith v Jones* or Smith's case, but preferably not both (in the same judgment.)

I.13 BAIL: FAILURE TO SURRENDER AND TRIALS IN ABSENCE

I.13.1 The following directions take effect immediately.

I.13.2 The failure of the defendants to comply with the terms of their bail by not surrendering can undermine the administration of justice. It can disrupt proceedings. The resulting delays impact on victims, witnesses and other court users and also waste costs. A defendant's failure to surrender affects not only the case with which he is concerned, but also the courts' ability to administer justice more generally by damaging the confidence of victims, witnesses and the public in the effectiveness of the court system and the judiciary. It is, therefore most important that defendants who are granted bail appreciate the significance of the obligation to surrender to custody in accordance with the terms of their bail and that courts take appropriate action if they fail to do so.

I.13.3 There are at least three courses of action for the courts to consider taking:-

(a) imposing penalties for the failure to surrender;
(b) revoking bail or imposing more stringent bail conditions; and
(c) conducting trials in the absence of the defendant.

PENALTIES FOR FAILURE TO SURRENDER

I.13.4 A defendant who commits a section 6(1) or section 6(2) Bail Act 1976 offence commits an offence that stands apart from the proceedings in

respect of which bail was granted. The seriousness of the offence can be reflected by an appropriate penalty being imposed for the Bail Act offence.

I.13.5 The common practice at present of courts automatically deferring disposal of a section 6(1) or section 6(2) Bail Act 1976 offence (failure to surrender) until the conclusion of the proceedings in respect of which bail was granted should no longer be followed. Instead, courts should now deal with defendants as soon as is practicable. In deciding what is practicable, the Court must take into account when the proceedings in respect of which bail was granted are expected to conclude, the seriousness of the offence for which the defendant is already being prosecuted, the type of penalty that might be imposed for the breach of bail and the original offence as well as any other relevant circumstances. If there is no good reason for postponing dealing with the breach until after the trial, the breach should be dealt with as soon as practicable. If the disposal of the breach of bail is deferred, then it is still necessary to consider imposing a separate penalty at the trial and the sentence for the breach of the bail should usually be custodial and consecutive to any other custodial sentence (as to which see I.13.13). In addition, bail should usually be revoked in the meantime (see I.13.14 to 16). In the case of offences which cannot, or are unlikely to, result in a custodial sentence, trial in the absence of the defendant may be a pragmatic sensible response to the situation (see I.13.17 to I.13.19). This is not a penalty for the Bail Act offence and a penalty may also be imposed for the Bail Act offence.

Initiating Proceedings – Bail granted by a police officer

I.13.6 When a person has been granted bail by a police officer to attend court and subsequently fails to surrender to custody, the decision whether to initiate proceedings for a section 6(1) or section 6(2) offence will be for the police/prosecutor.

I.13.7 The offence in this form is a summary offence and should be initiated as soon as practicable after the offence arises in view of the six month time limit running from the failure to surrender. It should be dealt with on the first appearance after arrest, unless an adjournment is necessary, as it will be relevant in considering whether to grant bail again.

Initiating Proceedings - Bail granted by a court

I.13.8 When a person has been granted bail by a court and subsequently fails to

surrender to custody, on arrest that person should normally be brought as soon as appropriate before the court at which the proceedings in respect of which bail was granted are to be heard. (The six months time limit does not apply where bail was granted by the court). Should the defendant commit another offence outside the jurisdiction of the bail court, the Bail Act offence should, where practicable, be dealt with by the new court at the same time as the new offence. If impracticable, the defendant may, if this is appropriate, be released formally on bail by the new court so that the warrant may be executed for his attendance before the first court in respect of the substantive and Bail Act offences.

I.13.9 Given that bail was granted by a court, it is more appropriate that the court itself should initiate the proceedings by its own motion. The court will be invited to take proceedings by the prosecutor, if the prosecutor considers proceedings are appropriate.

Conduct of Proceedings

I.13.10 Proceedings under section 6 Bail Act 1976 may be conducted either as a summary offence or as a criminal contempt of court. Where the court is invited to take proceedings by the prosecutor, the prosecutor will conduct the proceedings and, if the matter is contested, call the evidence. Where the court initiates proceedings without such an invitation the same role can be played by the prosecutor at the request of the court, where this is practicable.

I.13.11 The burden of proof is on the defendant to prove that he had reasonable cause for his failure to surrender to custody (s6 (3) Bail Act 1976).

Proceedings to be progressed to disposal as soon as is practicable

I.13.12 If the court decides to proceed, the section 6 Bail Act offence should be concluded as soon as practicable.

Sentencing for a Bail Act offence

I.13.13 In principle, a custodial sentence for the offence of failing to surrender should be ordered to be served consecutively to any other sentence imposed at the same time for another offence unless there are circumstances that make this inappropriate (see White & McKinnon).

RELATIONSHIP BETWEEN THE BAIL ACT OFFENCE AND FURTHER

REMANDS ON BAIL OR IN CUSTODY

I.13.14 When a defendant has been convicted of a Bail Act offence, the court should review the remand status of the defendant, including the conditions of that bail, in respect of the main proceedings for which bail had been granted.

I.13.15 Failure by the defendant to surrender or a conviction for failing to surrender to bail in connection with the main proceedings will be significant factors weighing against the re-granting of bail or, in the case of offences which do not normally give rise to a custodial sentence, in favour of trial in the absence of the offender.

I.13.16 Whether or not an immediate custodial sentence has been imposed for the Bail Act offence, the court may, having reviewed the defendant's remand status, also remand the defendant in custody in the main proceedings.

TRIALS IN ABSENCE

I.13.17 A defendant has a right, in general, to be present and to be represented at his trial. However, a defendant may choose not to exercise those rights by voluntarily absenting himself and failing to instruct his lawyers adequately so that they can represent him and, in the case of proceedings before the Magistrates' court, there is an express statutory power to hear trials in the defendant's absence (s11 of the Magistrates' Courts Act 1980). In such circumstances, the court has discretion whether the trial should take place in his/her absence.

I.13.18 The court must exercise its discretion to proceed in the absence of the defendant with the utmost care and caution. The overriding concern must be to ensure that such a trial is as fair as circumstances permit and leads to a just outcome.

I.13.19 Due regard should be had to the judgment of Lord Bingham in *R v Jones* [2003] AC 1, [2002] 2 AER 113 in which Lord Bingham identified circumstances to be taken into account before proceeding, which include: the conduct of the defendant, the disadvantage to the defendant, public interest, the effect of any delay and whether the attendance of the defendant could be secured at a later hearing. Other relevant considerations are the seriousness of the offence and likely outcome if the defendant is found guilty. If the defendant is only likely to be fined for a summary offence this can be relevant since the costs that a defendant

might otherwise be ordered to pay as a result of an adjournment could be disproportionate. In the case of summary proceedings the fact that there can be an appeal that is a complete rehearing is also relevant, as is the power to re-open the case under s142 of the Magistrates' Court Act 1980.

I.14 FORMS

I.14.1 This Practice Direction supplements Part 5 (forms) of the Criminal Procedure Rules.

I.14.2 The forms set out in Annex D, or forms to that effect, are to be used in the criminal courts on or after 4th April, 2005, when the Criminal Procedure Rules come into force. Almost all are identical to those in use before that date, and accordingly a form in use before that date which corresponds with one set out in Annex D may still be used in connection with the rule to which it applies.

I.14.3 The table at the beginning of Annex D lists the forms set out in that Annex and—

- shows the rule in connection with which each form applies
- describes each form
- in the case of a form in use before the Criminal Procedure Rules came into force, shows the legislation by which the form was prescribed and by what number (if any) it was known.

PART II: FURTHER DIRECTIONS APPLYING IN THE COURT OF APPEAL (CRIMINAL DIVISION)

II.1 APPEALS AGAINST SENTENCE – THE PROVISION OF NOTICE TO THE PROSECUTION

II.1.1 The Registrar of Criminal Appeals will notify the relevant prosecution authority in the event that:

(a) leave to appeal against sentence is granted by the single Judge; or

(b) the single Judge or the Registrar refers an application for leave to appeal against sentence to the Full Court for determination; or

(c) the Registrar becomes aware that Counsel for the applicant will be appearing at a renewed application for leave to appeal against sentence.

II.1.2 The Prosecution will have 7 days from the grant of leave by the single Judge or the referral by the Registrar to notify the Registrar if they wish to be represented at the hearing OR to request sight of the grounds of appeal and/or any comments made by the single Judge when granting leave or referring the case to the Full Court. Upon such a request, the prosecution will have a further 7 days from receipt to notify the Registrar if they wish to be represented at the hearing.

II.1.3 Occasionally, for example, where the single Judge fixes a hearing date at short notice, the Registrar may have to foreshorten the period specified in II.1.2 above.

II.1.4 In relation to (c) in paragraph II.1.1, the prosecution will have 72 hours or, if the case is listed, 48 hours, to notify the Registrar that they wish to be represented at the hearing. Should the prosecution require sight of the grounds of appeal and the single Judge's comments, such a request should be made as expeditiously as possible.

II.1.5 If the prosecution wishes to be represented at any hearing, the notification should include details of Counsel instructed, a time estimate and an indication whether a skeleton argument will be lodged no later than 14 days before the hearing (or such shorter period as may be necessary). If a skeleton argument is to be lodged, it must be served on the Court and the applicant/appellant.

II.1.6 An application by the prosecution to remove a case from the list for Counsel's convenience, or to allow further preparation time, will rarely be granted.

II.1.7 There may be occasions when the Court of Appeal Criminal Division will grant leave to appeal to an unrepresented applicant and proceed forthwith with the appeal in the absence of the appellant and Counsel. In those circumstances there will be no opportunity to notify the prosecution.

II.1.8 As a Court of Review, the Court of Appeal Criminal Division would expect the prosecution to have raised any specific matters of relevance with the sentencing Judge in the first instance.

II.1.9 When the prosecution attend a hearing as a result of this Practice Direction, the prosecution should not volunteer assistance in relation to any unrepresented applicant.

II.1.10 This Direction will come into force as from 10 November 2003.

II.1.11 The Prosecution are already invited to appear and respond, as a matter of course, in appeals against Confiscation Orders and where the Court is considering issuing sentencing guidelines. This practice will continue without change.

II.1.12 This Practice Direction replaces the existing protocol whereby the prosecution were responsible for lodging a letter of interest with the Registrar of Criminal Appeals via the Crown Court.

II. 2 LISTING OF APPEALS AGAINST CONVICTION AND SENTENCE IN THE CACD

II.2.1 Arrangements for the fixing of dates for the hearing of appeals will be made by the Criminal Appeal Office Listing Officer, under the superintendence of the Registrar of Criminal Appeals who may give such directions as he deems necessary.

II.2.2 Where possible, regard will be had to an advocate's existing commitments. However, in relation to the listing of appeals, the Court of Appeal takes precedence over all lower courts, including the Crown Court. Wherever practicable a lower court will have regard to this principle when making arrangements to release an advocate to appear in the Court of Appeal. In case of difficulty the lower court should communicate with the Registrar. In general an advocate's commitment in a lower court will not be regarded as a good reason for failing to accept a date proposed for a

hearing in the Court of Appeal.

II.2.3 The copy of the Criminal Appeal Office summary provided to advocates will contain the summary writer's time estimate for the whole hearing including delivery of judgment. The Listing Officer will rely on that estimate unless the advocate for the appellant or the Crown provides a different time estimate to the Listing Officer, in writing, within 7 days of the receipt of the summary by the advocate. Where the time estimate is considered by an advocate to be inadequate, or where the estimate has been altered because, for example, a ground of appeal has been abandoned, it is the duty of the advocate to inform the Court promptly, in which event the Registrar will reconsider the time estimate and inform the parties accordingly.

II.2.4 In furtherance of the Court's aim of continuing to improve the service provided to appellants and respondents the following target times will be set for the hearing of appeals. Target times will run from the receipt of the appeal by the Listing Officer, as being ready for hearing. These arrangements will apply to appeals so received on and after 22nd March 2004.

II.2.5

NATURE OF APPEAL	FROM RECEIPT BY LISTING OFFICER TO FIXING OF HEARING DATE	FROM FIXING OF HEARING DATE TO HEARING	TOTAL TIME FROM RECEIPT BY LISTING OFFICER TO HEARING
Sentence Appeal	14 days	14 days	28 days
Conviction			

Appeal	21 days	42 days	63 days
Conviction Appeal where witness to attend	28 days	52 days	80 days

II.2.6 Where legal vacations impinge these periods may be extended. Where expedition is required, the Registrar may direct that these periods be abridged.

II.2.7 “Appeal” includes an application for leave to appeal which requires an oral hearing.

II.13 MODE OF ADDRESSING THE COURT

II.13.1 Judges of the Court of Appeal and of the High Court are addressed as "My Lord" or "My Lady"; so are Circuit Judges sitting as judges of the High Court under section 9 of the Supreme Court Act 1981.

II.14 NOTICES OF APPEAL AND OF APPLICATIONS FOR LEAVE TO APPEAL

II.14.1 These are to be served on the Crown Court at the centre where the proceedings took place. The Crown Court will forward them to the Criminal Appeal Office together with the trial documents and any others which may be required.

II.15 GROUNDS OF APPEAL

II.15.1 Advocates should not settle grounds or support them with written advice unless they consider that they are properly arguable. Grounds should be carefully drafted and properly particularised. Advocates should not assume that the Court will entertain any ground of appeal not set out and properly particularised. Should leave to amend the grounds be granted it is most unlikely that further grounds will be entertained.

II.15.2 A copy of the advocate’s positive advice about the merits should be

attached as part of the grounds.

II.16 LOSS OF TIME

II.16.1 Both the Court and the single judge have power in their discretion to direct that part of the time during which an applicant is in custody after putting in his notice of application for leave to appeal should not count towards sentence. Those who contemplate putting in such a notice and their legal advisers should bear this in mind. It is important that those contemplating an appeal should seek advice and should remember that it is useless to appeal without grounds and that grounds should be substantial and particularised and not a mere formula. Where an application devoid of merit has been refused by the single judge and a direction for loss of time has been made, the Full Court, on renewal of the application, may direct that additional time shall be lost if it, once again, thinks it right so to exercise its discretion in all the circumstances of the case.

II.17 SKELETON ARGUMENTS

II.17.1 In all appeals against conviction a skeleton argument from the advocate for the appellant is to be lodged with the Registrar of Criminal Appeals and served on the prosecuting authority within 14 days of receipt by the advocate of the notification of the grant of leave to appeal against conviction or such longer period as the Registrar or the Court may direct. The skeleton may refer to an advice, which should be annexed with an indication of which parts of it are relied upon, and should include any additional arguments to be advanced.

II.17.2 The advocate for the prosecuting authority should lodge with the Registrar and the advocate for the appellant his skeleton argument within 14 days of the receipt of the skeleton argument for the appellant or such longer (or, in exceptional cases, shorter) period as the Registrar or the Court may direct.

II.17.3 Practitioners should ensure that, where reliance is placed upon unreported cases in skeleton arguments, short head notes are included.

II.17.4 Advocates should ensure that the correct Criminal Appeal Office number appears at the beginning of their skeleton arguments and that their names are at the end.

II.17.5 A skeleton argument should contain a numbered list of the points the advocate intends to argue, grouped under each ground of appeal, and

stated in no more than one or two sentences. It should be as succinct as possible, the object being to identify each point, not to argue it or elaborate on it. Each listed point should be followed by full references to the material to which the advocate will refer in support of it, i.e. the relevant passages in the transcripts, authorities, etc. It should also contain anything the advocate would expect to be taken down by the Court during the hearing, such as propositions of law, chronologies, etc. If more convenient, these can be annexed to the skeletons rather than included in it. For points of law, the skeleton should state the point and cite the principal authority or authorities in support with reference to the passages where the principle is enunciated. Chronologies should, if possible, be agreed with the opposing advocate before the hearing. Respondents' skeletons should follow the same principles.

II.18 CRIMINAL APPEAL OFFICE SUMMARIES

II.18.1 To assist the Court the Criminal Appeal Office prepares summaries of the cases coming before it. These are entirely objective and do not contain any advice about how the Court should deal with the case or any view about its merits. They consist of two Parts.

II.18.2 Part I, which is provided to all of the advocates in the case, generally contains (a) particulars of the proceedings in the Crown Court, including representation and details of any co-accused, (b) particulars of the proceedings in the Court of Appeal (Criminal Division), (c) the facts of the case, as drawn from the transcripts, advice of the advocates, witness statements and/or the exhibits, (d) the submissions and rulings, summing up and sentencing remarks. Should an advocate not want any factual material in his advice taken into account this should be stated in the advice.

II.18.3 The contents of the summary are a matter for the professional judgment of the writer, but an advocate wishing to suggest any significant alteration to Part I should write to the Registrar of Criminal Appeals. If the Registrar does not agree, the summary and the letter will be put to the Court for decision. The Court will not generally be willing to hear oral argument about the content of the summary.

II.18.4 Advocates may show Part I of the summary to their professional or lay clients (but to no one else) if they believe it would help to check facts or formulate arguments, but summaries are not to be copied or reproduced without the permission of the Criminal Appeal Office; permission for this

will not normally be given in cases involving children or sexual offences or where the Crown Court has made an order restricting reporting.

II.18.5 Unless a judge of the High Court or the Registrar of Criminal Appeals gives a direction to the contrary in any particular case involving material of an explicitly salacious or sadistic nature, Part I will also be supplied to appellants who seek to represent themselves before the Full Court or who renew to the full court their applications for leave to appeal against conviction or sentence.

II.18.6 Part II, which is supplied to the Court alone, contains (a) a summary of the grounds of appeal and (b) in appeals against sentence (and applications for such leave), summaries of the antecedent histories of the parties and of any relevant pre-sentence, medical or other reports.

II.18.7 All of the source material is provided to the Court and advocates are able to draw attention to anything in it which may be of particular relevance.

II.19 CITATION OF JUDGMENTS IN COURT

II.19.1 Reference should be made to paragraph 10.1 of Practice Direction (Court of Appeal (Civil Division)) [1999] 1 WLR 1027; [1999] 2 All ER 490.

II.20 CITATION OF HANSARD

II.20.1 Where any party intends to refer to the reports of Parliamentary proceedings as reported in the Official Reports of either House of Parliament ("Hansard") in support of any such argument as is permitted by the decisions in *Pepper v Hart* [1993] AC 593 and *Pickstone v Freeman* [1989] AC 66 or otherwise he must, unless the Court otherwise directs, serve upon all other parties and the Court copies of any such extract together with a brief summary of the argument intended to be based upon such extract. No other report of Parliamentary proceedings may be cited.

II.20.2 Unless the Court otherwise directs, service of the extract and summary of the argument shall be effected not less than 5 clear working days before the first day of the hearing, whether or not it has a fixed date. Advocates must keep themselves informed as to the state of the lists where no fixed date has been given. Service on the Court shall be effected by sending three copies to the Registrar of Criminal Appeals, Room C212, Royal Courts of Justice, Strand, London WC2 A 2LL. If any party fails to do so the Court may make such order (relating to costs or otherwise) as is in all

the circumstances appropriate.

PART III: FURTHER DIRECTIONS APPLYING IN THE CROWN COURT AND MAGISTRATES' COURTS

III.21 CLASSIFICATION OF CROWN COURT BUSINESS AND ALLOCATION TO CROWN COURT CENTRES

Classification

III.21.1 For the purposes of trial in the Crown Court offences are classified as follows:

Class 1:

(a) Misprision of treason and treason felony;
(b) Murder;
(c) Genocide;
(d) Torture, hostage-taking and offences under the War Crimes Act 1991;
(e) An offence under the Official Secrets Acts;
(f) Manslaughter;
(g) Infanticide;
(h) Child destruction;
(i) Abortion (section 58 of the Offences against the Person Act 1861);
(j) Sedition;
(k) An offence under section 1 of the Geneva Conventions Act 1957;
(l) Mutiny;
(m) Piracy;
(n) Soliciting, incitement, attempt or conspiracy to commit any of the above offences.

Class 2:

(a) Rape;
(b) Sexual intercourse with a girl under 13;
(c) Incest with girl under 13;
(d) Assault by penetration;
(e) Causing a person to engage in sexual activity, where penetration is involved;
(f) Rape of a child under 13;
(g) Assault of a child under 13 by penetration;
(h) Causing or inciting a child under 13 to engage in sexual activity, where penetration is involved;
(i) Sexual activity with a person with a mental disorder, where

penetration is involved;

(j) Inducement to procure sexual activity with a mentally disordered person where penetration is involved;

(k) Paying for sexual services of a child where child is under 13 and penetration is involved;

(l) Committing an offence with intent to commit a sexual offence, where the offence is kidnapping or false imprisonment;

(m) Soliciting, incitement, attempt or conspiracy to commit any of the above offences.

Class 3:
All other offences not listed in classes 1 or 2.

Cases committed, transferred or sent for trial

III.21.2 The magistrates' court, upon either committing a person for trial under section 6 of the Magistrates' Courts Act 1980, or sending a person under section 51 of the Crime and Disorder Act 1998, shall:

(a) if the offence or any of the offences is included in Class 1, specify the most convenient location of the Crown Court where a High Court Judge, or, where a Circuit Judge duly authorised by the Lord Chief Justice to try class 1 cases, regularly sits.

(b) if the offence or any of the offences is included in Class 2, specify the most convenient location of the Crown Court where a Judge duly authorised to try Class 2 regularly sits. These courts on each Circuit will be identified by the Presiding Judges, with the concurrence of the Lord Chief Justice.

(c) where an offence is in Class 3 the magistrates' court shall specify the most convenient location of the Crown Court.

Where a case is transferred under section 4 of the Criminal Justice Act 1987 or section 53 of the Criminal Justice Act 1991, the authority shall, in specifying the proposed place of trial in the notice of transfer, comply with the provisions of this paragraph.

III.21.3 In selecting the most convenient location of the Crown Court the justices shall have regard to the considerations referred to in section 7 of the Magistrates' Courts Act 1980 and section 51(10) of the Crime and Disorder Act 1998 and the location or locations of the Crown Court

designated by a Presiding Judge as the location to which cases should normally be committed from their court.

III.21.4 Where on one occasion a person is committed in respect of a number of offences all the committals shall be to the same location of the Crown Court and that location shall be the one where a High Court Judge regularly sits if such a location is appropriate for any of the offences.

Committals following breach

III.21.5 Where, in the Crown Court, a community order or an order for conditional discharge has been made, or a suspended sentence has been passed, and the offender is subsequently found or alleged to be in breach before a magistrates' court which decides to commit the offender to the Crown Court, he shall be committed in accordance with paragraphs III.21.6, III.21.7 or III.21.8

III.21.6 He shall be committed to the location of the Crown Court where the order was made or the suspended sentence was passed, unless it is inconvenient, impracticable or inappropriate to do so in all the circumstances.

III.21.7 If, for whatever reason, he is not so committed and the order was made or sentence passed by a High Court Judge, he shall be committed to the most convenient location of the Crown Court where a High Court Judge regularly sits.

III.21.8 In all other cases he shall be committed to the most convenient location of the Crown Court.

III.21.9 In selecting the most convenient location of the Crown Court, the justices shall have regard to the locations of the Crown Court designated by a Presiding Judge as the locations to which cases should normally be committed from their court.

Notice of transfer in cases of serious or complex fraud

III.21.10 Where a notice of transfer is served under section 4 of the Criminal Justice Act 1987 the proposed place of trial to be specified in the notice shall be one of the Crown Court centres designated by the Senior Presiding Judge.

Notice of transfer in child witness cases

III.21.11 Where a notice of transfer is served under section 53 of the Criminal Justice Act 1991 (child witness cases) the proposed place of trial to be specified in accordance with paragraph 1(1) of Schedule 6 to the Act shall be a Crown Court centre which is equipped with live television link facilities.

III.22 APPLICATIONS FOR EVIDENCE TO BE GIVEN IN WELSH

III.22.1 If a defendant in a court in England asks to give or call evidence in the Welsh language the case should not be transferred to Wales. In ordinary circumstances interpreters can be provided on request.

III.23 USE OF THE WELSH LANGUAGE IN COURTS IN WALES

III.23.1 The purpose of this direction is to reflect the principle of the Welsh Language Act 1993 that in the administration of justice in Wales the English and Welsh languages should be treated on a basis of equality.

General

III.23.2 It is the responsibility of the legal representatives in every case in which the Welsh language may be used by any witness or party or in any document which may be placed before the court to inform the court of that fact so that appropriate arrangements can be made for the listing of the case.

III.23.3 If the possible use of the Welsh language is known at the time of committal, transfer or appeal to the Crown Court, the court should be informed immediately after committal or transfer or when the notice of appeal is lodged. Otherwise the court should be informed as soon as possible use of the Welsh language becomes known.

III.23.4 If costs are incurred as a result of failure to comply with these directions, a wasted costs order may be made against the defaulting party and/or his legal representatives.

III.23.5 The law does not permit the selection of jurors in a manner which enables the court to discover whether a juror does or does not speak Welsh or to secure a jury whose members are bilingual to try a case in which the Welsh language may be used.

Plea and directions hearings

III.23.6 An advocate in a case in which the Welsh language may be used must raise that matter at the plea and directions hearing and endorse details of it on the judge's questionnaire so that appropriate directions may be given for the progress of the case.

Listing

III.23.7 The listing officer, in consultation with the resident judge, should ensure that a case in which the Welsh language may be used is listed (a) wherever practicable before a Welsh speaking judge, and (b) in a court in Wales with simultaneous translation facilities.

Interpreters

III.23.8 Whenever an interpreter is needed to translate evidence from English into Welsh or from Welsh into English, the court manager in whose court the case is to be heard shall ensure that the attendance is secured of an interpreter whose name is included in the list of approved court interpreters.

Jurors

III.23.9 The jury bailiff when addressing the jurors at the start of their period of jury service shall inform them that each juror may take an oath or affirm in Welsh or English as he wishes.

III.23.10 After the jury has been selected to try a case, and before it is sworn, the court officer swearing in the jury shall inform the jurors in open court that each juror may take an oath or affirm in Welsh or English as he wishes.

Witnesses

III.23.11 When each witness is called the court officer administering the oath or affirmation shall inform the witness that he may be sworn or affirm Welsh or English as he wishes.

Opening/closing of courts

III.23.12 Unless it is not reasonably practicable to do so, the opening and closing of the court should be performed in Welsh and English.

Role of liaison judge

III.23.13 If any question or problem arises concerning the implementation of paragraphs III.23.1-III.23.12, contact should in the first place be made with the liaison judge for Welsh language matters on circuit.

III.24 EVIDENCE BY WRITTEN STATEMENT

III.24.1 Where the prosecution proposes to tender written statements in evidence either under sections 5A and 5B of the Magistrates' Courts Act 1980 or section 9 of the Criminal Justice Act 1967 it will frequently be not only proper, but also necessary for the orderly presentation of the evidence, for certain statements to be edited. This will occur either because a witness has made more than one statement whose contents should conveniently be reduced into a single, comprehensive statement or where a statement contains inadmissible, prejudicial or irrelevant material. Editing of statements should in all circumstances be done by a Crown Prosecutor (or by a legal representative, if any, of the prosecutor if the case is not being conducted by the Crown Prosecution Service) and not by a police officer.

Composite statements

III.24.2 A composite statement giving the combined effect of two or more earlier statements or settled by a person referred to in paragraph III.24.1 must be prepared in compliance with the requirements of sections 5A and 5B of the 1980 Act or section 9 of the 1967 Act as appropriate and must then be signed by the witness.

Editing single statements

III.24.3 There are two acceptable methods of editing single statements.

(a) By marking *copies* of the statement in a way which indicates the passages on which the prosecution will not rely. This merely indicates that the prosecution will not seek to adduce the evidence so marked. The *original signed statement* to be tendered to the court is not marked in any way. The marking on the copy statement is done by lightly striking out the passages to be edited so that what appears beneath can still be read, or by bracketing, or by a combination of both. It is not permissible to produce a photocopy with the deleted material obliterated, since this would be contrary to the requirement

that the defence and the court should be served with copies of the signed original statement. Whenever the striking out/bracketing method is used, it will assist if the following words appear at the foot of the frontispiece or index to any bundle of copy statements to be tendered: 'The prosecution does not propose to adduce evidence of those passages of the attached copy statements which have been struck out and/or bracketed (nor will it seek to do so at the trial unless a notice of further evidence is served).'

(b) By obtaining a fresh statement, signed by the witness, which omits the offending material, applying the procedure in paragraph III.24.2.

III.24.4 In most cases where a single statement is to be edited, the striking out/bracketing method will be the more appropriate, but the taking of a fresh statement is preferable in the following circumstances:

(a) When a police (or other investigating) officer's statement contains details of interviews with more suspects than are eventually charged, a fresh statement should be prepared and signed omitting all details of interview with those not charged except, insofar as it is relevant, for the bald fact that a certain named person was interviewed at a particular time, date and place.

(b) When a suspect is interviewed about more offences than are eventually made the subject of committal charges, a fresh statement should be prepared and signed omitting all questions and answers about the uncharged offences unless either they might appropriately be taken into consideration or evidence about those offences is admissible on the charges preferred, such as evidence of system. It may, however, be desirable to replace the omitted questions and answers with a phrase such as: 'After referring to some other matters, I then said … ', so as to make it clear that part of the interview has been omitted.

(c) A fresh statement should normally be prepared and signed if the only part of the original on which the prosecution is relying is only a small proportion of the whole, although it remains desirable to use the alternative method if there is reason to believe that the defence might itself wish to rely, in mitigation or for any other purpose, on at least some of those parts which the prosecution does not propose to adduce.

(d) When the passages contain material which the prosecution is entitled to withhold from disclosure to the defence.

III.24.5 Prosecutors should also be aware that, where statements are to be tendered under section 9 of the 1967 Act in the course of *summary* proceedings, there will be a need to prepare fresh statements excluding inadmissible or prejudicial material rather than using the striking out or bracketing method.

III.24.6 None of the above principles applies, in respect of committal proceedings, to documents which are exhibited (including statements under caution and signed contemporaneous notes). Nor do they apply to oral statements of a defendant which are recorded in the witness statements of interviewing police officers, except in the circumstances referred to in paragraph III.24.4(b). All this material should remain in its original state in the committal bundles, any editing being left to prosecuting counsel at the Crown Court (after discussion with defence counsel and, if appropriate, the trial judge).

III.24.7 Whenever a fresh statement is taken from a witness, a copy of the earlier, unedited statement(s) of that witness will be given to the defence in accordance with the Attorney General's guidelines on the disclosure of unused material (*Practice Note* [1982] 1 All ER 734) unless there are grounds under paragraph 6 of the guidelines for withholding such disclosure.

III.25 BAIL DURING TRIAL

III.25.1 Paragraphs III.25.2 to III.25.5 are to be read subject to the Bail Act 1976, especially section 4.

III.25.2 Once a trial has begun the further grant of bail, whether during the short adjournment or overnight, is in the discretion of the trial judge. It may be a proper exercise of this discretion to refuse bail during the short adjournment if the accused cannot otherwise be segregated from witnesses and jurors.

III.25.3 An accused who was on bail while on remand should not be refused overnight bail during the trial unless in the opinion of the judge there are positive reasons to justify this refusal. Such reasons are likely to be:

(a) that a point has been reached where there is a real danger that the accused will abscond, either because the case is going badly for him, or for any other reason;
(b) that there is a real danger that he may interfere with witnesses or

jurors.

III.25.4 There is no universal rule of practice that bail shall not be renewed when the summing-up has begun. Each case must be decided in the light of its own circumstances and having regard to the judge's assessment from time to time of the risks involved.

III.25.5 Once the jury has returned a verdict a further renewal of bail should be decided in the light of the gravity of the offence and the likely sentence to be passed in all the circumstances of the case.

III.26 FACTS TO BE STATED ON PLEAS OF GUILTY

III.26.1 To enable the press and the public to know the circumstances of an offence of which an accused has been convicted and for which he is to be sentenced, in relation to each offence to which an accused has pleaded guilty the prosecution shall state those facts in open court before sentence is imposed.

III.27 ANTECEDENTS

Standard for the provision of information of antecedents in the Crown Court and magistrates' courts

III.27.1 In the Crown Court the police will provide brief details of the circumstances of the last three similar convictions and/or of convictions likely to be of interest to the court, the latter being judged on a case by case basis. This information should be provided separately and attached to the antecedents as set out below.

III.27.2 Where the current alleged offence could constitute a breach of an existing community order, e.g. community rehabilitation order, and it is known that that order is still in force then, to enable the court to consider the possibility of revoking that order, details of the circumstances of the offence leading to the community order should be included in the antecedents as set out below.

Preparation of antecedents and standard formats to be used

III.27.3 In magistrates' courts and the Crown Court:

Personal details and summary of convictions and cautions – Police

National Computer ["PNC"] Court/Defence/Probation Summary Sheet;

Previous convictions – PNC Court/Defence/Probation printout, supplemented by Form MG16 if the police force holds convictions not shown on PNC;

Recorded cautions – PNC Court/Defence/Probation printout, supplemented by Form MG17 if the police force holds cautions not shown on PNC.

and, in addition, in the Crown Court:

Circumstances of the last three similar convictions;

Circumstances of offence leading to a community order still in force;

Form MG(c). The detail should be brief and include the date of the offence.

Provision of antecedents to the court and parties

Crown Court

III.27.4 The Crown Court antecedents will be prepared by the police immediately following committal proceedings, including committals for sentence, transfers under section 4 of the Criminal Justice Act 1987 or section 53 of the Criminal Justice Act 1991 or upon receipt of a notice of appeal, excluding non-imprisonable motoring offences.

III.27.5 Seven copies of the antecedents will be prepared in respect of each defendant. Two copies are to be provided to the Crown Prosecution Service ["CPS"] direct, the remaining five to be sent to the Crown Court. The court will send one copy to the defence and one to the Probation Service. The remaining copies are for the court's use. Where following conviction a custodial order is made one copy is to be attached to the order sent to the prison.

III.27.6 The antecedents must be provided, as above, within 21 days of committal or transfer in each case. Any points arising from them are to be raised with the police by the defence solicitor as soon as possible and, where there is time, at least seven days before the hearing date so that the matter can be resolved prior to that hearing.

III.27.7 Seven days before the hearing date the police will check the record of convictions. Details of any additional convictions will be provided using the standard format above. These will be provided as above and attached to the documents already supplied. Details of any additional outstanding cases will also be provided at this stage.

Magistrates' courts

III.27.8 The magistrates' court antecedents will be prepared by the police and submitted to the CPS with the case file.

III.27.9 Five copies of the antecedents will be prepared in respect of each defendant and provided to the CPS who will be responsible for distributing them to others at the sentencing hearing. Normally two copies will be provided to the court, one to the defence and one to the Probation Service when appropriate. Where following conviction a custodial order is made, one of the court's copies is to be attached to the order sent to the prison.

III.27.10 In instances where antecedents have been provided to the court some time before the hearing the police will, if requested to do so by the CPS, check the record of convictions. Details of any additional convictions will be provided using the standard format above. These will be provided as above and attached to the documents already supplied. Details of any additional outstanding cases will also be provided at this stage.

III.27.11 The above arrangements whereby the police provide the antecedents to the CPS for passing on to others will apply unless there is a local agreement between the CPS and the court that alters that arrangement.

III.28 PERSONAL STATEMENTS OF VICTIMS

III.28.1 This section draws attention to a scheme, which started on 1 October 2001, to give victims a more formal opportunity to say how a crime has affected them. It may help to identify whether they have a particular need for information, support and protection. It will also enable the court to take the statement into account when determining sentence.

III.28.2 When a police officer takes a statement from a victim the victim will be told about the scheme and given the chance to make a victim personal statement. A victim personal statement may be made or updated at any

time prior to the disposal of the case. The decision about whether or not to make a victim personal statement is entirely for the victim. If the court is presented with a victim personal statement the following approach should be adopted:

(a) The victim personal statement and any evidence in support should be considered and taken into account by the court prior to passing sentence.
(b) Evidence of the effects of an offence on the victim contained in the victim personal statement or other statement, must be in proper form, that is a witness statement made under section 9 of the Criminal Justice Act 1967 or an expert's report, and served upon the defendant's solicitor or the defendant, if he is not represented, prior to sentence. Except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencer must not make assumptions unsupported by evidence about the effects of an offence on the victim.
(c) The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, so far as the court considers it appropriate, the consequences to the victim. The opinions of the victim or the victim's close relatives as to what the sentence should be are therefore not relevant, unlike the consequence of the offence on them. Victims should be advised of this. If, despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them.
(d) The court should consider whether it is desirable in its sentencing remarks to refer to the evidence provided on behalf of the victim.

III.29 SUPPORT FOR WITNESSES GIVING EVIDENCE BY LIVE TELEVISION LINK

III.29.1 This section of the Practice Direction is made pursuant to Rule 7 of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002 and Rule 7 of the Magistrates' Courts (Special Measures Directions) Rules 2002 and supersedes previous guidance given by the Senior Presiding Judges, Lord Justice Tasker Watkins in 1991 and Lord Justice Auld in 1998.

III.29.2 An increased degree of flexibility is now appropriate as to who can act as supporter of a witness giving evidence by live television link. Where a special measures direction is made enabling a vulnerable, intimidated or

child witness to give evidence by means of a live television link, the trial judge will make a direction as to the identity of the witness supporter. Where practical, the direction will be made before the trial commences. In giving the direction, the trial judge will balance all relevant interests – see paragraph 1.11 of the guidance "*Achieving Best Evidence*". The witness supporter should be completely independent of the witness and his or her family and have no previous knowledge of or personal involvement in the case. The supporter should also be suitably trained so as to understand the obligations of, and comply with, the National Standards relating to witness supporters. Providing these criteria are met, the witness supporter need not be an usher or court official. Thus, for example, the functions of the witness supporter may be performed by a representative of the Witness Service.

III.29.3 Where the witness supporter is someone other than the court usher, the usher should continue to be available both to assist the witness and the witness supporter, and to ensure that the judge's requirements are properly complied with in the CCTV room.

III.30 TREATMENT OF VULNERABLE DEFENDANTS

III.30.1 This direction applies to proceedings in the Crown Court and in magistrates' courts on the trial, sentencing or (in the Crown Court) appeal of (a) children and young persons under 18 or (b) adults who suffer from a mental disorder within the meaning of the Mental Health Act 1983 or who have any other significant impairment of intelligence and social function.[1] In this direction such defendants are referred to collectively as "vulnerable defendants". The purpose of this direction is to extend to proceedings in relation to such persons in the adult courts procedures analogous to those in use in youth courts.

III.30.2 The steps which should be taken to comply with paragraphs III.30.3 to III.30.17 should be judged, in any given case, taking account of the age, maturity and development (intellectual, social and emotional) of the defendant concerned and all other circumstances of the case.

<u>The overriding principle</u>

III.30.3 A defendant may be young and immature or may have a mental disorder

[1] This reflects the wording used in section 33A of the Youth Justice and Criminal Evidence Act 1999, as inserted by section 47 of the Police and Justice Act 2006.

within the meaning of the Mental Health Act 1983 or some other significant impairment of intelligence and social function such as to inhibit his understanding of and participation in the proceedings. The purpose of criminal proceedings is to determine guilt, if that is in issue, and decide on the appropriate sentence if the defendant pleads guilty or is convicted. All possible steps should be taken to assist a vulnerable defendant to understand and participate in those proceedings. The ordinary trial process should, so far as necessary, be adapted to meet those ends. Regard should be had to the welfare of a young defendant as required by section 44 of the Children and Young Persons Act 1933, and generally to Parts 1 and 3 of the Criminal Procedure Rules (the overriding objective and the court's powers of case management).

Before the trial, sentencing or appeal

III.30.4 If a vulnerable defendant, especially one who is young, is to be tried jointly with one who is not, the court should consider at the plea and case management hearing, or at a case management hearing in a magistrates' court, whether the vulnerable defendant should be tried on his own and should so order unless of the opinion that a joint trial would be in accordance with Part 1 of the Criminal Procedure Rules (the overriding objective) and in the interests of justice. If a vulnerable defendant is tried jointly with one who is not, the court should consider whether any of the modifications set out in this direction should apply in the circumstances of the joint trial and so far as practicable make orders to give effect to any such modifications.

III.30.5 At the plea and case management hearing, or at a case management hearing in a magistrates' court, the court should consider and so far as practicable give directions on the matters covered in paragraphs III.30.9 to III.30.17.

III.30.6 It may be appropriate to arrange that a vulnerable defendant should visit, out of court hours and before the trial, sentencing or appeal hearing, the courtroom in which that hearing is to take place so that he can familiarise himself with it.

III.30.7 If any case against a vulnerable defendant has attracted or may attract widespread public or media interest, the assistance of the police should be enlisted to try and ensure that the defendant is not, when attending the court, exposed to intimidation, vilification or abuse. Section 41 of the Criminal Justice Act 1925 prohibits the taking of photographs of

defendants and witnesses (among others) in the court building or in its precincts, or when entering or leaving those precincts. A direction informing media representatives that the prohibition will be enforced may be appropriate.

III.30.8 The court should be ready at this stage, if it has not already done so, where relevant to make a reporting restriction under section 39 of the Children and Young Persons Act 1933 or, on an appeal to the Crown Court from a youth court, to remind media representatives of the application of section 49 of that Act. Any such order, once made, should be reduced to writing and copies should on request be made available to anyone affected or potentially affected by it.

The trial, sentencing or appeal hearing

III.30.9 Subject to the need for appropriate security arrangements the proceedings should, if practicable, be held in a courtroom in which all the participants are on the same or almost the same level.

III.30.10 A vulnerable defendant, especially if he is young, should normally, if he wishes, be free to sit with members of his family or others in a like relationship, and with some other suitable supporting adult such as a social worker, and in a place which permits easy, informal communication with his legal representatives. The court should ensure that a suitable supporting adult is available throughout the course of the proceedings.

III.30.11 At the beginning of the proceedings the court should ensure that what is to take place has been explained to a vulnerable defendant in terms he can understand, and at trial in the Crown Court it should ensure in particular that the role of the jury has been explained. It should remind those representing the vulnerable defendant and the supporting adult of their responsibility to explain each step as it takes place, and at trial to explain the possible consequences of a guilty verdict. Throughout the trial the court should continue to ensure, by any appropriate means, that the defendant understands what is happening and what has been said by those on the bench, the advocates and witnesses.

III.30.12 A trial should be conducted according to a timetable which takes full account of a vulnerable defendant's ability to concentrate. Frequent and regular breaks will often be appropriate. The court should ensure, so far as practicable, that the trial is conducted in simple, clear language that the defendant can understand and that cross-examination is conducted by

questions that are short and clear.

III.30.13 A vulnerable defendant who wishes to give evidence by live link in accordance with section 33A of the Youth Justice and Criminal Evidence Act 1999 may apply for a direction to that effect. Before making such a direction the court must be satisfied that it is in the interests of justice to do so, and that the use of a live link would enable the defendant to participate more effectively as a witness in the proceedings. The direction will need to deal with the practical arrangements to be made, including the room from which the defendant will give evidence, the identity of the person or persons who will accompany him, and how it will be arranged for him to be seen and heard by the court.

III.30.14 In the Crown Court robes and wigs should not be worn unless the court for good reason orders that they should. It may be appropriate for the court to be robed for sentencing in a grave case even though it has sat without robes for trial. It is generally desirable that those responsible for the security of a vulnerable defendant who is in custody, especially if he is young, should not be in uniform, and that there should be no recognisable police presence in the courtroom save for good reason.

III.30.15 The court should be prepared to restrict attendance by members of the public in the court room to a small number, perhaps limited to those with an immediate and direct interest in the outcome. The court should rule on any challenged claim to attend.

III.30.16 Facilities for reporting the proceedings (subject to any restrictions under section 39 or 49 of the Children and Young Persons Act 1933) must be provided. But the court may restrict the number of reporters attending in the courtroom to such number as is judged practicable and desirable. In ruling on any challenged claim to attend in the court room for the purpose of reporting the court should be mindful of the public's general right to be informed about the administration of justice.

III.30.17 Where it has been decided to limit access to the courtroom, whether by reporters or generally, arrangements should be made for the proceedings to be relayed, audibly and if possible visually, to another room in the same court complex to which the media and the public have access if it appears that there will be a need for such additional facilities. Those making use of such a facility should be reminded that it is to be treated as an extension of the court room and that they are required to conduct themselves accordingly.

III.30.18 Where the court is called upon to exercise its discretion in relation to any procedural matter falling within the scope of this practice direction but not the subject of specific reference, such discretion should be exercised having regard to the principles in paragraph III.30.3.

III.31 BINDING OVER ORDERS AND CONDITIONAL DISCHARGES

III.31.1 This direction takes into account the judgments of the European Court of Human Rights in *Steel v United Kingdom* (1999) 28 EHRR 603, [1998] Crim. L.R. 893 and in *Hashman and Harrup v United Kingdom* (2000) 30 EHRR 241, [2000] Crim. L.R. 185. Its purpose is to give practical guidance, in the light of those two judgments, on the practice of imposing binding over orders. The direction applies to orders made under the court's common law powers, under the Justices of the Peace Act 1361, under section 1(7) of the Justices of the Peace Act 1968 and under section 115 of the Magistrates' Courts Act 1980. This direction also gives guidance concerning the court's power to bind over parents or guardians under section 150 of the Powers of Criminal Courts (Sentencing) Act 2000 and the Crown Court's power to bind over to come up for judgment. The court's power to impose a conditional discharge under section 12 of the Powers of Criminal Courts (Sentencing) Act 2000 is also covered by this direction.

Binding over to keep the peace

III.31.2 Before imposing a binding over order, the court must be satisfied that a breach of the peace involving violence or an imminent threat of violence has occurred or that there is a real risk of violence in the future. Such violence may be perpetrated by the individual who will be subject to the order or by a third party as a natural consequence of the individual's conduct.

III.31.3 In light of the judgment in *Hashman and Harrup*, courts should no longer bind an individual over "to be of good behaviour". Rather than binding an individual over to "keep the peace" in general terms, the court should identify the specific conduct or activity from which the individual must refrain.

Written order

III.31.4 When making an order binding an individual over to refrain from

specified types of conduct or activities, the details of that conduct or those activities should be specified by the court in a written order served on all relevant parties. The court should state its reasons for the making of the order, its length and the amount of the recognisance. The length of the order should be proportionate to the harm sought to be avoided and should not generally exceed 12 months.

Evidence

III.31.5 Sections 51 to 57 of the Magistrates' Courts Act 1980 set out the jurisdiction of the magistrates' court to hear an application made on complaint and the procedure which is to be followed. This includes a requirement under section 53 to hear evidence and the parties before making any order. This practice should be applied to all cases in the magistrates' court and the Crown Court where the court is considering imposing a binding over order. The court should give the individual who would be subject to the order and the prosecutor the opportunity to make representations, both as to the making of the order and as to its terms. The court should also hear any admissible evidence the parties wish to call and which has not already been heard in the proceedings. Particularly careful consideration may be required where the individual who would be subject to the order is a witness in the proceedings.

III.31.6 Where there is an admission which is sufficient to found the making of a binding over order and/or the individual consents to the making of the order, the court should nevertheless hear sufficient representations and, if appropriate, evidence, to satisfy itself that an order is appropriate in all the circumstances and to be clear about the terms of the order.

III.31.7 Where there is an allegation of breach of a binding over order and this is contested, the court should hear representations and evidence, including oral evidence, from the parties before making a finding.

Burden of proof

III.31.8 The court should be satisfied beyond reasonable doubt of the matters complained of before a binding over order may be imposed. Where the procedure has been commenced on complaint, the burden of proof rests on the complainant. In all other circumstances, the burden of proof rests upon the prosecution.

III.31.9 Where there is an allegation of breach of a binding over order, the court

should be satisfied beyond reasonable doubt that a breach has occurred before making any order for forfeiture of a recognisance. The burden of proof shall rest on the prosecution.

Recognisance

III.31.10 The court must be satisfied on the merits of the case that an order for binding over is appropriate and should announce that decision before considering the amount of the recognisance. The individual who is made subject to the binding over order should be told he has a right of appeal from the decision.

III.31.11 When fixing the amount of the recognisance, courts should have regard to the individual's financial resources and should hear representations from the individual or his legal representatives regarding finances.

Refusal to enter into a recognisance

III.31.12 If there is any possibility that an individual will refuse to enter a recognisance, the court should consider whether there are any appropriate alternatives to a binding over order (for example, continuing with a prosecution). Where there are no appropriate alternatives and the individual continues to refuse to enter into the recognisance, the magistrates' court may use its power under section 115(3) of the Magistrates Court Act 1980, and the Crown Court may use its common law power, to commit the individual to custody.

III.31.13 Before the court exercises a power to commit the individual to custody, the individual should be given the opportunity to see a duty solicitor or another legal representative and be represented in proceedings if the individual so wishes. Public funding should generally be granted to cover representation.

III.31.14 In the event that the individual does not take the opportunity to seek legal advice, the court shall give the individual a final opportunity to comply with the request and shall explain the consequences of a failure to do so.

Antecedents

III.31.15 Courts are reminded of the provisions of section 7(5) of the Rehabilitation of Offenders Act 1974 which excludes from a person's antecedents any order of the court "with respect to any person otherwise than on a

conviction".

Binding over to come up for judgment

III.31.16 If the Crown Court is considering binding over an individual to come up for judgment, the court should specify any conditions with which the individual is to comply in the meantime and not specify that the individual is to be of good behaviour.

Binding over of parent or guardian

III.31.17 Where a court is considering binding over a parent or guardian under section 150 of the Powers of Criminal Courts (Sentencing) Act 2000 to enter into a recognisance to take proper care of and exercise proper control over a child or young person, the court should specify the actions which the parent or guardian is to take.

Security for good behaviour

III.31.18 Where a court is imposing a conditional discharge under section 12 of the Powers of Criminal Courts (Sentencing) Act 2000, it has the power, under section 12(6) to make an order that a person who consents to do so give security for the good behaviour of the offender. When making such an order, the court should specify the type of conduct from which the offender is to refrain.

PART IV: FURTHER DIRECTIONS APPLYING IN THE CROWN COURT

IV.30 MODES OF ADDRESS AND TITLES OF JUDGES

Mode of Address

IV.30.1 The following judges, when sitting in court, should be addressed as 'My Lord' or 'My Lady', as the case may be, whatever their personal status:

(a) any Circuit Judge sitting as a judge of the High Court under section 9(1) of the Supreme Court Act 1981;

(b) any judge sitting at the Central Criminal Court;

(c) any Senior Circuit Judge who is the Honorary Recorder of the city in which he sits.

IV.30.2 Subject to paragraph IV.31.1, Circuit Judges, Recorders and Deputy Circuit should be addressed as 'Your Honour' when sitting in court.

Description

IV.30.3 In cause lists, forms and orders members of the judiciary should be described as follows:

(a) Circuit Judges, as 'His [or Her] Honour Judge A' (when the judge is sitting as a judge of the High Court under section 9(1) of the Supreme Court Act 1981 the words 'sitting as a judge of the High Court' should be added);

(b) Recorders, as 'Mr [or Mrs] Recorder B'. This style is appropriate irrespective of any honour or title which the recorder might possess, but if in any case it is desired to include an honour or title the alternative description 'Sir CD, Recorder' or 'The Lord D, Recorder' may be used;

(c) Deputy Circuit Judges, as 'His [or Her] Honour EF, sitting as a Deputy Circuit Judge'

IV.31 TRANSFER OF CASES FROM ONE CIRCUIT TO ANOTHER

IV.31.1 An application that a case be transferred from one Circuit to another should not be granted unless the judge is satisfied that:

(a) the approval of the Presiding Judges and Regional Director for each Region/Circuit has been obtained, or
(b) the case may be transferred under general arrangements approved by the Presiding Judges and Regional Directors.

IV.32 TRANSFER OF PROCEEDINGS BETWEEN LOCATIONS OF THE CROWN COURT

IV.32.1 Without prejudice to the provisions of section 76 of the Supreme Court Act 1981 (committal for trial: alteration of place of trial) directions may be given for the transfer from one location of the Crown Court to another of: (a) appeals; (b) proceedings on committal for sentence or to be dealt with.

IV.32.2 Such directions may be given in a particular case by an officer of the Crown Court, or generally, in relation to a class or classes of case, by the Presiding Judge or a judge acting on his behalf.

IV.32.3 If dissatisfied with such directions given by an officer of the Crown Court, any party to the proceedings may apply to a judge of the Crown Court who may hear the application in chambers.

IV.33 ALLOCATION OF BUSINESS WITHIN THE CROWN COURT

General

IV.33.1 Cases in Class 1 may only be tried by:

(1) a High Court Judge, or
(2) a Circuit Judge or Deputy High Court Judge or Deputy Circuit Judge provided (a) that, in all cases save attempted murder, such judge is authorised by the Lord Chief Justice to try murder cases, or in the case of attempted murder, to try murder or attempted murder, and (b) the Presiding Judge has released the case for trial by such a judge.

IV.33.2 Cases in Class 2 may be tried by:

(1) a High Court Judge
(2) a Circuit Judge or Deputy High Court Judge or Deputy Circuit Judge or a Recorder, provided that in all cases such judge is authorised to

try class 2 cases by the Lord Chief Justice and the case has been assigned to the judge by or under the direction of either the Presiding Judge or Resident Judge in accordance with guidance given by the Presiding Judges.

IV.33.3 Cases in Class 3 may be tried by a High Court Judge, or in accordance with guidance given by the Presiding Judges, a Circuit Judge, a Deputy Circuit Judge or a Recorder. A case in Class 3 shall not be listed for trial by a High Court Judge except with the consent of a Presiding Judge.

IV.33.4 Appeals from decisions of magistrates shall be heard by:

(a) a Resident Judge, or
(b) a Circuit Judge, nominated by the Resident Judge, who regularly sits at the Crown Court centre, or
(c) an experienced Recorder or Deputy Circuit Judge specifically approved by or under the direction of the Presiding Judges for the purpose, or
(d) where no Circuit Judge or Recorder satisfying the requirements above is available and it is not practicable to obtain the approval of the Presiding Judges, by a Circuit Judge, Recorder or Deputy Circuit Judge selected by the Resident Judge to hear a specific case or cases listed on a specific day.

IV.33.5 Committals following breach (such as a matter in which a community order has been made, or a suspended sentence passed) should, where possible, be listed before the judge who originally dealt with the matter, or, if not, before a judge of the same or higher level.

Applications for removal of a driving disqualification

IV.33.6 Application should be made to the location of the Crown Court where the order of disqualification was made.

Absence of Resident Judge

IV.33.7 A Resident Judge must appoint a deputy to exercise his functions when he is absent from his centre.

Guidance issued by the Senior Presiding Judge and the Presiding Judges

IV.33.8 For the just, speedy and economical disposal of the business of the

Circuits or a Circuit, the Senior Presiding Judge or the Presiding Judges, with the approval of the Senior Presiding Judge, may issue guidance to Resident Judges in relation to the allocation and management of the work at their court.

IV.33.9 With the approval of the Senior Presiding Judge, general directions may be given by the Presiding Judges of the South Eastern Circuit concerning the distribution and allocation of business of all classes of case at the Central Criminal Court.

IV.34 SETTLING THE INDICTMENT

IV.34.1 Rule 14.1 of the Criminal Procedure Rules requires the prosecutor to serve a draft indictment not more than 28 days after service of the evidence in a case sent for trial, after the committal of the defendant for trial, or after one of the other events listed in that rule. Rule 14.2(5) provides that an indictment may contain any count charging substantially the same offence as one sent or committed for trial and any other count based on the prosecution evidence already served which the Crown Court has jurisdiction to try. Where the prosecutor intends to include in the draft indictment counts which differ materially from, or are additional to, those on which the defendant was sent or committed for trial then the defendant should be given as much notice as possible, usually by service of a draft indictment, or a provisional draft indictment, at the earliest possible opportunity.

IV.34.2 There is no rule of law or practice which prohibits two indictments being in existence at the same time for the same offence against the same person and on the same facts. But the court will not allow the prosecution to proceed on both indictments. They cannot be tried together and the court will require the prosecution to elect the one on which the trial will proceed. Where different defendants have been separately sent or committed for trial for offences which can lawfully be charged in the same indictment then it is permissible to join in one indictment counts based on the separate sendings or committals for trial even if an indictment based on one of them already has been signed. Where necessary the court should be invited to exercise its powers of amendment under section 5 of the Indictments Act 1915.

IV.34.3 Save in the special circumstances described in the following paragraphs of this Practice Direction, it is undesirable that a large number of counts should be contained in one indictment. Where defendants on trial have a

variety of offences alleged against them then in the interests of effective case management it is the court's responsibility to exercise its powers in accordance with the overriding objective set out in Part 1 of the Criminal Procedure Rules. The prosecution may be required to identify a selection of counts on which the trial should proceed, leaving a decision to be taken later whether to try any of the remainder. Where an indictment contains substantive counts and one or more related conspiracy counts the court will expect the prosecution to justify the joinder. Failing justification the prosecution should be required to choose whether to proceed on the substantive counts or on the conspiracy counts. In any event, if there is a conviction on any counts that are tried then those that have been postponed can remain on the file marked "not to be proceeded with without the leave of the court". In the event that a conviction is later quashed on appeal, the remaining counts can be tried. Where necessary the court has power to order that an indictment be divided and some counts removed to a separate indictment.

Multiple offending: trial by jury and then by judge alone

IV.34.4 Under sections 17 to 21 of the Domestic Violence, Crime and Victims Act 2004 the court may order that the trial of certain counts will be by jury in the usual way and, if the jury convicts, that other associated counts will be tried by judge alone. The use of this power is likely to be appropriate where justice cannot be done without charging a large number of separate offences and the allegations against the defendant appear to fall into distinct groups by reference to the identity of the victim, by reference to the dates of the offences, or by some other distinction in the nature of the offending conduct alleged.

IV.34.5 In such a case it is essential to make clear from the outset the association asserted by the prosecutor between those counts to be tried by a jury and those counts which it is proposed should be tried by judge alone, if the jury convict on the former. A special form of indictment is prescribed for this purpose.

IV.34.6 An order for such a trial may be made only at a preparatory hearing. It follows that where the prosecutor intends to invite the court to order such a trial it will normally be appropriate to proceed as follows. The draft indictment served under Criminal Procedure Rule 14.1(1) should be in the form appropriate to such a trial. It should be accompanied by an application under Criminal Procedure Rule 15.1 for a preparatory hearing. On receipt of such a draft indictment Crown Court staff should not sign it

before consulting a judge, who is likely to direct under Criminal Procedure Rule 14.1(3) that it should not be signed before the prosecutor's application is heard. This will ensure that the defendant is aware at the earliest possible opportunity of what the prosecution propose and of the proposed association of counts in the indictment. It is undesirable for a draft indictment in the usual form to be served where the prosecutor expects to apply for a two stage trial and hence, of necessity, for permission to amend the indictment at a later stage in order that it may be in the special form.

IV.34.7 If the court allows the prosecutor's application for a two stage trial then it will direct the Crown Court officer to sign the draft indictment accordingly. If the court refuses the application then it will give such directions for the preparation and signature of an indictment as may be appropriate.

Multiple offending: count charging more than one incident

IV.34.8 Rule 14.2(2) of the Criminal Procedure Rules allows a single count to allege more than one incident of the commission of an offence in certain circumstances. Each incident must be of the same offence. The circumstances in which such a count may be appropriate include, but are not limited to, the following:

(a) the victim on each occasion was the same, or there was no identifiable individual victim as, for example, in a case of the unlawful importation of controlled drugs or of money laundering;
(b) the alleged incidents involved a marked degree of repetition in the method employed or in their location, or both;
(c) the alleged incidents took place over a clearly defined period, typically (but not necessarily) no more than about a year;
(d) in any event, the defence is such as to apply to every alleged incident without differentiation. Where what is in issue differs between different incidents, a single "multiple incidents" count will not be appropriate, though it may be appropriate to use two or more such counts according to the circumstances and to the issues raised by the defence.

IV.34.9 Even in circumstances such as those set out in paragraph IV.34.8, there may be occasions on which a prosecutor chooses not to use such a count, in order to bring the case within section 75(3)(a) of the Proceeds of Crime Act 2002 (criminal lifestyle established by conviction of three or more offences in the same proceedings): for example, because section 75(2)(c)

of that Act does not apply (criminal lifestyle established by an offence committed over a period of at least six months). Where the prosecutor proposes such a course it is unlikely that Part 1 of the Criminal Procedure Rules (the overriding objective) will require an indictment to contain a single "multiple incidents" count in place of a larger number of counts, subject to the general principles set out in paragraph IV.34.3.

IV.34.10 For some offences, particularly sexual offences, the penalty for the offence may have changed during the period over which the alleged incidents took place. In such a case, additional "multiple incidents" counts should be used so that each count only alleges incidents to which the same maximum penalty applies.

IV.34.11 In some cases, such as money laundering or theft, there will be documented evidence of individual incidents but the sheer number of these will make it desirable to cover them in a single count. Where the indictment contains a count alleging multiple incidents of the commission of such offences, and during the course of the trial it becomes clear that the jury may bring in a verdict in relation to a lesser amount than that alleged by the prosecution, it will normally be desirable to direct the jury that they should return a partial verdict with reference to that lesser amount.

IV.34.12 In other cases, such as sexual or physical abuse, a complainant may be in a position only to give evidence of a series of similar incidents without being able to specify when or the precise circumstances in which they occurred. In these cases, a "multiple incidents" count may be desirable. If on the other hand, the complainant is able to identify particular incidents of the offence by reference to a date or other specific event, but alleges that in addition there were other incidents which the complainant is unable to specify, then it may be desirable to include separate counts for the identified incidents and a "multiple incidents" count or counts alleging that incidents of the same offence occurred "many" times. Using a "multiple incidents" count may be an appropriate alternative to using "specimen" counts in some cases where repeated sexual or physical abuse is alleged. The choice of count will depend on the particular circumstances of the case and should be determined bearing in mind the implications for sentencing set out in *R v Canavan; R v Kidd; R v Shaw* [1998] 1 Cr App R 79.

IV.35 VOLUNTARY BILLS OF INDICTMENT

IV.35.1 Section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933 allows the preferment of a bill of indictment by the direction or with the consent of a judge of the High Court. Bills so preferred are known as voluntary bills.

IV.35.2 Applications for such consent must not only comply with each paragraph of the Indictments (Procedure) Rules 1971, SI 1971/2084, but must also be accompanied by:

(e) a copy of any charges on which the defendant has been committed for trial;
(f) a copy of any charges on which his committal for trial was refused by the magistrates' court;
(g) a copy of any existing indictment which has been preferred in consequence of his committal;
(h) a summary of the evidence or other document which (i) identifies the counts in the proposed indictment on which he has been committed for trial (or which are substantially the same as charges on which he has been so committed), and (ii) in relation to each other count in the proposed indictment, identifies the pages in the accompanying statements and exhibits where the essential evidence said to support that count is to be found;
(i) marginal markings of the relevant passages on the pages of the statements and exhibits identified under (d)(ii).

These requirements should be complied with in relation to each defendant named in the indictment for which consent is sought, whether or not it is proposed to prefer any new count against him.

IV.35.3 The preferment of a voluntary bill is an exceptional procedure. Consent should only be granted where good reason to depart from the normal procedure is clearly shown and only where the interests of justice, rather than considerations of administrative convenience, require it.

IV.35.4 Neither the 1933 Act nor the 1971 Rules expressly require a prosecuting authority applying for consent to the preferment of a voluntary bill to give notice of the application to the prospective defendant or to serve on him a copy of documents delivered to the judge; nor is it expressly required that the prospective defendant have any opportunity to make any submissions to the judge, whether in writing or orally.

IV.35.5 The prosecuting authorities for England and Wales have issued revised guidance to prosecutors on the procedures to be adopted in seeking judicial consent to the preferment of voluntary bills. These procedures direct prosecutors:

(j) on the making of application for consent to preferment of a voluntary bill, forthwith to give notice to the prospective defendant that such application has been made;
(k) at about the same time, to serve on the prospective defendant a copy of all the documents delivered to the judge (save to the extent that these have already been served on him);
(l) to inform the prospective defendant that he may make submissions in writing to the judge, provided that he does so within nine working days of the giving of notice under (a) above. Prosecutors will be directed that these procedures should be followed unless there are good grounds for not doing so, in which case prosecutors will inform the judge that the procedures have not been followed and seek his leave to dispense with all or any of them. Judges should not give leave to dispense unless good grounds are shown

IV.35.6 A judge to whom application for consent to the preferment of a voluntary bill is made will, of course, wish to consider carefully the documents submitted by the prosecutor and any written submissions timeously made by the prospective defendant, and may properly seek any necessary amplification. The judge may invite oral submissions from either party, or accede to a request for an opportunity to make such oral submissions, if the judge considers it necessary or desirable to receive such oral submissions in order to make a sound and fair decision on the application. Any such oral submissions should be made on notice to the other party, who should be allowed to attend.

IV.36 ABUSE OF PROCESS STAY APPLICATIONS

IV.36.1 In all cases where a defendant in the Crown Court proposes to make an application to stay an indictment on the grounds of abuse of process, written notice of such application must be given to the prosecuting authority and to any co-defendant not later than 14 days before the date fixed or warned for trial ("the relevant date"). Such notice must:

(a) give the name of the case and the indictment number;
(b) state the fixed date or the warned date as appropriate;
(c) specify the nature of the application;

(d) set out in numbered sub-paragraphs the grounds upon which the application is to be made;
(e) be copied to the chief listing officer at the court centre where the case is due to be heard.

IV.36.2 Any co-defendant who wishes to make a like application must give a like notice not later than seven days before the relevant date, setting out any additional grounds relied upon.

IV.36.3 In relation to such applications, the following automatic directions shall apply:

(a) the advocate for the applicant(s) must lodge with the court and serve on all other parties a skeleton argument in support of the application at least five clear working days before the relevant date. If reference is to be made to any document not in the existing trial documents, a paginated and indexed bundle of such documents is to be provided with the skeleton argument;
(b) the advocate for the prosecution must lodge with the court and serve on all other parties a responsive skeleton argument at least two clear working days before the relevant date, together with a supplementary bundle if appropriate.

IV.36.4 All skeleton arguments must specify any propositions of law to be advanced (together with the authorities relied upon in support, with page references to passages relied upon) and, where appropriate, include a chronology of events and a list of dramatis personae. In all instances where reference is made to a document, the reference in the trial documents or supplementary bundle is to be given.

IV.36.5 The above time limits are minimum time limits. In appropriate cases the court will order longer lead times. To this end in all cases where defence advocates are, at the time of the plea and directions hearing, considering the possibility of an abuse of process application, this must be raised with the judge dealing with the matter, who will order a different timetable if appropriate, and may wish, in any event, to give additional directions about the conduct of the application.

IV.37 CITATION OF HANSARD

IV.37.1 Where any party intends to refer to the reports of Parliamentary proceedings as reported in the Official Reports of either House of

Parliament ("Hansard") in support of any such argument as is permitted by the decisions in *Pepper v Hart* [1993] AC 593 and *Pickstone v Freeman* [1989] AC 66 or otherwise must, unless the court otherwise directs, serve upon all other parties and the court copies of any such extract together with a brief summary of the argument intended to be based upon such extract. No other report of Parliamentary proceedings may be cited.

IV.37.2 Unless the court otherwise directs, service of the extract and summary of the argument shall be effected not less than 5 clear working days before the first day of the hearing, whether or not it has a fixed date. Advocates must keep themselves informed as to the state of the lists where no fixed date has been given. Service on the court shall be effected by sending three copies to the chief clerk of the relevant Crown Court centre. If any party fails to do so the court may make such order (relating to costs or otherwise) as is in all the circumstances appropriate.

IV.38 APPLICATIONS FOR REPRESENTATION ORDERS

IV.38.1 Applications for representation by a Queen's Counsel alone or by more than one advocate under Part IV of the Criminal Defence Service (General) (No 2) Regulations 2001 SI 2001/1437 made to the Crown Court shall be placed before the Resident Judge of that Crown Court (or, in his absence, a judge nominated for that purpose by a Presiding Judge of the circuit) who shall determine the application, save that, where the application relates to a case which is to be heard before a named High Court judge or a named Circuit Judge, he should refer the application to the named judge for determination.

IV.38.2 This does not apply where an application is made in the course of a trial or of a preliminary hearing, pre-trial review, or plea and directions hearing by the judge presiding at that trial or hearing.

IV.38.3 In the event of any doubt as to the proper application of this direction, reference shall be made by the judge concerned to a Presiding Judge of the circuit, who shall give such directions as he thinks fit.

IV.40 VIDEO RECORDED EVIDENCE IN CHIEF

IV.40.1 The procedure for making application for leave to adduce a video recording of testimony from a witness under section 27 of the Youth Justice and Criminal Evidence Act 1999 is laid down in rule 8 of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-Examination) Rules 2002 (S.I. 2002 No. 1688).

IV.40.2 Where a court, on application by a party to the proceedings or of its own motion, grants leave to admit a video recording in evidence under section 27(1) of the 1999 Act it may direct that any part of the recording be excluded (section 27(2) and (3)). When such direction is given, the party who made application to admit the video recording must edit the recording in accordance with the judge's directions and send a copy of the edited recording to the appropriate officer of the Crown Court and to every other party to the proceedings.

IV.40.3 Where a video recording is to be adduced during proceedings before the Crown Court, it should be produced and proved by the interviewer, or any other person who was present at the interview with the witness at which the recording was made. The applicant should ensure that such a person will be available for this purpose, unless the parties have agreed to accept a written statement in lieu of attendance by that person.

IV.40.4 Once a trial has begun if, by reason of faulty or inadequate preparation or for some other cause, the procedures set out above have not been properly complied with and an application is made to edit the video recording, thereby making necessary an adjournment for the work to be carried out, the court may make at its discretion an appropriate award of costs.

IV.41 MANAGEMENT OF CASES TO BE HEARD IN THE CROWN COURT

IV.41.1 This section of the practice direction supplements the rules in Part 3 of the Criminal Procedure Rules as they apply to the management of cases to be heard in the Crown Court. Where time limits or other directions in the Consolidated Criminal Practice Direction appear inconsistent with this section, the directions in this section take precedence.

IV.41.2 The case details form set out in annex E should be completed by the Crown Court case progression officer in all cases to be tried on indictment.

Cases sent for trial

IV.41.3 A preliminary hearing ('PH') is not required in every case sent for trial under section 51 of the Crime and Disorder Act 1998: see rule 12.2 (which altered the Crown Court rule from which it derived). A PH should normally only be ordered by the magistrates' court or by the Crown Court where:

(i) there are case management issues which call for such a hearing;
(ii) the case is likely to last for more than 4 weeks;
(iii) it would be desirable to set an early trial date;
(iv) the defendant is a child or young person;
(v) there is likely to be a guilty plea and the defendant could be sentenced at the preliminary hearing; or
(vi) it seems to the court that it is a case suitable for a preparatory hearing in the Crown Court (see sections 7 and 9 of the Criminal Justice Act 1987 and sections 29 – 32 of the Criminal Procedure and Investigations Act 1996).

A PH, if there is one, should be held about 14 days after sending.

IV.41.4 The case progression form to be used in the magistrates' court and the PH form to be used in the Crown Court are set out in annex E with guidance notes. The forms provide a detailed timetable to enable the subsequent plea and case management hearing ('PCMH') to be effective.

IV.41.5 Where the magistrates' court does not order a PH it should order a PCMH to be held within about 14 weeks after sending for trial where a defendant is in custody and within about 17 weeks after sending for trial where a defendant is on bail. Those periods accommodate the periods fixed by the relevant rules for the service of the prosecution case papers and for making all potential preparatory applications. Where the parties realistically expect to have completed their preparation for the PCMH in less time than that then the magistrates' court should order it to be held earlier. But it will not normally be appropriate to order that the PCMH be held on a date before the expiry of at least 4 weeks from the date on which the prosecutor expects to serve the prosecution case papers, to allow the defence a proper opportunity to consider them. To order that a PCMH be held before the parties have had a reasonable opportunity to complete their preparation in accordance with the Criminal Procedure Rules risks compromising the effectiveness of this most important pre-trial hearing and risks wasting their time and that of the court.

Cases committed for trial

IV.41.6 For cases committed to the Crown Court for trial under section 6 of the Magistrates' Courts Act 1980 the case progression form to be used in the magistrates' court is set out in annex E with guidance notes. A PCMH should be ordered by the magistrates' court in every case, to be held within about 7 weeks after committal. That period accommodates the periods

fixed by the relevant rules for making all potential preparatory applications. Where the parties realistically expect to have completed their preparation for the PCMH in less time than that then the magistrates' court should order it to be held earlier. However, to order that a PCMH be held before the parties have had a reasonable opportunity to complete their preparation in accordance with the Criminal Procedure Rules risks compromising the effectiveness of this most important pre-trial hearing and risks wasting their time and that of the court.

Cases transferred for trial

IV.41.7 In a case transferred to the Crown Court for trial under section 4(1) of the Criminal Justice Act 1987 or under section 53(1) of the Criminal Justice Act 1991 the directions contained in the case progression form used in cases for committal for trial apply as if the case had been committed on the date of the notice of transfer. A PMCH should be listed by the Crown Court to be held within about 7 weeks after transfer. That period accommodates the periods fixed by the relevant rules for making all potential preparatory applications. Where the parties realistically expect to have completed their preparation for the PCMH in less time than that then the magistrates' court should order it to be held earlier. However, to order that a PCMH be held before the parties have had a reasonable opportunity to complete their preparation in accordance with the Criminal Procedure Rules risks compromising the effectiveness of this most important pre-trial hearing and risks wasting their time and that of the court.

Plea and case management hearing

IV.41.8 Active case management at the PCMH is essential to reduce the number of ineffective and cracked trials and delays during the trial to resolve legal issues. The effectiveness of a PCMH hearing in a contested case depends in large measure upon preparation by all concerned and upon the presence of the trial advocate or an advocate who is able to make decisions and give the court the assistance which the trial advocate could be expected to give. Resident Judges in setting the listing policy should ensure that list officers fix cases as far as possible to enable the trial advocate to conduct the PCMH and the trial.

IV.41.9 In Class 1 and Class 2 cases, and in all cases involving a serious sexual offence against a child, the PCMH must be conducted by a High Court judge; by a circuit judge or by a recorder to whom the case has been assigned in accordance with paragraph IV.33 (allocation of business

within the Crown Court); or by a judge authorised by the Presiding Judges to conduct such hearings. In the event of a guilty plea before such an authorised judge, the case will be adjourned for sentencing by a High Court judge or by a circuit judge or recorder to whom the case has been assigned.

Use of the PCMH form

IV.41.10 The PCMH form as set out in annex E must be used in accordance with the guidance notes.

Further pre-trial hearings after the PCMH

IV.41.11 Additional pre-trial hearings should be held only if needed for some compelling reason. Such hearings – often described informally as 'mentions' – are expensive and should actively be discouraged. Where necessary the power to give, vary or revoke a direction without a hearing should be used. Rule 3.9(3) of the Criminal Procedure Rules enables the Court to require the parties' case progression officers to inform the Crown Court case progression officer that the case is ready for trial, that it will proceed as a trial on the date fixed and will take no more or less time than that previously ordered.

IV.42 JURIES

Jury service

IV.42.1 The effect of section 321 Criminal Justice Act 2003 was to remove certain categories of persons from those previously ineligible for jury service (the judiciary and others concerned with the administration of justice) and certain other categories ceased to be eligible for excusal as of right, (such as members of Parliament and medical professionals). Jury service is an important public duty which individual members of the public are chosen at random to undertake. The normal presumption is that everyone, unless mentally disordered or disqualified, will be required to serve when summoned to do so. This legislative change has, however, meant an increase in the number of jurors with professional and public service commitments. One of the results of this change is that trial judges must continue to be alert to the need to exercise their discretion to adjourn a trial, excuse or discharge a juror should the need arise. Whether or not an application has already been made to the jury summoning officer for deferral or excusal it is also open to the person summoned to apply to the

court to be excused. Such applications must be considered with common sense and according to the interests of justice. An explanation should be required for an application being much later than necessary.

IV.42.2 Where a juror appears on a jury panel, it may be appropriate for a judge to excuse the juror from that particular case where the potential juror is personally concerned with the facts of the particular case or is closely connected with a prospective witness. Where the length of the trial is estimated to be significantly longer than the normal period of jury service, it is good practice for the trial judge to enquire whether the potential jurors on the jury panel foresee any difficulties with the length and if the judge is satisfied that the jurors concerns are justified he may say that they are not required for that particular jury. This does not mean that the judge must excuse the juror from sitting at that court altogether as it may well be possible for the juror to sit on a shorter trial at the same court.

IV.42.3 Where a juror unexpectedly finds him or herself in difficult professional or personal circumstances during the course of the trial, jurors should be encouraged to raise such problems with the trial judge. This might apply, for example, to a parent whose childcare arrangements unexpectedly fail or a worker who is engaged in the provision of services the need for which can be critical or Member of Parliament who has deferred their jury service to an apparently more convenient time, but is unexpectedly called back to work for a very important reason. Such difficulties would normally be raised through a jury note in the normal manner. In such circumstances, the judge must exercise his or her discretion according to the interests of justice and the requirements of each individual case. The judge must decide for himself whether the juror has presented a sufficient reason to interfere with the course of the trial. If the juror has presented a sufficient reason, in longer trials it may well be possible to adjourn for a short period in order to allow the juror to overcome the difficulty. In shorter cases it may be more appropriate to discharge the juror and to continue the trial with a reduced number of jurors. The power to do this is implicit in section 16 (1) Juries Act 1974. In unusual cases (such as an unexpected emergency arising over night) a juror need not be discharged in open court. The good administration of justice depends on the cooperation of jurors who perform an essential public service. All such applications should be dealt with sensitively and sympathetically and the trial judge should always seek to meet the interests of justice without unduly inconveniencing any juror.

Jury oath

IV.42.4 The wording of the oath to be taken by jurors is: 'I swear by Almighty God that I will faithfully try the defendant and give a true verdict according to the evidence.' Any person who objects to being sworn shall be permitted to make his solemn affirmation instead. The wording of the affirmation is '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.'

Guidance to Jurors

IV.42.5 The following directions take effect immediately.

IV.42.6 Trial judges should ensure that the jury is alerted to the need to bring any concerns about fellow jurors to the attention of the judge at the time, and not to wait until the case is concluded. At the same time, it is undesirable to encourage inappropriate criticism of fellow jurors, or to threaten jurors with contempt of court.

IV.42.7 Judges should therefore take the opportunity, when warning the jury of the importance of not discussing the case with anyone outside the jury, to add a further warning. It is for the trial judge to tailor the further warning to the case, and to the phraseology used in the usual warning. The effect of the further warning should be that it is the duty of jurors to bring to the judge's attention, promptly, any behaviour among the jurors or by others affecting the jurors, that causes concern. The point should be made that, unless that is done while the case is continuing, it may be impossible to put matters right.

IV.42.8 The Judge should consider, particularly in a longer trial, whether a reminder on the lines of the further warning is appropriate prior to the retirement of the jury.

IV.42.9 In the event that such an incident does occur, trial judges should have regard to the remarks of Lord Hope at paras 127 and 128 in *R -v- Connors and Mirza* [2004] 2 WLR 201 and consider the desirability of preparing a statement that could be used in connection with any appeal arising from the incident to the Court of Appeal Criminal Division. Members of the Court of Appeal Criminal Division should also remind themselves of the power to request the judge to furnish them with any information or assistance under rule 22 of the Criminal Appeal Rules 1968 (SI

1968/1262) and section 87 (4) of the Supreme Court Act 1981.

IV.43 EVIDENCE OF TAPE RECORDED INTERVIEWS

IV.43.1 Where a suspect is to be interviewed by the police, the Code of Practice on Tape Recording of Interviews with Suspects effective from 10th April 1995 and issued under section 60 of the Police and Criminal Evidence Act 1984 applies. Where a record of the interview is to be prepared this should be in accordance with the national guidelines approved by the Secretary of State, as envisaged by Note E:5A of the Code.

IV.43.2 Where the prosecution intends to adduce evidence of the interview in evidence, and agreement between the parties has not been reached about the record, sufficient notice must be given to allow consideration of any amendment to the record or the preparation of any transcript of the interview or any editing of a tape for the purpose of playing it back in court. To that end, the following practice should be followed.

(a) Where the defence is unable to agree a record of interview or transcript (where one is already available) the prosecution should be notified no more than 21 days from the date of committal or date of transfer, or at the PDH if earlier, with a view to securing agreement to amend. The notice should specify the part to which objection is taken or the part omitted which the defence consider should be included. A copy of the notice should be supplied to the court within the period specified above.

(b) If agreement is not reached and it is proposed that the tape or part of it be played in court, notice should be given to the prosecution by the defence no more than 14 days after the expiry of the period in (a), or as ordered at the PDH, in order that counsel for the parties may agree those parts of the tape that should not be adduced and that arrangements may be made, by editing or in some other way, to exclude that material. A copy of the notice should be supplied to the court within the period specified above.

(c) Notice of any agreement reached under (a) or (b) should be supplied to the court by the prosecution as soon as is practicable.

(d) Alternatively, if, in any event, prosecuting counsel proposes to play the tape or part of it, the prosecution should, within 28 days of the date of committal or date of transfer or, if earlier, at the PDH, notify the defence and the court. The defence should notify the prosecution and the court within 14 days of receiving the notice if they object to the production of the tape on the basis that a part of it should be

excluded. If the objections raised by the defence are accepted, the prosecution should prepare an edited tape or make other arrangements to exclude the material part and should notify the court of the arrangements made.

(e) Whenever editing or amendment of a record of interview or of a tape or of a transcript takes place, the following general principles should be followed:

(i) Where a defendant has made a statement which includes an admission of one or more other offences, the portion relating to other offences should be omitted unless it is or becomes admissible in evidence;

(ii) Where the statement of one defendant contains a portion which is partly in his favour and partly implicatory of a co-defendant in the trial, the defendant making the statement has the right to insist that everything relevant which is in his favour goes before the jury. In such a case the judge must be consulted about how best to protect the position of the co-defendant.

IV.43.3 If there is a failure to agree between counsel under paragraph IV.43.2(a) to (e), or there is a challenge to the integrity of the master tape, notice and particulars should be given to the court and to the prosecution by the defence as soon as is practicable. The court may then, at its discretion, order a pre-trial review or give such other directions as may be appropriate.

IV.43.4 If a tape is to be adduced during proceedings before the Crown Court it should be produced and proved by the interviewing officer or any other officer who was present at the interview at which the recording was made. The prosecution should ensure that such an officer will be available for this purpose.

IV.43.5 Where such an officer is unable to act as the tape machine operator it is for the prosecution to make some other arrangement.

IV.43.6 In order to avoid the necessity for the court to listen to lengthy or irrelevant material before the relevant part of a tape recording is reached, counsel shall indicate to the tape machine operator those parts of a recording which it may be necessary to play. Such an indication should, so far as possible, be expressed in terms of the time track or other identifying process used by the interviewing police force and should be given in time for the operator to have located those parts by the appropriate point in the trial.

IV.43.7 Once a trial has begun, if, by reason of faulty preparation or for some other cause, the procedures above have not been properly complied with, and an application is made to amend the record of interview or transcript or to edit the tape, as the case may be, thereby making necessary an adjournment for the work to be carried out, the court may make at its discretion an appropriate award of costs.

IV.43.8 Where a case is listed for hearing on a date which falls within the time limits set out above, it is the responsibility of the parties to ensure that all the necessary steps are taken to comply with this Practice Direction within such shorter period as is available.

IV.43.9 In paragraph IV.43.2(a) and (d), 'date of transfer' is the date on which notice of transfer is given in accordance with the provisions of section 4(1)(c) of the Criminal Justice Act 1987.

IV.43.10 This direction should be read in conjunction with the Code of Practice on Tape Recording referred to in paragraph IV.43.1 and with Home Office Circular 26/1995.

IV.44 DEFENDANT'S RIGHT TO GIVE OR NOT TO GIVE EVIDENCE

IV.44.1 At the conclusion of the evidence for the prosecution, section 35(2) of the Criminal Justice and Public Order Act 1994 requires the court to satisfy itself that the accused is aware that the stage has been reached at which evidence can be given for the defence and that he can, if he wishes, give evidence and that, if he chooses not to give evidence, or having been sworn, without good cause refuses to answer any question, it will be permissible for the jury to draw such inferences as appear proper from his failure to give evidence or his refusal, without good cause, to answer any question.

<u>If the accused is legally represented</u>

IV.44.2 Section 35(1) provides that section 35(2) does not apply if at the conclusion of the evidence for the prosecution the accused's legal representative informs the court that the accused will give evidence. This should be done in the presence of the jury. If the representative indicates that the accused will give evidence the case should proceed in the usual way.

IV.44.3 If the court is not so informed, or if the court is informed that the accused does not intend to give evidence, the judge should in the presence of the jury inquire of the representative in these terms: 'Have you advised your client that the stage has now been reached at which he may give evidence and, if he chooses not to do so or, having been sworn, without good cause refuses to answer any question, the jury may draw such inferences as appear proper from his failure to do so ?'

IV.44.4 If the representative replies to the judge that the accused has been so advised, then the case shall proceed. If counsel replies that the accused has not been so advised, then the judge shall direct the representative to advise his client of the consequences set out in paragraph IV.44.3 and should adjourn briefly for this purpose before proceeding further.

<u>If the accused is not legally represented</u>

IV.44.5 If the accused is not represented, the judge shall at the conclusion of the evidence for the prosecution and in the presence of the jury say to the accused:

> "You have heard the evidence against you. Now is the time for you to make your defence. You may give evidence on oath, and be cross-examined like any other witness. If you do not give evidence or, having been sworn, without good cause refuse to answer any question the jury may draw such inferences as appear proper. That means they may hold it against you. You may also call any witness or witnesses whom you have arranged to attend court. Afterwards you may also, if you wish, address the jury by arguing your case from the dock. But you cannot at that stage give evidence. Do you now intend to give evidence?"

IV.45 DISCUSSIONS ABOUT SENTENCE

IV.45.1 An advocate must be free to do what is his duty, namely to give the accused the best advice he can and, if need be, in strong terms. It will often include advice that a guilty plea, showing an element of remorse, is a mitigating factor which may well enable the court to give a lesser sentence than would otherwise be the case. The advocate will, of course, emphasise that the accused must not plead guilty unless he has committed the acts constituting the offence(s) charged.

IV.45.2 The accused, having considered the advocate's advice, must have

complete freedom of choice whether to plead guilty or not guilty.

IV.45.3 There must be freedom of access between advocate and judge. Any discussion must, however, be between the judge and the advocates on both sides. If counsel is instructed by a solicitor who is in court, he too should be allowed to attend the discussion. This freedom of access is important because there may be matters calling for communication or discussion of such a nature that the advocate cannot, in his client's interest, mention them in open court, e.g. the advocate, by way of mitigation, may wish to tell the judge that the accused has not long to live because he is suffering maybe from cancer of which he is and should remain ignorant. Again, the advocates on both sides may wish to discuss with the judge whether it would be proper, in a particular case, for the prosecution to accept a plea to a lesser offence. It is imperative that, so far as possible, justice must be administered in open court. Advocates should, therefore, only ask to see the judge when it is felt to be really necessary. The judge must be careful only to treat such communications as private where, in fairness to the accused, this is necessary.

IV.45.4 The judge should, subject to one exception, never indicate the sentence he is minded to impose. The exception is that it should be permissible for a judge to say, if it be the case, that, whatever happens, whether the accused pleads guilty or not guilty, the sentence will or will not take a particular form. Where any such discussion on sentence has taken place, the advocate for the defence should disclose it to the accused and, subject to the exception of those matters of which he should remain ignorant, such as cancer, of which he is unaware, inform him of what took place.

IV.45.5 Where any such discussion takes place it should be recorded either by a tape recorder or a shorthand writer.

IV.46 MAJORITY VERDICTS

IV.46.1 It is important that all those trying indictable offences should so far as possible adopt a uniform practice when complying with section 17 of the Juries Act 1974, both in directing the jury in summing-up and also in receiving the verdict or giving further directions after retirement. So far as the summing-up is concerned, it is inadvisable for the judge, and indeed for advocates, to attempt an explanation of the section for fear that the jury will be confused. Before the jury retire, however, the judge should direct the jury in some such words as the following:

> "As you may know, the law permits me, in certain circumstances, to accept a verdict which is not the verdict of you all. Those circumstances have not as yet arisen, so that when you retire I must ask you to reach a verdict upon which each one of you is agreed. Should, however, the time come when it is possible for me to accept a majority verdict, I will give you a further direction."

IV.46.2 Thereafter the practice should be as follows: Should the jury return *before* two hours and ten minutes since the last member of the jury left the jury box to go to the jury room (or such longer time as the judge thinks reasonable) has elapsed (see section 17(4)), they should be asked: (a) "Have you reached a verdict upon which you are all agreed? Please answer Yes or No"; (b) (i) If unanimous, "What is your verdict?"; (ii) If not unanimous, the jury should be sent out again for further deliberation with a further direction to arrive if possible at an unanimous verdict.

IV.46.3 Should the jury return (whether for the first time or subsequently) or be sent for *after* the two hours and ten minutes (or the longer period) has elapsed, questions (a) and (b)(i) in paragraph IV.46.2 should be put to them and, if it appears that they are not unanimous, they should be asked to retire once more and told that they should continue to endeavour to reach an unanimous verdict but that, if they cannot, the judge will accept a majority verdict as in section 17(1).

IV.46.4 When the jury finally return they should be asked: (a) "Have at least ten (or nine as the case may be) of you agreed on your verdict?"; (b) If "Yes", "What is your verdict? Please only answer Guilty or Not Guilty"; (c) (i) If "Not Guilty", accept the verdict without more ado; (ii) If "Guilty", "Is that the verdict of you all or by a majority?"; (d) If "Guilty" by a majority, "How many of you agreed to the verdict and how many dissented?"

IV.46.5 At whatever stage the jury return, before question (a) is asked, the senior officer of the court present shall state in open court, for each period when the jury was out of court for the purpose of considering their verdict(s), the time at which the last member of the jury left the jury box to go to the jury room and the time of their return to the jury box and will additionally state in open court the total of such periods.

IV.46.6 The reason why section 17(3) is confined to a majority verdict of guilty and for the somewhat complicated procedure set out in paragraph IV.46.3 and paragraph IV.46.4 is to prevent it being known that a verdict of "Not

Guilty" is a majority verdict. If the final direction in paragraph IV.46.3 continues to require the jury to arrive, if possible, at an unanimous verdict and the verdict is received as in paragraph IV.46.4, it will not be known for certain that the acquittal is not unanimous.

IV.46.7 Where there are several counts (or alternative verdicts) left to the jury the above practice will, of course, need to be adapted to the circumstances. The procedure will have to be repeated in respect of each count (or alternative verdict), the verdict being accepted in those cases where the jury are unanimous and the further direction in paragraph IV.46.3 being given in cases in which they are not unanimous. Should the jury in the end be unable to agree on a verdict by the required majority (i.e. if the answer to the question in paragraph IV.46.4(a) be in the negative) the judge in his discretion will either ask them to deliberate further or discharge them.

IV.46.8 Section 17 will, of course, apply also to verdicts other than "Guilty" or "Not Guilty", e.g. to special verdicts under the Criminal Procedure (Insanity) Act 1964, verdicts under that Act as to fitness to be tried, and special verdicts on findings of fact. Accordingly in such cases the questions to jurors will have to be suitably adjusted.

IV.47 IMPOSITION OF DISCRETIONARY LIFE SENTENCES

IV.47.1 Section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 empowers a judge when passing a sentence of life imprisonment, where such a sentence is not fixed by law, to specify by order such part of the sentence ('the relevant part') as shall be served before the prisoner may require the Secretary of State to refer his case to the Parole Board.

IV.47.2 Thus the discretionary life sentence falls into two parts:

(a) the relevant part, which consists of the period of detention imposed for punishment and deterrence, taking into account the seriousness of the offence, and,
(b) the remaining part of the sentence, during which the prisoner's detention will be governed by considerations of risk to the public.

IV.47.3 The judge is not obliged by statute to make use of the provisions of section 82A when passing a discretionary life sentence. However, the judge should do so, save in the very exceptional case where the judge considers that the offence is so serious that detention for life is justified by

the seriousness of the offence alone, irrespective of the risk to the public. In such a case, the judge should state this in open court when passing sentence.

IV.47.4 In cases where the judge is to specify the relevant part of the sentence under section 82A, the judge should permit the advocate for the defendant to address the court as to the appropriate length of the relevant part. Where no relevant part is to be specified, the advocate for the defendant should be permitted to address the court as to the appropriateness of this course of action.

IV.47.5 In specifying the relevant part of the sentence, the judge should have regard to the specific terms of section 82A and should indicate the reasons for reaching his decision as to the length of the relevant part.

IV.47.6 Whether or not the court orders that section 82A should apply, the judge shall not, following the imposition of a discretionary life sentence, make a written report to the Secretary of State through the Lord Chief Justice as was the practice until 8 February 1993.

NOTE: Reference should also be made to the section on life sentences below.

IV.48 LIFE SENTENCES FOR JUVENILES CONVICTED OF MURDER

IV.48.1 When a person is convicted of a murder committed when under the age of 18 the determination of the minimum term (previously tariff) applicable to his sentence has since 30 November 2000 been set by the trial judge, as it was and is for adults subject to discretionary life sentences: see section 82A of the Powers of Criminal Courts (Sentencing) Act 2000.

IV.49 LIFE SENTENCES

IV.49.1 This direction replaces amendment number 6 to the Consolidated Criminal Practice Direction handed down on 18 May 2004 (previously inserted at paragraphs IV.49.1 to IV.49.25 of the Consolidated Criminal Practice Direction). Its purpose is to give practical guidance as to the procedure for passing a mandatory life sentence under section 269 and schedule 21 of the Criminal Justice Act 2003 (‘the Act’). This direction also gives guidance as to the transitional arrangements under section 276 and schedule 22 of the Criminal Justice Act 2003 (‘the Act’). It clarifies the correct approach to looking at the practice of the Secretary of State prior

to December 2002 for the purposes of schedule 22 of the Act, in the light of the judgment in *R. v Sullivan, Gibbs, Elener and Elener* [2004] EWCA Crim. 1762 ('*Sullivan*').

IV.49.2 Section 269 of the Act came into force on 18 December 2003. Under section 269 all courts passing a mandatory life sentence must either announce in open court the minimum term the prisoner must serve before the Parole Board can consider release on licence under the provisions of section 28 of the Crime (Sentences) Act 1997 (as amended by section 275 of the Act) or announce that the seriousness of the offence is so exceptionally high that the early release provisions should not apply at all (a 'whole life order').

IV.49.3 In setting the minimum term the court must set the term it considers appropriate taking into account the seriousness of the offence. In considering the seriousness of the offence the court must have regard to the general principles set out in Schedule 21 of the Act and any other guidelines issued by the Sentencing Guidelines Council which are relevant to the case and not incompatible with the provisions of Schedule 21. Although it is necessary to have regard to the guidance, it is always permissible not to apply the guidance if a judge considers there are reasons for not following it. It is always necessary to have regard to the need to do justice in the particular case. However, if a court departs from any of the starting points given in Schedule 21 the court is under a duty to state its reasons for doing so.

IV.49.4 The guidance states that where the offender is 21 or over, the first step is to choose one of three starting points: 'whole life', 30 years or 15 years. Where the 15 year starting point has been chosen, judges should have in mind that this starting point encompasses a very broad range of murders. At para.35 of Sullivan the court found that it should not be assumed that Parliament intended to raise all minimum terms that would previously have had a lower starting point to 15 years.

IV.49.5 Where the offender was 21 or over at the time of the offence, and the court takes the view that the murder is so grave that the offender ought to spend the rest of his life in prison, the appropriate starting point is a 'whole life order'. The effect of such an order is that the early release provisions in section 28 of the Crime (Sentences) Act 1997 will not apply. Such an order should only be specified where the court considers that the seriousness of the offence (or the combination of the offence and one or more other offences associated with it) is exceptionally high. Paragraph 4

(2) of Schedule 21 of the Act sets out examples of cases where it would normally be appropriate to take the 'whole life order' as the appropriate starting point.

IV.49.6 Where the offender is aged 18 to 20 and commits a murder that is so serious that it would require a whole life order if committed by an offender aged 21 or over, the appropriate starting point will be 30 years.

IV.49.7 Where a case is not so serious as to require a 'whole life order' but where the seriousness of the offence is particularly high and the offender was aged 18 or over when he committed the offence the appropriate starting point, is 30 years. Paragraph 5 (2) of Schedule 21 of the Act sets out examples of cases where a 30 year starting point would normally be appropriate (if they do not require a 'whole life order').

IV.49.8 Where the offender was aged 18 or over when he committed the offence and the case does not fall within paragraph 4 (1) or 5 (1) of Schedule 21 the appropriate starting point is 15 years.

IV.49.9 18 to 20 year olds are only the subject of the 30 year and 15 year starting points.

IV.49.10 The appropriate starting point when setting a sentence of detention during Her Majesty's pleasure for offenders aged under 18 when they committed the offence is always 12 years.

IV.49.11 The second step after choosing a starting point is to take account of any aggravating or mitigating factors which would justify a departure from the starting point. Additional aggravating factors (other than those specified in paragraphs 4 (1) and 5 (1)) are listed at paragraph 10 of Schedule 21. Examples of mitigating factors are listed at paragraph 11 of Schedule 21. Taking into account the aggravating and mitigating features the court may add to or subtract from the starting point to arrive at the appropriate punitive period.

IV.49.12 The third step is that the court should consider the effect of section 151 (1) of the Powers of Criminal Courts (Sentencing) Act 2000 (or, when it is in force, section 143 (2) of the Act) in relation to previous convictions and section 151 (2) Powers of Criminal Courts (Sentencing) Act 2000 (or, when it is in force, section 143 (3) of the Act) where the offence was committed whilst the offender was on bail. The court should also consider the effect of section 152 of the Powers of Criminal Courts (Sentencing)

Act 2000 (or, when it is in force, section 144 of the Act) where the offender has pleaded guilty. The Court should then take into account what credit the offender would have received for a remand in custody under section 240 of the Act, but for the fact that the mandatory sentence is one of life imprisonment. Where the offender has been remanded in custody in connection with the offence or a related offence, the court should have in mind that no credit will otherwise be given for this time when the prisoner is considered for early release. The appropriate time to take it into account is when setting the minimum term. The court should normally subtract the time for which the offender was remanded in custody in connection with the offence or a related offence from the punitive period it would otherwise impose in order to reach the minimum term.

IV.49.13 Following these calculations the court should have arrived at the appropriate minimum term to be announced in open court. As paragraph 9 of Schedule 21 makes clear, the judge retains ultimate discretion and the court may arrive at any minimum term from any starting point. The minimum term is subject to appeal by the offender under section 271 of the Act and subject to review on a reference by the Attorney-General under section 272 of the Act.

TRANSITIONAL ARRANGEMENTS FOR NEW SENTENCES WHERE THE OFFENCE WAS COMMITTED BEFORE 18 DECEMBER 2003

IV.49.14 Where the court is passing a sentence of mandatory life imprisonment for an offence committed before 18 December 2003, the court should take a fourth step in determining the minimum term in accordance with section 276 and schedule 22 of the Act.

IV.49.15 The purpose of those provisions is to ensure that the sentence does not breach the principle of non-retroactivity by ensuring that a lower minimum term would not have been imposed for the offence when it was committed. Before setting the minimum term the court must check whether the proposed term is greater than that which the term the Secretary of State would probably have notified under the practice followed by the Secretary of State before December 2002.

IV.49.16 The decision in *Sullivan, Gibbs, Elener and Elener* [2004] EWCA Crim. 1762 gives detailed guidance as to the correct approach to this practice and judges passing mandatory life sentences where the murder was committed prior to 18 December 2003 are well advised to read that judgment before proceeding.

IV.49.17 The practical result of that judgment is that in sentences where the murder was committed before 31 May 2002, the best guide to what would have been the practice of the Secretary of State is the letter sent to judges by Lord Bingham CJ on 10th February 1997, the relevant parts of which are set out at paras IV.49.18 to IV.49.21 below.

IV.49.18 The practice of Lord Bingham, as set out in his letter of 10 February 1997 was to take 14 years as the period actually to be served for the 'average', 'normal' or 'unexceptional' murder. Examples of factors he outlined as capable, in appropriate cases of mitigating the normal penalty were:

1. Youth
2. Age (where relevant to physical capacity on release or the likelihood of the defendant dying in prison)
3. Subnormality or mental abnormality
4. Provocation (in a non-technical sense), or an excessive response to a personal threat.
5. The absence of an intention to kill.
6. Spontaneity and lack of premeditation (beyond that necessary to constitute the offence: e.g. a sudden response to family pressure or to prolonged and eventually insupportable stress
7. Mercy killing
8. A plea of guilty, or hard evidence of remorse or contrition.

IV.49.19 Lord Bingham then listed the following factors as likely to call for a sentence more severe than the norm:

1. Evidence of a planned, professional, revenge or contract killing.
2. The killing of a child or a very old or otherwise vulnerable victim.
3. Evidence of sadism, gratuitous violence, or sexual maltreatment, humiliation or degradation before the killing.
4. Killing for gain (in the course of burglary, robbery, blackmail, insurance fraud, etc.)
5. Multiple killings.
6. The killing of a witness or potential witness to defeat the ends of justice.
7. The killing of those doing their public duty (policemen, prison officers, postmasters, firemen, judges, etc).
8. Terrorist or politically motivated killings.
9. The use of firearms or other dangerous weapons, whether carried for defensive or offensive reasons.

10. A substantial record of serious violence.
11. Macabre attempts to dismember or conceal the body.

IV.49.20 Lord Bingham further stated that the fact that a defendant was under the influence of drink or drugs at the time of the killing is so common he would be inclined to treat it as neutral. But in the not unfamiliar case in which a married couple, or two derelicts, or two homosexuals, inflamed by drink, indulge in a violent quarrel in which one dies, often against a background of longstanding drunken violence, then he would tend to recommend a term somewhat below the norm.

IV.49.21 Lord Bingham went on to say that given the intent necessary for proof of murder, the consequences of taking life and the understandable reaction of relatives of the deceased, a substantial term will almost always be called for, save perhaps in a truly venial case of mercy killing. While a recommendation of a punitive term longer than, say, 30 years will be very rare indeed, there should not be any upper limit. Some crimes will certainly call for terms very well in excess of the norm.

IV.49.22 For the purposes of sentences where the murder was committed after 31 May 2002 and before 18 December 2003, the judge should apply the Practice Statement handed down on 31 May 2002 reproduced at paras. 49.23 to 49.33 below.

IV.49.23 This Statement replaces the previous single normal tariff of 14 years by substituting; a higher and a normal starting point of respectively 16 (comparable to 32 years) and 12 years (comparable to 24 years). These starting points have then to be increased or reduced because of aggravating or mitigating factors such as those referred to below. It is emphasised that they are no more than starting points.

<u>The normal starting point of 12 years</u>

IV.49.24 Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in paragraph 49.26. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.

IV.49.25 The normal starting point can be reduced because the murder is one where the offender’s culpability is significantly reduced, for example, because:

(a) the case came close to the borderline between murder and manslaughter; or
(b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or
(c) the offender was provoked (in a non-technical sense), such as by prolonged and eventually unsupportable stress; or
(d) the case involved an over reaction in self-defence; or
(e) the offence was a mercy killing.

These factors could justify a reduction to 8/9 years (equivalent to 16/18 years).

The higher starting point of 15/16 years

IV.49.26 The higher starting point will apply to cases where the offender's culpability was exceptionally high or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious, such as:

i. the killing was 'professional' or a contract killing;
ii. the killing was politically motivated;
iii. the killing was done for gain (in the course of a burglary, robbery etc.);
iv. the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness);
v. the victim was providing a public service;
vi. the victim was a child or was otherwise vulnerable;
vii. the killing was racially aggravated;
viii. the victim was deliberately targeted because of his or her religion or sexual orientation;
ix. there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing;
x. extensive and/or multiple injuries were inflicted on the victim before death;
xi. the offender committed multiple murders.

Variation of the starting point

IV.49.27 Whichever starting point is selected in a particular case, it may be

appropriate for the trial judge to vary the starting point upwards or downwards, to take account of aggravating or mitigating factors, which relate to either the offence or the offender, in the particular case.

IV.49.28 Aggravating factors relating to the offence can include:

(a) the fact that the killing was planned;
(b) the use of a firearm;
(c) arming with a weapon in advance;
(d) concealment of the body, destruction of the crime scene and/or dismemberment of the body;
(e) particularly in domestic violence cases, the fact that the murder was the culmination of cruel and violent behaviour by the offender over a period of time.

IV.49.29 Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the extent that this is relevant to culpability rather than to risk.

IV.49.30 Mitigating factors relating to the offence will include:

(a) an intention to cause grievous bodily harm, rather than to kill;
(b) spontaneity and lack of pre-meditation.

IV.49.31 Mitigating factors relating to the offender may include:

(a) the offender's age;
(b) clear evidence of remorse or contrition;
(c) a timely plea of guilty.

Very serious cases

IV.49.32 A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case.

IV.49.33 Among the categories of case referred to in paragraph IV.49.26 some

offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime or the offence was a terrorist or sexual or sadistic murder or involved a young child. In such a case, a term of 20 years and upwards could be appropriate.

IV.49.34 In following this guidance, judges should bear in mind the conclusion of the Court in Sullivan that the general effect of both these statements is the same. While Lord Bingham does not identify as many starting points, it is open to the judge to come to exactly the same decision irrespective of which was followed. Both pieces of guidance give the judge a considerable degree of discretion.

PROCEDURE FOR ANNOUNCING THE MINIMUM TERM IN OPEN COURT

IV.49.35 Having gone through the three or four steps outlined above, the court is then under a duty under section 270 of the Act, to state in open court, in ordinary language, its reasons for deciding on the minimum term or for passing a whole life order.

IV.49.36 In order to comply with this duty the court should state clearly the minimum term it has determined. In doing so, it should state which of the starting points it has chosen and its reasons for doing so. Where the court has departed from that starting point due to mitigating or aggravating features it must state the reasons for that departure and any aggravating or mitigating features which have led to that departure. At that point the court should also declare how much, if any, time is being deducted for time spent in custody. The court must then explain that the minimum term is the minimum amount of time the prisoner will spend in prison, from the date of sentence, before the Parole Board can order early release. If it remains necessary for the protection of the public, the prisoner will continue to be detained after that date. The court should also state that where the prisoner has served the minimum term and the Parole Board has decided to direct release the prisoner will remain on licence for the rest of his life and may be recalled to prison at any time.

IV.49.37 Where the offender was 21 or over when he committed the offence and the court considers that the seriousness of the offence is so exceptionally high that a ‘whole life order’ is appropriate, the court should state clearly its reasons for reaching this conclusion. It should also explain that the early release provisions will not apply.

IV.50 BAIL PENDING APPEAL

IV.50.1 The procedure for granting bail by a judge of the Crown Court pending an appeal to the Court of Appeal (Criminal Division) (see sections 1(2) and 11(1A) of the Criminal Appeal Act 1968, and section 81(1B) of the Supreme Court Act 1981) is described in the *Guide to Proceedings in the Court of* Appeal *Criminal Division*. This is available at Crown Courts and is to be found at (1983) 77 Cr App R 138 and [1983] Crim LR 145.

IV.50.2 The procedure is also set out in outline on Criminal Appeal Office Form C (Crown Court Judge's Certificate of fitness for appeal) and Form BC (Crown Court Judge's Order granting bail), copies of which are held by the Crown Court. The court clerk will ensure that these forms are always available when a judge hears an application under these provisions.

IV.50.3 The judge may well think it right (a) to hear the application for a certificate in chambers with a shorthand writer present; (b) to invite the defendant's advocate to submit before the hearing of the application a draft of the grounds of appeal which he will ask the judge to certify on Form C. The advocate for the Crown will be better able to assist the judge at the hearing if the draft ground is sent beforehand to him also.

IV.50.4 The first question for the judge is then whether there exists a particular and cogent ground of appeal. If there is no such ground there can be no certificate, and if there is no certificate there can be no bail. A judge should not grant a certificate with regard to sentence merely in the light of mitigation to which he has, in his opinion, given due weight, nor in regard to conviction on a ground where he considers the chance of a successful appeal is not substantial. The judge should bear in mind that, where a certificate is refused, application may be made to the Court of Appeal for leave to appeal and for bail.

IV.50.5 The length of the period which might elapse before the hearing of any appeal is not relevant to the grant of a certificate, but, if the judge does decide to grant a certificate, it may be one factor in the decision whether or not to grant bail. A judge who is minded to take this factor into account may find it advisable to have the court clerk contact the Criminal Appeal Office Listing Co-ordinator in order that he may have an accurate and up-to-date assessment of the likely waiting time. This can be very short. The Co-ordinator will require a general account of the weight and urgency of the case.

IV.50.6 Where the defendant's representative considers that bail should be applied for as a matter of urgency, the application should normally be made, in the first instance, to the trial judge, and the Court of Appeal may decline to treat such an application as urgent if there is no good reason why it has not been made to the trial judge.

PART V: FURTHER DIRECTIONS APPLYING IN THE MAGISTRATES' COURTS

V.51 MODE OF TRIAL

V.51.1 The purpose of these guidelines is to help magistrates decide whether or not to commit defendants charged with 'either way' offences for trial in the Crown Court. Their object is to provide guidance not direction. They are not intended to impinge on a magistrate's duty to consider each case individually and on its own particular facts. These guidelines apply to all defendants aged 18 and above.

General mode of trial considerations

V.51.2 Section 19 of the Magistrates' Courts Act 1980 requires magistrates to have regard to the following matters in deciding whether an offence is more suitable for summary trial or trial on indictment:

(a) the nature of the case;
(b) whether the circumstances make the offence one of a serious character;
(c) whether the punishment which a magistrates' court would have power to inflict for it would be adequate;
(d) any other circumstances which appear to the court to make it more suitable for the offence to be tried in one way rather than the other;
(e) any representations made by the prosecution or the defence.

V.51.3 Certain general observations can be made:

(a) the court should never make its decision on the grounds of convenience or expedition;
(b) the court should assume for the purpose of deciding mode of trial that the prosecution version of the facts is correct;
(c) the fact that the offences are alleged to be specimens is a relevant consideration (although, it has to be borne in mind that difficulties can arise in sentencing in relation to specimen counts see *R v Clark [1996] 2 Cr App R (S) 351* and *R v Canavan and others [1998] 1 Cr App R (S) 243*); the fact that the defendant will be asking for other offences to be taken into consideration, if convicted, is not;
(d) where cases involve complex questions of fact or difficult questions of law, including difficult issues of disclosure of sensitive material,

the court should consider committal for trial;

(e) where two or more defendants are jointly charged with an offence each has an individual right to elect his mode of trial;

(f) in general, except where otherwise stated, either way offences should be tried summarily unless the court considers that the particular case has one or more of the features set out in paragraphs V.51.4 to V.51.18 and that its sentencing powers are insufficient;

(g) the court should also consider its power to commit an offender for sentence under sections 3 and 4 of the Powers of Criminal Courts (Sentencing) Act 2000, if information emerges during the course of the hearing which leads it to conclude that the offence is so serious, or the offender such a risk to the public, that its powers to sentence him are inadequate. This means that committal for sentence is no longer determined by reference to the character and antecedents of the offender.

Features relevant to individual offences

V.51.4 Where reference is made in these guidelines to property or damage of 'high value' it means a figure equal to at least twice the amount of the limit (currently £5,000) imposed by statute on a magistrates' court when making a compensation order.

Burglary: Dwelling-house

V.51.5 Cases should be tried summarily unless the court considers that one or more of the following features is present in the case *and* that its sentencing powers are insufficient. Magistrates should take account of their powers under sections 3 and 4 of the Powers of Criminal Courts (Sentencing) Act 2000 to commit for sentence, see paragraph V.51.3(g).

(a) Entry in the daytime when the occupier (or another) is present;

(b) Entry at night of a house which is normally occupied, whether or not the occupier (or another) is present;

(c) The offence is alleged to be one of a series of similar offences;

(d) When soiling, ransacking, damage or vandalism occurs;

(e) The offence has professional hallmarks;

(f) The unrecovered property is of high value: see paragraph V.51.4 for definition of high value;

(g) The offence is racially motivated.

Note: Attention is drawn to paragraph 28(c) of Schedule 1 to the

Magistrates' Courts Act 1980 by which offences of burglary in a dwelling cannot be tried summarily if any person in the dwelling was subjected to violence or the threat of violence.

Burglary: Non-dwelling

V.51.6 Cases should be tried summarily unless the court considers that one or more of the following features is present in the case *and* that its sentencing powers are insufficient. Magistrates should take account of their powers under sections 3 and 4 of the Powers of Criminal Courts (Sentencing) Act 2000 to commit for sentence, see paragraph V.51.3(g).

(a) Entry of a pharmacy or doctor's surgery;
(b) Fear is caused or violence is done to anyone lawfully on the premises (e.g. night-watchman, security guard);
(c) The offence has professional hallmarks;
(d) Vandalism on a substantial scale;
(e) The unrecovered property is of high value: see paragraph V.51.4 for definition of high value;
(f) The offence is racially motivated.

Theft and fraud

V.51.7 Cases should be tried summarily unless the court considers that one or more of the following features is present in the case *and* that its sentencing powers are insufficient. Magistrates should take account of their powers under sections 3 and 4 of the Powers of Criminal Courts (Sentencing) Act 2000 to commit for sentence, see paragraph V.51.4(g).

Breach of trust by a person in a position of substantial authority, or in whom a high degree of trust is placed;
Theft or fraud which has been committed or disguised in a sophisticated manner;
Theft or fraud committed by an organised gang;
The victim is particularly vulnerable to theft or fraud, e.g. the elderly or infirm;
The unrecovered property is of high value: see paragraph V.51.4 for definition of high value.

Handling

V.51.8 Cases should be tried summarily unless the court considers that one or

more of the following features is present in the case *and* that its sentencing powers are insufficient. Magistrates should take account of their powers under sections 3 and 4 of the Powers of Criminal Courts (Sentencing) Act 2000 to commit for sentence, see paragraph V.51.3(g).

(a) Dishonest handling of stolen property by a receiver who has commissioned the theft;
(b) The offence has professional hallmarks;
(c) The property is of high value: see paragraph V.51.4 for definition of high value.

Social security frauds

V.51.9 Cases should be tried summarily unless the court considers that one or more of the following features is present in the case *and* that its sentencing powers are insufficient. Magistrates should take account of their powers under sections 3 and 4 of the Powers of Criminal Courts (Sentencing) Act 2000 to commit for sentence, see paragraph V.51.3(g).

(a) Organised fraud on a large scale;
(b) The frauds are substantial and carried out over a long period of time.

Violence (sections 20 and 47 of the Offences against the Person Act 1861)

V.51.10 Cases should be tried summarily unless the court considers that one or more of the following features is present in the case *and* that its sentencing powers are insufficient. Magistrates should take account of their powers under sections 3 and 4 of the Powers of Criminal Courts (Sentencing) Act 2000 to commit for sentence, see paragraph V.51.3(g).

(a) The use of a weapon of a kind likely to cause serious injury;
(b) A weapon is used and serious injury is caused;
(c) More than minor injury is caused by kicking or head-butting;
(d) Serious violence is caused to those whose work has to be done in contact with the public or are likely to face violence in the course of their work;
(e) Violence to vulnerable people, e.g. the elderly and infirm;
(f) The offence has clear racial motivation.

Note: the same considerations apply to cases of domestic violence.

Public Order Act Offences

V.51.11 Cases should be tried summarily unless the court considers that one or more of the following features is present in the case *and* that its sentencing powers are insufficient. Magistrates should take account of their powers under sections 3 and 4 of the Powers of Criminal Courts (Sentencing) Act 2000 to commit for sentence, see paragraph V.51.3(g).

(a) Cases of *violent disorder* should generally be committed for trial;
(b) *Affray*;
    (i) Organised violence or use of weapons;
    (ii) Significant injury or substantial damage;
    (iii) The offence has clear racial motivation;
    (iv) An attack on police officers, ambulance staff, fire-fighters and the like.

Violence to and neglect of children

V.51.12 Cases should be tried summarily unless the court considers that one or more of the following features is present in the case *and* that its sentencing powers are insufficient. Magistrates should take account of their powers under sections 3 and 4 of the Powers of Criminal Courts (Sentencing) Act 2000 to commit for sentence, see paragraph V.51.3(g):

(a) Substantial injury;
(b) Repeated violence or serious neglect, even if the physical harm is slight;
(c) Sadistic violence, e.g. deliberate burning or scalding.

Indecent assault

V.51.13 Cases should be tried summarily unless the court considers that one or more of the following features is present in the case *and* that its sentencing powers are insufficient. Magistrates should take account of their powers under sections 3 and 4 of the Powers of Criminal Courts (Sentencing) Act 2000 to commit for sentence, see paragraph V.51.3(g).

(a) Substantial disparity in age between victim and defendant, and a more serious assault;
(b) Violence or threats of violence;
(c) Relationship of trust or responsibility between defendant and victim;
(d) Several more serious similar offences;
(e) The victim is particularly vulnerable;

(f) Serious nature of the assault.

Unlawful sexual intercourse

V.51.14 Cases should be tried summarily unless the court considers that one or more of the following features is present in the case *and* that its sentencing powers are insufficient. Magistrates should take account of their powers under sections 3 and 4 of the Powers of Criminal Courts (Sentencing) Act 2000 to commit for sentence, see paragraph V.51.3(g).

(a) Wide disparity of age;
(b) Breach of position of trust;
(c) The victim is particularly vulnerable.

Note: Unlawful sexual intercourse with a girl *under 13* is triable only on indictment.

Drugs

V.51.15 Class A:
(a) Supply; possession with intent to supply:
These cases should be committed for trial.
(b) Possession:
Should be committed for trial unless the amount is consistent only with personal use.

V.51.16 Class B:
(a) Supply; possession with intent to supply:
Should be committed for trial unless there is only small scale supply for no payment.
(b) Possession:
Should be committed for trial when the quantity is substantial and not consistent only with personal use.

Dangerous driving and aggravated vehicle taking

V.51.17 Cases should be tried summarily unless the court considers that one or more of the following features is present in the case *and* that its sentencing powers are insufficient. Magistrates should take account of their powers under sections 3 and 4 of the Powers of Criminal Courts (Sentencing) Act 2000 to commit for sentence, see paragraph V.51.3(g).

(a) Alcohol or drugs contributing to the dangerous driving;
(b) Grossly excessive speed;
(c) Racing;
(d) Prolonged course of dangerous driving;
(e) Other related offences;
(f) Significant injury or damage sustained.

Criminal damage

V.51.18 Cases should be tried summarily unless the court considers that one or more of the following features is present in the case *and* that its sentencing powers are insufficient. Magistrates should take account of their powers under sections 3 and 4 of the Powers of Criminal Courts (Sentencing) Act 2000 to commit for sentence, see paragraph V.51.3(g).

(a) Deliberate fire-raising;
(b) Committed by a group;
(c) Damage of a high value;
(d) The offence has clear racial motivation.

Note: Offences set out in Schedule 2 to the Magistrates' Courts Act 1980 (which includes offences of criminal damage which do not amount to arson) *must* be tried summarily if the value of the property damaged or destroyed is £5,000 or less.

V.52 COMMITTAL FOR SENTENCE AND APPEALS TO CROWN COURT

V.52.1 Any case notes should be sent to the Crown Court when there is an appeal, thereby making them available to the judge if the judge requires them in order to decide before the hearing questions of listing or representation or the like. They will also be available to the court during the hearing if it becomes necessary or desirable for the court to see what happened in the lower court. On a committal for sentence or an appeal, any reasons given by the magistrates for their decision should be included with the notes.

V.53 BAIL BEFORE COMMITTAL FOR TRIAL

V.53.1 Rules 19 and 20 of the Crown Court Rules 1982: SI 1982/1109 apply to these applications.

V.53.2 Before the Crown Court can deal with an application it must be satisfied that the magistrates' court has issued a certificate under section 5(6A) of

the Bail Act 1976 that it heard full argument on the application for bail before it refused the application. A copy of the certificate will be issued to the applicant and not sent directly to the Crown Court. It will therefore be necessary for the applicant's solicitors to attach a copy of the certificate to the bail application form. If the certificate is not enclosed with the application form it will be difficult to avoid some delay in listing.

Venue

V.53.3 Applications should be made to the court to which the defendant will be or would have been committed for trial. In the event of an application in a purely summary case, it should be made to the Crown Court centre which normally receives class 4 work. The hearing will be listed as a chambers matter unless a judge has directed otherwise.

V.54 CONTEMPT IN THE FACE OF THE MAGISTRATES' COURT

General

V.54.1 Section 12 of the Contempt of Court Act 1981 gives magistrates' courts the power to detain until the court rises, someone, whether a defendant or another person present in court, who wilfully insults anyone specified in section 12 or who interrupts proceedings. In any such case, the court may order any officer of the court, or any constable, to take the offender into custody and detain him until the rising of the court; and the court may, if it thinks fit, commit the offender to custody for a specified period not exceeding one month or impose a fine not exceeding level 4 on the standard scale or both. This power can be used to stop disruption of their proceedings. Detention is until the person can be conveniently dealt with without disruption of the proceedings. Prior to the court using the power the offender should be warned to desist or face the prospect of being detained.

V.54.2 Magistrates' courts also have the power to commit to custody any person attending or brought before a magistrates' court who refuses without just cause to be sworn or to give evidence under section 97(4) of the Magistrates' Courts Act 1980, until the expiration of such period not exceeding one month as may be specified in the warrant or until he sooner gives evidence or produces the document or thing, or impose on him a fine not exceeding £2,500, or both.

V.54.3 In the exercise of any of these powers, as soon as is practical, and in any

event prior to an offender being proceeded against, an offender should be told of the conduct which it is alleged to constitute his offending in clear terms. When making an order under section 12 the justices should state their findings of fact as to the contempt.

V.54.4 Exceptional situations require exceptional treatment. While this direction deals with the generality of situations, there will be a minority of situations where the application of the direction will not be consistent with achieving justice in the special circumstances of the particular case. Where this is the situation, the compliance with the direction should be modified so far as is necessary so as to accord with the interests of justice.

V.54.5 The power to bind persons over to be of good behaviour in respect of their conduct in court should cease to be exercised.

Contempt consisting of wilfully insulting anyone specified in section 12 or interrupting proceedings

V.54.6 In the case of someone who wilfully insults anyone specified in section 12 or interrupts proceedings, if an offender expresses a willingness to apologise for his misconduct, he should be brought back before the court at the earliest convenient moment in order to make the apology and to give undertakings to the court to refrain from further misbehaviour.

V.54.7 In the majority of cases, an apology and a promise as to future conduct should be sufficient for justices to order an offender's release. However, there are likely to be certain cases where the nature and seriousness of the misconduct requires the justices to consider using their powers under section 12(2) of the Contempt of Court 1981 Act either to fine or to order the offender's committal to custody.

Where an offender is detained for contempt of court

V.54.8 Anyone detained under either of these provisions in paragraphs V.54.1 or V.54.2 should be seen by the duty solicitor or another legal representative and be represented in proceedings if they so wish. Public funding should generally be granted to cover representation. The offender must be afforded adequate time and facilities in order to prepare his case. The matter should be resolved the same day if at all possible.

V.54.9 The offender should be brought back before the court before the justices conclude their daily business. The justices should ensure that he

understands the nature of the proceedings, including his opportunity to apologise or give evidence and the alternative of them exercising their powers.

V.54.10 Having heard from the offender's solicitor, the justices should decide whether to take further action.

Sentencing of an offender who admits being in contempt

V.54.11 If an offence of contempt is admitted the justices should consider whether they are able to proceed on the day or whether to adjourn to allow further reflection. The matter should be dealt with on the same day if at all possible. If the justices are of the view to adjourn they should generally grant the offender bail unless one or more of the exceptions to the right to bail in the Bail Act 1976 are made out.

V.54.12 When they come to sentence the offender where the offence has been admitted, the justices should first ask the offender if he has any objection to them dealing with the matter. If there is any objection to the justices dealing with the matter a differently constituted panel should hear the proceedings. If the offender's conduct was directed to the justices, it will not be appropriate for the same bench to deal with the matter.

V.54.13 The justices should consider whether an order for the offender's discharge is appropriate, taking into account any time spent on remand, whether the offence was admitted and the seriousness of the contempt. Any period of committal should be for the shortest time commensurate with the interests of preserving good order in the administration of justice.

Trial of the issue where the contempt is not admitted

V.54.14 Where the contempt is not admitted the justices' powers are limited to making arrangements for a trial to take place. They should not at this stage make findings against the offender.

V.54.15 In the case of a contested contempt the trial should take place at the earliest opportunity and should be before a bench of justices other than those before whom the alleged contempt took place. If a trial of the issue can take place on the day such arrangements should be made taking into account the offender's rights under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969). If the trial cannot take place

that day the justices should again bail the offender unless there are grounds under the Bail Act 1976 to remand him in custody.

V.54.16 The offender is entitled to call and examine witnesses where evidence is relevant. If the offender is found by the court to have committed contempt the court should again consider first whether an order for his discharge from custody is sufficient to bring proceedings to an end. The justices should also allow the offender a further opportunity to apologise for his contempt or to make representations. If the justices are of the view that they must exercise their powers to commit to custody under section12(2) of the 1981 Act, they must take into account any time spent on remand and the nature and seriousness of the contempt. Any period of committal should be for the shortest period of time commensurate with the interests of preserving good order in the administration of justice.

V.55 CLERK RETIRING WITH JUSTICES

V.55.1 A justices' clerk is responsible for:

(a) the legal advice tendered to the justices within the area;
(b) the performance of any of the functions set out below by any member of his staff acting as legal adviser;
(c) ensuring that competent advice is available to justices when the justices' clerk is not personally present in court; and
(d) the effective delivery of case management and the reduction of unnecessary delay.

V.55.2 Where a person other than the justices' clerk (a 'legal adviser'), who is authorised to do so, performs any of the functions referred to in this direction he will have the same responsibilities as the justices' clerk. The legal adviser may consult the justices' clerk or other person authorised by the justices' clerk for that purpose before tendering advice to the bench. If the justices' clerk or that person gives any advice directly to the bench, he should give the parties or their advocates an opportunity of repeating any relevant submissions prior to the advice being given.

V.55.3 It shall be the responsibility of the legal adviser to provide the justices with any advice they require properly to perform their functions, whether or not the justices have requested that advice, on:

(a) questions of law (including European Court of Human Rights jurisprudence and those matters set out in section 2(1) of the Human

Rights Act 1998);
(b) questions of mixed law and fact;
(c) matters of practice and procedure;
(d) the range of penalties available;
(e) any relevant decisions of the superior courts or other guidelines;
(f) other issues relevant to the matter before the court; and
(g) the appropriate decision-making structure to be applied in any given case.

In addition to advising the justices it shall be the legal adviser's responsibility to assist the court, where appropriate, as to the formulation of reasons and the recording of those reasons.

V.55.4 A justices' clerk or legal adviser must not play any part in making findings of fact, but may assist the bench by reminding them of the evidence, using any notes of the proceedings for this purpose.

V.55.5 A justices' clerk or legal adviser may ask questions of witnesses and the parties in order to clarify the evidence and any issues in the case. A legal adviser has a duty to ensure that every case is conducted fairly.

V.55.6 When advising the justices the justices' clerk or legal adviser, whether or not previously in court, should:

(a) ensure that he is aware of the relevant facts; and
(b) provide the parties with the information necessary to enable the parties to make any representations they wish as to the advice before it is given.

V.55.7 At any time justices are entitled to receive advice to assist them in discharging their responsibilities. If they are in any doubt as to the evidence which has been given, they should seek the aid of their legal adviser, referring to his notes as appropriate. This should ordinarily be done in open court. Where the justices request their adviser to join them in the retiring room, this request should be made in the presence of the parties in court. Any legal advice given to the justices other than in open court should be clearly stated to be provisional and the adviser should subsequently repeat the substance of the advice in open court and give the parties an opportunity to make any representations they wish on that provisional advice. The legal adviser should then state in open court whether the provisional advice is confirmed or if it is varied the nature of the variation.

V.55.8 The performance of a legal adviser may be appraised by a person authorised by the magistrates' courts committee to do so. For that purpose the appraiser may be present in the justices' retiring room. The content of the appraisal is confidential, but the fact that an appraisal has taken place, and the presence of the appraiser in the retiring room, should be briefly explained in open court.

V.55.9 The legal adviser is under a duty to assist unrepresented parties to present their case, but must do so without appearing to become an advocate for the party concerned.

V.55.10 The role of legal advisers in fine default proceedings or any other proceedings for the enforcement of financial orders, obligations or penalties is to assist the court. They must not act in an adversarial or partisan manner. With the agreement of the justices a legal adviser may ask questions of the defaulter to elicit information which the justices will require to make an adjudication, for example to facilitate his explanation for the default. A legal adviser may also advise the justices in the normal way as to the options open to them in dealing with the case. It would be inappropriate for the legal adviser to set out to establish wilful refusal or neglect or any other type of culpable behaviour, to offer an opinion on the facts, or to urge a particular course of action upon the justices. The duty of impartiality is the paramount consideration for the legal adviser at all times, and this takes precedence over any role he may have as a collecting officer. The appointment of other staff to 'prosecute' the case for the collecting officer is not essential to ensure compliance with the law, including the Human Rights Act 1998. Whether to make such appointments is a matter for the justices' chief executive.

V.56 CASE MANAGEMENT IN MAGISTRATES' COURTS

V.56.1 This section of the practice direction supplements the rules in Part 3 of the Criminal Procedure Rules as they apply to the management of cases in magistrates' courts. Where time limits or other directions in the Consolidated Criminal Practice Direction appear inconsistent with this section, the directions in this section take precedence. To avoid unnecessary and wasted hearings the parties should be allowed adequate time to prepare the case, having regard to the time limits for applications and notices set by the Criminal Procedure Rules and by other legislation. When those time limits have expired the parties will be expected to be fully prepared.

Cases to be tried summarily by the magistrates' court

V.56.2 The case progression form to be used is set out in annex E with guidance notes. The form, read with the notes, constitutes a case progression timetable for the effective preparation of a case.

Cases sent, committed or transferred to the Crown Court for trial

V.56.3 The case progression forms set out in annex E with guidance notes are to be used in connection with cases that are sent to the Crown Court for trial under section 51 of the Crime and Disorder Act 1998 and cases that are committed to the Crown Court for trial under section 6 of the Magistrates' Courts Act 1980. In a case transferred to the Crown Court for trial under section 4(1) of the Criminal Justice Act 1987 or under section 53(1) of the Criminal Justice Act 1991 the directions contained in the case progression form used for committal for trial apply as if the case had been committed on the date of the notice of transfer.

V.56.4 A preliminary hearing ('PH') is not required in every case sent for trial under section 51 of the Crime and Disorder Act 1998: see rule 12.2 (which altered the Crown Court rule from which it derived). A PH should be ordered only where such a hearing is considered necessary. The PH should be held about 14 days after sending.

V.56.5 Whether or not a magistrates' court orders a PH, a plea and case management hearing ('PCMH') should be ordered in every case sent or committed to the Crown Court for trial. The PCMH should be held within about 7 weeks after committal for trial, within about 14 weeks after sending for trial where a defendant is in custody and within about 17 weeks after sending for trial where a defendant is on bail.

Use of the forms: directions that apply by default

V.56.6 The case progression forms to be used in magistrates' courts contain directions some of which are determined by Criminal Procedure Rules or by other legislation and some of which are discretionary, as explained in the guidance notes. All those directions apply in every case unless the court otherwise orders.

The Lord Chief Justice of England and Wales
8 July 2002

as amended 30 March 2007

ANNEX A

List of Practice Directions, Practice Notes and Practice Statements included in this consolidation (in chronological order)

Practice Note: Misjoinder of counts in an Indictment, delivered as part of the judgment in *Hudson and Hagan* (1952) 36 CrAppR 94; 12/5/52
Practice Note (Justices' Clerks) [1954] WLR 213; [1954] 1 All ER 230; 15/1/54
Practice Note (Quarter Sessions: Documents) [1956] 1 QB 451; [1956] 2 WLR 681; [1956] 1 All ER 448; 10/2/56
Practice Note (Indictments) [1956] 1 WLR 1499; (1956) 40 CrAppR 164; 12/11/56
Practice Direction (Sentence) [1959] 1 WLR 491; [1959] 2 All ER 144; (1959) 43 CrAppR 154, CA; 13/4/59
Practice Direction (Passing Sentence) [1962] 1 WLR 191; [1962] 1 All ER 417, CA; 5/2/62
Practice Direction (Crime: Majority Verdicts) [1967] 1 WLR 1198; [1967] 3 All ER 137; (1967) 51 CrAppR 454, C.A; 31/7/67
Practice Direction (Plea of guilty: Statement of Facts) [1968] 1 WLR 529; [1968] 2 All ER 144; 52 CrAppR 513, CA; 1/4/68
Discussions relevant to sentence – Based on *R v Turner* [1970] 2 QB 321, and Archbold 2002 at paragraphs 4-78 - 4-79
Practice Direction (Crime: Suspended Sentence) [1970] 1 WLR 259; [1970] 1 All ER 273; (1970) 54 CrAppR 208, CA; 16/1/70
Practice Note (Crime: Applications for Leave to Appeal) [1970] 1 WLR 663; [1970] 1 All ER 1119; 54 CrAppR 280, CA; 17/3/70
Practice Direction (Crime: Majority Verdict) [1970] 1 WLR 916; [1970] 2 All ER 215; 54 CrAppR 373; 11/5/70
R v Upton (Note) [1973] 3 All ER 318; 57 CrAppR 838; 28/6/73
Practice Direction (Deferred Sentences) (1974) 59 Cr App R 130; C.A.; 22/3/74
Practice Direction (Crime: Bail During Trial) [1974] 1 WLR 770; [1974] 2 All ER 794; 59 CrAppR 159, CA; 4/6/74
Practice Direction (Crime: Spent Convictions) [1975] 1 WLR 1065; [1975] 2 All ER 1072; (1975) 61 CrAppR 260, DC; 30/6/75
Practice Direction (Crime: Indictment) [1976] 1 WLR 409; [1976] 2 All ER 326; 62 CrAppR 251, C.A; 9/3/76
Practice Direction (Crime: Inconsistent decisions) [1976] 1 WLR 799; [1976] Crim LR 561, CA; 26/7/76
Practice Direction (Crime: Conspiracy) [1977] 1 WLR 537; [1977] 2 All ER 540; (1977) 64 CrAppR 258; 9/5/77
Practice Direction (Crime: Sentence: Loss of time) [1980] 1 WLR 270; [1980] 1 All ER 555, CA; 14/2/80

Practice Direction (Tape Recorders) [1981] 1 WLR 1526; [1981] 3 All ER 848; (1982) 74 CrAppR 73, CA; 19/11/81
Practice Direction (Judges: Modes of Address) [1982] 1 WLR 101; [1982] 1 All ER 320; (1982) 74 CrAppR 193, CA; 12/1/82
Practice Direction (Contempt: Reporting Restrictions) [1982] 1 WLR 1475; [1983] 1 All ER 64; (1983) 76 CrAppR 78, CA; 6/12/82
Practice Direction (Crown Court: Bail) [1983] 2 All ER 261; 77 CrAppR 69; 26/4/83
Practice Direction (Crown Court: Bail Pending Appeal) [1983] 1 WLR 1292; [1983] 3 All ER 608; 78 CrAppR 40, CA; 10/11/83
Practice Direction (Crime: Jury Oath) [1984] 1 WLR 1217; [1984] 3 All ER 528; 80 CrAppR 13, CA; 12/10/84
Practice Direction (Crime: Evidence by Written Statements) [1986] 1 WLR 805; [1986] 2 All ER 511; 83 CrAppR 212, DC; 3/6/86
Practice Direction (Bail: Failure to Surrender to Custody) [1987] 1 WLR 79; (1987) 84 CrAppR 137, [1987] 1 All ER 128; 19/12/86
Practice Direction (Ward: Witness at Trial) [1987] 1 WLR 1739; [1988] 1 All ER 223; 11/11/87
Practice Direction (Crime: Notices of Appeal) [1988] 1 WLR 34; [1988] 1 All ER 244; 86 CrAppR 195, CA; 18/12/87
Practice Direction (Ward: Witness at Trial) (No. 2) [1988] 1 WLR 989; [1988] 2 All ER 1015; 18/7/88
Practice Direction (Crime: Tape Recording: Police Interviews) [1989] 1 WLR 631; [1989] 2 All ER 415; (1989) 89 CrAppR 132; 26/5/89
Practice Note (Mode of Trial: Guidelines) [1990] 1 WLR 1439; [1990] 3 All ER 979; (1990) 92 CrAppR 142; 26/10/90
Practice Direction (Crown Courts: TV Links) [1992] 1 WLR 838; [1992] 3 All ER 922; 95 CrAppR 354; 31/7/92
Practice Direction (Crime: Child's Video Evidence) [1992] 1 WLR 839; [1992] 3 All ER 909; 95 CrAppR 354; 31/7/92
Practice Direction (Criminal Appeals: Summaries) [1992] 1 WLR 938; [1992] 4 All ER 408; 95 CrAppR 455, CA; 1/10/92
Practice Statement (Crime: Sentencing) [1992] 1 WLR 948; [1992] 4 All ER 307; 95 CrAppR 456; 1/10/92
Practice Direction (Crime: Life Sentences) [1993] 1 WLR 223; [1993] 1 All ER 747; 96 CrAppR 397, CA; 8/2/93
Practice Direction (Court Dress) [1994] 1 WLR 1056; [1995] 1 CrAppR 13; 19/7/94
Practice Direction (Reference to Extracts from Hansard) [1995] 1 WLR 192; 20/12/94
Practice Direction (Crown Court: Counsel) [1995] 1 WLR 261; [1995] 1 All ER 307; [1995] 1 CrAppR 576; 16/1/95
Practice Direction (Crown Court: Defendant's Evidence) [1995] 1 WLR 657; [1995] 2 All ER 499; [1995] 2 CrAppR 192; 10/4/95
Practice Direction (Court Dress) (No. 2) [1995] 1 WLR 648; [1995] 2 CrAppR 191;

11/4/95
Practice Direction (Crown Court: Plea and Directions Hearings) [1995] 1 WLR 1318; [1995] 4 All ER 379; [1995] 2 CrAppR 600; 25/7/95
Practice Direction (Crime: Antecedents) (No.2) [1997] 1 WLR 1482; [1997] 4 All ER 350; [1998] 1 CrAppR 213; 9/10/97
Practice Directions (Custodial Sentences: Explanations) [1998] 1 WLR 278; [1998] 1 All ER 733; [1998] 1 CrAppR 397; 22/1/98
Practice Statement (Royal Courts of Justice: Judgments) [1998] 1 WLR 825; [1998] 2 All ER 667; 22/4/98
Practice Direction (Crown Court: Welsh Language) [1998] 1 WLR 1677; [1999] 1 All ER 575; [1999] 2 CrAppR 32; 16/10/98
Practice Direction (Crown Court: Fraud Trials) (No. 4) [1998] 1 WLR 1692; [1998] 4 All ER 1023; [1999] 1 CrAppR 142; 28/10/98
Practice Direction (Court Dress) (No. 3) [1998] 1 WLR 1764; [1999] 1 CrAppR 336; 25/11/98
Practice Statement (Royal Courts of Justice: Judgments (2) [1999] 1 WLR 1; [1999] 1 All ER 125; [1999] 1 Cr App R 333; 25/11/98
Practice Direction (Criminal Appeals: Skeleton Arguments) [1999] 1 WLR 146; [1999] 1 All ER 669, CA; 15/12/98
Practice Direction (ECJ References: Procedure) [1999] 1 WLR 260; [1999] 1 CrAppR 452; 14/1/99
Practice Direction (Judges: Recorder of Cardiff) [1999] 1 WLR 597; [1999] 2 All ER 352; [1999] 2 CrAppR 187; 18/2/99
Practice Direction (Court of Appeal (Civil Division)) [1999] 1 WLR 1027; [1999] 2 All ER 490, CA; Paragraph 9; 19/4/99
Practice Direction (Court of Appeal (Civil Division)) [1999] 1 WLR 1027; [1999] 2 All ER 490, CA; Paragraph 10.1; 19/4/99
Practice Direction (Court of Appeal (Civil Division)) [1999] 1 WLR 1027; [1999] 2 All ER 490, CA; Paragraph 10.2; 19/4/99
Practice Direction (Supreme Court: Devolution) [1999] 1 WLR 1592; [1999] 3 All ER 466; [1999] 2 CrAppR 486; 6/99
Practice Direction (Crime: Voluntary Bills) [1999] 1 WLR 1613; [1999] 4 All ER 62; [1999] 2 CrAppR 442; 29/7/99
Practice Direction (Crown Court: Young Defendants) [2000] 1 WLR 659; [2000] 2 All ER 285; [2000] 1 CrAppR 483; 16/2/00
Practice Direction (Criminal Appeals: Summaries) (No.2) [2000] 1 WLR 1177; [2000] CrAppR 178, CA; 15/05/00
Practice Direction (Crown Court: Abuse of Process) [2000] 1 WLR 1322; [2000] 3 All ER 384;[2000] 2 CrAppR 179; 23/5/00
Practice Statement (Juveniles: Murder Tariff) [2000] 1 WLR 1655; [2000] 4 All ER 831; [2000] 2 CrAppR 457; 27/7/00
Practice Direction (Justices: Clerk to Court) [2000] 1 WLR 1886; [2000] 4 All ER 895;

2/10/00
Practice Direction (Judgments: Form and Citation) [2001] 1 WLR 194; [2001] 1 All ER 19; [2001] 1 CrAppR 426; 11/01/01
Practice Direction (Magistrates' Courts: Contempt) [2001] 1 WLR 1254; [2001] 3 All ER 94; [2001] 2 CrAppR 272; 23/5/01
Practice Direction (Crown Court: Business) [2001] 1 WLR 1996; [2001] 4 All ER 635; 16/10/01
Practice Direction (Crime: Victim Personal Statements) [2001] 1 WLR 2038; [2001] 4 All ER 640; 16/10/01
Practice Direction (Judgments: Neutral citations) [2002] 1 All ER 351; 14/01/02
Practice Statement as to life sentences; 31/05/02
Amendment No. 1 to the Consolidated Criminal Practice Direction (Support For Witnesses Giving Evidence By Live Television Link)
Amendment No. 2 to the Consolidated Criminal Practice Direction (Appeals Against Sentence – the Provision of Notice to the Prosecution)
Amendment No. 3 to the Consolidated Criminal Practice Direction (Bail: Failure to Surrender and Trials in Absence)
Amendment No. 4 to the Consolidated Criminal Practice Direction (Guidance to Jurors)
Amendment No. 5 to the Consolidated Criminal Practice Direction (Listing of Appeals against Conviction and Sentence in the Court of Appeal Criminal Division)
Amendment No. 7 to the Consolidated Criminal Practice Direction (Explanations for the Imposition of Custodial Sentences)
Amendment No. 8 to the Consolidated Criminal Practice Direction (Mandatory Life Sentences)
Amendment No. 9 to the Consolidated Criminal Practice Direction (Jury Service)
Amendment No. 10 to the Consolidated Criminal Practice Direction (Forms for Use in Criminal Proceedings)
Amendment No. 11 to the Consolidated Criminal Practice Direction (Case Management)
Amendment No. 12 to the Consolidated Criminal Practice Direction (Classification and Allocation of Business)
Amendment No. 13 to the Consolidated Criminal Practice Direction (Forms for Use in Criminal Proceedings)
Amendment No. 14 to the Consolidated Criminal Practice Direction (Forms for Use in Criminal Proceedings)
Amendment No. 15 to the Consolidated Criminal Practice Direction (Treatment of Vulnerable Defendants; Binding Over Orders and Conditional Discharges; Settling the Indictment; Management of Cases to be Heard in the Crown Court and Forms for Use in Criminal Proceedings)

ANNEX B

List of Practice Directions, Practice Notes and Practice Statements not included in this consolidation, but no longer applicable in criminal proceedings (in chronological order)

Practice Note (Onus of proof: charge of receiving stolen goods) [1946] WN 101; 1/6/46
Practice Statement (Probation orders) (1952) 35 Cr. App. R. 207; 25/2/52
Practice Note (Applications for leave to appeal) (1952) 36 CrAppR 145; 6/10/52
Practice Note (Non-capital murder: No appeal against sentence) [1957] 2 All ER 378; 13/5/57
Practice Note (Criminal Law: Conditional Binding Over: Entry on Depositions) [1961] 1 All ER 875; 6/3/61
Practice Note (Appeal: Form of order) [1961] 3 All ER 522; 5/10/61
Practice Direction (Submission of no case) [1962] 1 WLR 227; [1962] 1 All ER 448, DC; 9/2/62
Practice Direction (Corrective training: Preventative Detention) [1962] 1 WLR 402; [1962] 1 All ER 671; 26/2/62
Practice Direction (Homicide: Indictment) [1964] 1 WLR 1244; [1964] 3 All ER 509; 12/10/64
Practice Direction (Corrective training: Preventative Detention) (No. 2) [1966] 1 WLR 1218; [1966] 2 All ER 905; 21/6/66
Practice Direction (Crime: Alibi Defence) [1969] 1 WLR 603; [1969] 1 All ER 1042, CA; 20/3/69
Practice Direction (Solicitors: Rights of Audience) (No. 2) [1972] 1 WLR 307; [1972] 1 All ER 608; 9/2/72
Practice Direction (Crime: Sentence) [1976] 1 WLR 122; [1976] 1 All ER 271; 62 CrAppR 130, DC; 19/12/75
Practice Direction (Solicitors: Rights of Audience) [1986] 1 WLR 545; [1986] 2 All ER 226; 83 CrAppR 6; 9/5/86
Practice Direction (Solicitors: Audience in Crown Court) [1988] 1 WLR 1427; [1988] 3 All ER 717; 88 CrAppR 179; 26/8/88
Practice Direction (Jury Service: Excusal) [1988] 1 WLR 1162; [1988] 3 All ER 177; 87 CrAppR 294, DC; 19/9/88
Practice Direction (Western circuit: Allocation of business to Crown Court centres); 1/00
Practice Direction (Wales and Chester Circuit: Appeals from the magistrates' courts against conviction); 5/01
Amendment No.6 to the Consolidated Criminal Practice Direction (Mandatory Life Sentences)

ANNEX C

Explanations for the imposition of custodial sentences: Forms of words

The following forms may need to be adapted in the light of such provisions or practices as are in force affecting possible earlier release.

Forms of words are provided for use where the offender (a) will be a short term prisoner not subject to licence; (b) will be a short term prisoner subject to licence; (c) will be a long term prisoner; (d) will be subject to a discretionary sentence of life imprisonment.

Sentencers will bear in mind that where an offender is sentenced to terms which are consecutive, or wholly or partly concurrent, they are to be treated as a single term: section 51(2) of the Criminal Justice Act 1991.

(d) Total term less than 12 months

The sentence is ( ) months.

Unless you are released earlier under supervision, you will serve half that sentence in prison/a young offender institution. After that time you will be released.

Your release will not bring this sentence to an end. If after your release and before the end of the period covered by the sentence you commit any further offence, you may be ordered to return to custody to serve the balance of the original sentence outstanding at the date of the further offence, as well as being punished for that new offence.

Any time you have spent on remand in custody in connection with the offence(s) for which you are now being sentenced will count as part of the sentence to be served, unless it has already been counted.

(b) Total term of 12 months and less than 4 years

The sentence is ( ) (months/years).

Unless you are released earlier under supervision, you will serve half that sentence in a prison/a young offender institution. After that time you will be released.

Your release will not bring this sentence to an end. If after your release and before the end of the period covered by the sentence you commit any further offence you may be ordered to return to custody to serve the balance of the original sentence

outstanding at the date of the further offence, as well as being punished for that new offence.

Any time you have spent on remand in custody in connection with the offence(s) for which you are now being sentenced will count as part of the sentence to be served, unless it has already been counted.

After your release you will also be subject to supervision on licence until the end of three-quarters of the total sentence. (If an order has been made under section 85 of the Powers of Criminal Courts (Sentencing) Act 2000: After your release you will also be subject to supervision on licence for the remainder of the licence period.) If you fail to comply with any of the requirements of your licence then again you may be brought before a court which will have power to suspend your licence and order your return to custody.

(c) Total term of 4 years or more

The sentence is ( ) (years/months).

Your case will not be considered by the Parole Board until you have served at least half that period in custody. Unless the Parole Board recommends earlier release, you will not be released until you have served two-thirds of that sentence.

Your release will not bring the sentence to an end. If after your release and before the end of the period covered by the sentence you commit any further offence you may be ordered to return to custody to serve the balance of the original sentence outstanding at the date of the new offence, as well as being punished for that new offence.

Any time you have spent in custody on remand in connection with the offence(s) for which you are now being sentenced will count as part of the sentence to be served, unless it has already been counted.

After your release you will also be subject to supervision on licence until the end of three-quarters of the total sentence. (If an order has been made under section 85 of the Powers of Criminal Courts (Sentencing) Act 2000: After your release you will also be subject to supervision on licence for the remainder of the licence period. You will be liable to be recalled to prison if your licence is revoked, either on the recommendation of the Parole Board, or, if it is thought expedient in the public interest, by the Secretary of State.

(d) Discretionary life sentence

The sentence of the court is life imprisonment/custody for life/detention for life under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000. For the purposes of section 82A of that Act the court specifies a period of (x) years. That means that your case will not be considered by the Parole Board until you have served at least (x) years in custody. After that time the Parole Board will be entitled to consider your release. When it is satisfied that you need no longer be confined in custody for the protection of the public it will be able to direct your release. Until it is so satisfied you will remain in custody.

If you are released, it will be on terms that you are subject to a licence for the rest of your life and liable to be recalled to prison at any time if your licence is revoked, either on the recommendation of the Parole Board, or, if it is thought expedient in the public interest, by the Secretary of State.

ANNEX D

Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 7: Commencing proceedings in a magistrates' court			
	Information	Magistrates' Courts (Forms) Rules 1981, Schedule 2	Form 1
	Information on commission of further offence during probation period	Magistrates' Courts (Forms) Rules 1981, Schedule 2	Form 77
	Information on commission of further offence during operation period of suspended sentence under section 123(1) of the Powers of Criminal Courts (Sentencing) Act 2000	Magistrates' Courts (Forms) Rules 1981, Schedule 2	Form 84
	Information for failure to comply with requirements of probation, community service or combination order under paragraph 3, Part 2 of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000	Magistrates' Courts (Forms) Rules 1981, Schedule 2	Form 92I
	Information for failure to comply with requirements of attendance centre order or on breach of Attendance Centre Rules under paragraph 1 of Schedule 5 to the Powers of Criminal Courts	Magistrates' Courts (Children and Young Persons) Rules 1992, Schedule 2.	Form 7

	(Sentencing) Act 2000		
	Information for search warrant under section 32 of the Children and Young Persons Act 1969	Magistrates' Courts (Children and Young Persons) Rules 1992, Schedule 2.	Form 10
	Statutory Declaration under section 72(2) of the Road Traffic Offenders Act 1988	Magistrates' Courts (Forms) Rules 1981, Schedule 2	Form 160
	Statutory Declaration under section 73(2) of the Road Traffic Offenders Act 1988	Magistrates' Courts (Forms) Rules 1981, Schedule 2	Form 161
Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 10: Committal for trial			
Rule 10.5(1)(f)	List of exhibits	Magistrates' Courts (Forms) Rules 1981, Schedule 2	Form 26
Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 13: Dismissal of charges sent or transferred to the Crown Court			
Rule 13.2(1)(a), (b) Rule 13.2(4) Rule 13.3(1)	Application for dismissal of transferred charge(s), and for extension of time, under s.6 Criminal Justice Act 1987 or Schedule 6 of paragraph 5 Criminal Justice Act 1991	Criminal Justice Act 1987 (Dismissal of Transferred Charges) Rules 1988, rr 2, 3 and Criminal Justice Act 1991 (Dismissal of	Form 5301 Form 1

		Transferred Charges) Rules 1992, rr 2, 3	
Rule 13.2(5) Rule 13.2(7) Rule 13.4(4)	Notification of Court's determination on applications under the Criminal Justice Act of 1987 or 1991	Criminal Justice Act 1991 (Dismissal of Transferred Charges) Rules 1992, rr 2, 4 and Criminal Justice Act 1991 (Dismissal of Transferred Charges) Rules 1992, rr 2, 4	Form 5303 Form 3
Rule 13.4(3) Rule 13.4(7)	Application by Prosecution for oral hearing of defence application for dismissal under the Criminal Justice Act of 1987 or 1991	Criminal Justice Act 1987 (Dismissal of Transferred Charges) Rules 1988, r 4 and Criminal Justice Act 1991 (Dismissal of Transferred Charges) Rules 1992, r 4	Form 5302 Form 2
Rule 13.5(2)	Notification of Judge's determination of application for dismissal of transferred charge(s) under s.6 Criminal Justice Act 1987 or Sched 6, para 5, Criminal Justice Act 1991	Criminal Justice Act 1987 (Dismissal of Transferred Charges) Rules 1988, r 5 and Criminal Justice Act 1991 (Dismissal of Transferred Charges) Rules 1992, r 5	Form 5304 Form 4
Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 14: The Indictment			
Rule 14.2	Form of indictment	Indictment Rules 1971, rule 4(1)	
Rule 14.2	Form of indictment for use where an order is made under section 17(2) of the Domestic Violence, Crime		Form 6412a

	and Victims Act 2004		
Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 15: Preparatory hearings in cases of serious fraud and other complex and lengthy cases in the Crown Court			
Rule 15.1(1) Rule 15.2(3)	Application for a preparatory hearing under section 7(2) of the Criminal Justice Act 1987, or section 29(4) Criminal Procedure and Investigations Act 1996, or for an extension of time within which to apply	Criminal Justice Act 1987 (Preparatory Hearings) Rules 1997, rules 3, 4 Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) Rules 1997, rules 3, 4	Form 5305 Form 5309
Rule 15.4(3)	Notification of the Court's Determination of an Application and/or Order for a Preparatory Hearing under s. 7(2) Criminal Justice Act 1987 or s.29(4) Criminal Procedure and Investigations Act 1996	Criminal Justice Act 1987 (Preparatory Hearings) Rules 1997, r 6 Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) Rules 1997, r 6	Form 5306 Form 5310
Rule 15.6(1)	Order for Defence Disclosure prior to Preparatory Hearing under s. 9(5) Criminal Justice Act 1987 or s.31(6) Criminal Procedure and Investigations Act 1996	Criminal Justice Act 1987 (Preparatory Hearings) Rules 1997, r 8 Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) Rules 1997, r 8	Form 5307 Form 5311

Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 16: Restrictions on reporting and public access			
Rule 16.1(1)	Application for a reporting direction under s.46 Youth Justice and Criminal Evidence Act 1999	Magistrates' Courts (Reports Relating to Adult Witnesses) Rules 2004, r 2; Crown Court (Reports Relating to Adult Witnesses) Rules 2004, r 2	Form A
Rule 16.4(4)	Application for an excepting direction under s.46(9) Youth Justice and Criminal Evidence Act 1999	Magistrates' Courts (Reports Relating to Adult Witnesses) Rules 2004, r 2; Crown Court (Reports Relating to Adult Witnesses) Rules 2004, r 5	Form B
Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 17: Extradition [Note: These forms should be used only in proceedings where the request for extradition was received by the relevant authority in the United Kingdom on or before 31st December 2003].			
Rule 17.2(1)	Simplified procedure: notice of waiver	Magistrates' Courts (Extradition) Rules, r 5(1)	Form 1
Rule	Notice of consent to	Magistrates' Courts	Form 2

17.3(2)	committal for return under section 14 of the Extradition Act 1989	(Extradition) Rules, r 6(2).	
Rule 17.4(2)	Notice of consent to committal for return under section 14A of the Extradition Act 1989	Magistrates' Courts (Extradition) Rules, r 7(2).	Form 3
Rule 17.11(1)	Endorsement of warrant of arrest under section 1 of the Backing of Warrants (Republic of Ireland) Act 1965	Magistrates' Courts (Backing of Warrants) Rules 1965, Schedule.	Form 1
Rule 17.11(1)	Provisional warrant of arrest under section 4 of the Backing of Warrants (Republic of Ireland) Act 1965	Magistrates' Courts (Backing of Warrants) Rules 1965, Schedule.	Form 3
Rule 17.11(1)	Warrant of arrest on failure to surrender to bail under section 5(4) of the Backing of Warrants (Republic of Ireland) Act 1965	Magistrates' Courts (Backing of Warrants) Rules 1965, Schedule.	Form 9
Rule 17.5 Rule 17.11(1)	Consent to Earlier Return under section 3(1)(a) of the Backing of Warrants (Republic of Ireland) Act 1965	Magistrates' Courts (Backing of Warrants) Rules 1965, Schedule.	Form 2
	Warrant of commitment of person ordered to be delivered up under the Backing of Warrants (Republic of Ireland) Act 1965	Magistrates' Courts (Backing of Warrants) Rules 1965, Schedule.	Form 4
	Warrant of commitment awaiting Irish warrant under the Backing of Warrants (Republic of Ireland) Act 1965	Magistrates' Courts (Backing of Warrants) Rules 1965, Schedule.	Form 5
	Warrant of commitment: recognizance to be taken later under the Backing of	Magistrates' Courts (Backing of Warrants) Rules 1965, Schedule.	Form 6

	Warrants (Republic of Ireland) Act 1965		
	Recognizance under the Backing of Warrants (Republic of Ireland) Act 1965	Magistrates' Courts (Backing of Warrants) Rules 1965, Schedule.	Form 7
	Warrant of delivery up of person bailed under the Backing of Warrants (Republic of Ireland) Act 1965	Magistrates' Courts (Backing of Warrants) Rules 1965, Schedule.	Form 8
	Notice of consent to surrender under section 7 of the International Criminal Court Act 2001	Magistrates' Courts (International Criminal Court) (Forms) Rules 2001, r 4	Form 1
	Notice of waiver of the right to review under section 13 of the International Criminal Court Act 2001	Magistrates' Courts (International Criminal Court) (Forms) Rules 2001, r 5	Form 2
Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 18: Warrants			
	Warrant to enter and search premises under section 15 of the Police and Criminal Evidence Act 1984 (Welsh language version available)	Magistrates' Courts (Forms) Rules 1981, Schedule 2	Form 156

Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 19: Bail in magistrates' courts and the Crown Court			
Rule 19.17(2)	Notice of Appeal by the Prosecution under Section 1 of the Bail (Amendment) Act 1993 against the Granting of Bail	Crown Court Rules 1982, r 11A(2)	
Rule 19.17(6)	Notice of Abandonment of Appeal under Section 1 of the Bail (Amendment) Act 1993 Against the Granting of Bail	Crown Court Rules 1982, r 11A(6)	
Rule 19.18(4)	Form of notice of application relating to bail in the Crown Court	Crown Court Rules 1982, r 19(4).	
Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 27: Witness statements			
Rule 27.1(1)	Statement of witness (Welsh language version available)	Magistrates' Courts Rules 1981, r 70	Form 13
Rule 27.1(2) [check]	Notice to defendant: proof by written statement (Welsh language version available)	Magistrates' Courts Rules 1981, r 70; Magistrates' Courts (Forms) Rules 1981, Schedule 2	Form 14

Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Rule 28: Witness summonses, warrants and orders			
Rule 28.4	Application for a witness summons, warrant or order		
Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 29: Special measures directions			
Rule 29.1(1) Rule 29.1(2)	Form of application for a special measures direction under s.19 Youth Justice and Criminal Evidence Act 1999	Magistrates' Courts (Special Measures Directions) Rules 2002, r 2 Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002, r 2	
Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 30: Use of live television link other than for vulnerable witness			
Rule	Notice of Application for	Crown Court Rules	

30.1(3)	Leave to use Television Link where Witness is Outside the United Kingdom	1982, r 23B(3)	
Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 34: Hearsay evidence			
Rule 34.2 Rule 68.20(1)	Notice of intention to introduce hearsay evidence under s.114 Criminal Justice Act 2003		
Rule 34.5 Rule 68.20(1)	Notice of opposition to the introduction of hearsay evidence under s.114 Criminal Justice Act 2003		
Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 35: Evidence of bad character			
Rule 35.2 Rule 68.21	Application for leave to adduce non-defendant's bad character		
Rule 35.4(1) Rule 68.21	Notice of intention to adduce defendant's bad character		
Rule 35.6 Rule 68.21	Application to exclude evidence of the defendant's bad character		

Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 37: Summary trial			
	Notice of intention to cite previous convictions under section 104 Magistrates' Courts Act 1980 (Welsh language version available)	Magistrates' Courts (Forms) Rules 1981, Schedule 2	Form 29
	Notice of intention to cite previous convictions for offences involving obligatory or discretionary disqualification from driving under section 13 Road Traffic Offenders Act 1988 (Welsh language version available)	Magistrates' Courts (Forms) Rules 1981, Schedule 2	Form 30
Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 40: Tainted acquittals			
Rule 40.2	Form of certification under section 54(2) Criminal Procedure and Investigations Act 1996	Crown Court (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) Rules 1997, rule 3	Form TAC 1

Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 41: Retrial following acquittal for serious offence			
Rule 41.2(1)	Notice of application to the Court of Appeal for a retrial under section 76 Criminal Justice Act 2003		RSO 1
Rule 41.3(1)	Notice by acquitted person of opposition to an application for a retrial under section 76 Criminal Justice Act 2003		RSO 2
Rule 41.4(2)	Application for an order for the examination of witnesses or evidence by the Court under section 80(6) Criminal Justice Act 2003.		RSO 3
Rule 41.8(1)	Application for restrictions on publication under section 82 Criminal Justice Act 2003		RSO 4
Rule 41.11(4) Rule 41.12(1)	Determination by the registrar or a single judge for the production of documents etc and notice of renewal		RSO 5
Rule 41.14(1) Rule 41.15(1)	Notice of application to arraign/set aside the order for retrial under section 84 Criminal Justice Act 2003		RSO 6
Rule 41.16(1)	Notice of abandonment of proceedings instituted under Part 10 Criminal Justice Act 2003		RSO 7

Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 48: Community penalties			
Rule 48.1(2) & (3)	Notice of curfew order with an Electronic monitoring requirement	Crown Court Rules 1982, r 37	
Rule 48.1(2) & (3)	Notice of community rehabilitation order with curfew and electronic monitoring requirements	Crown Court Rules 1982, r 37A	
Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 50: Civil orders made in criminal proceedings			
Rule 50.1(1)	Sexual Offences Prevention Order under s 104 Sexual Offences Act 2003	Magistrates' Courts (Sexual Offences Prevention Orders) Rules 2004, r 4(3)	
Rule 50.1(2)	Interim Sexual Offences Prevention Order under s 109 Sexual Offences Act 2003	Magistrates' Courts (Sexual Offences Prevention Orders) Rules 2004, r 4(4)	
Rule 50.2(1)	Parenting Order under section 8 Crime and Disorder Act 1998	Magistrates' Courts (Parenting Orders) Rules 2004, r 7	
Rule 50.2(2)	Parenting Order under paragraph 9D, Schedule 1, Powers of Criminal Courts (Sentencing) Act 2000	Magistrates' Courts (Parenting Orders) Rules 2004, rule 8	
Rule 50.4	Anti-Social Behaviour	Crown Court Rules	

	Order made on Conviction under s.1C Crime and Disorder Act 1998	1982, rule 38	
Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 64: Appeal to the High Court by way of case stated			
	Recognizance to prosecute on appeal before the High Court on case stated and for bail pending appeal under section 114 of the Magistrates' Courts Act 1980 (Welsh language version available)	Magistrates' Courts (Forms) Rules 1981, Schedule 2	Form 121
	Case Stated under section 111 of the Magistrates' Courts Act 1980	Magistrates' Courts (Forms) Rules 1981, Schedule 2	Form 155
Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 65: Appeal to the Court of Appeal against ruling in preparatory hearing			
Rule 65.1(6)	Notice and grounds of appeal or of application for leave to appeal under s 9(11) Criminal Justice Act 1987 or s.35(1) Criminal Procedure and Investigations Act 1996	Criminal Justice Act 1987 (Preparatory Hearings)(Interlocutory Appeals) Rules 1988, r 3 Criminal Procedure and Investigations Act 1996 (Preparatory Hearings)(Interlocutory Appeals) Rules	Form 1A(1) Form 5312

		1997, r 3	
Rule 65.2(1)	Notice and grounds of opposition to appeal under s 9(11) Criminal Justice Act 1987 or s.35(1) Criminal Procedure and Investigations Act 1996	Criminal Justice Act 1987 (Preparatory Hearings)(Interlocutory Appeals) Rules 1988, r 4 Criminal Procedure and Investigations Act 1996 (Preparatory Hearings)(Interlocutory Appeals) Rules 1997, r 4	Form 1A(2) Form 5313
Rule 65.3(3)(b)	Notice of application for leave to be present at hearing of appeal or application for leave to appeal under s 9(11) Criminal Justice Act 1987 or s.35(1) Criminal Procedure and Investigations Act 1996	Criminal Justice Act 1987 (Preparatory Hearings)(Interlocutory Appeals) Rules 1988, r 5 Criminal Procedure and Investigations Act 1996 (Preparatory Hearings)(Interlocutory Appeals) Rules 1997, r 5	Form 1A(3) Form 5314
Rule 65.5(a)	Notice of abandonment of proceedings instituted under s 9(11) Criminal Justice Act 1987 or s.35(1) Criminal Procedure and Investigations Act 1996	Criminal Justice Act 1987 (Preparatory Hearings)(Interlocutory Appeals) Rules 1988, r 7 Criminal Procedure and Investigations Act 1996 (Preparatory Hearings)(Interlocutory Appeals) Rules 1997, r 7	Form 1A(4) Form 5315
Rule 65.7(1) Rule 65.8(1)	Determination by single judge and notice of renewal of applications to the Court of Appeal	Criminal Justice Act 1987 (Preparatory Hearings)(Interlocutory Appeals) Rules 1988, rr 9, 10. Criminal Procedure and Investigations Act 1996 (Preparatory	Form 1A(5) Form 5316

		Hearings)(Interlocutory Appeals) Rules 1997, rr 9, 10.	
Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 66: Appeal to the Court of Appeal against ruling adverse to prosecution			
Rule 66.3(5)	Judge's Certificate of leave to appeal under s 58 of the Criminal Justice Act 2003	The Criminal Justice Act 2003 (Prosecution Appeals) Rules 2004	Form PA1
Rule 66.5(1)	Notice and grounds of prosecution appeal or application for leave to appeal under s 58 of the Criminal Justice Act 2003	The Criminal Justice Act 2003 (Prosecution Appeals) Rules 2004	Form PA2
Rule 66.5(5) Rule 66.6(1)	Notice and grounds of opposition to appeal under s 58 of the Criminal Justice Act 2003	The Criminal Justice Act 2003 (Prosecution Appeals) Rules 2004	Form PA3
Rule 66.10	Notice of abandonment of proceedings instituted under s.58 Criminal Justice Act 2003	The Criminal Justice Act 2003 (Prosecution Appeals) Rules 2004	Form PA4
Rule 66.12(3) Rule 66.13(1)	Determination by the Registrar or single judge of applications, and notice of renewal, under Part 9 Criminal Justice Act 2003	The Criminal Justice Act 2003 (Prosecution Appeals) Rules 2004	Form PA5

Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 67: Appeal to the Court of Appeal regarding reporting or public access			
Rule 67.1(1) Rule 67.2(2) Rule 67.2(4)	Notice of application for leave to appeal under section 159 of the Criminal Justice Act 1998	Criminal Appeal Rules 1968, rr, 16A, 16B	Form 20
Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 68: Appeal to the Court of Appeal against conviction, sentence, or sentence review decision			
Rule 68.2(1)	Judge's certificate	Criminal Appeal Rules 1968, r 1	Form 1
Rule 68.3(1) and (2)	Notice and grounds of appeal or application for leave to appeal	Criminal Appeal Rules 1968, r 2	Form NG (2 & 3)
Rule 68.3 (1A), (2)	Notice of grounds of appeal or application for leave to appeal against life sentence minimum term		
Rule 68.3 (1B)	Notice and grounds of application for leave to appeal against sentence review decision		
Rule 68.5(2)	Application for determination by Court of Appeal	Criminal Appeal Rules 1968, rr 11 and 12	Form 15

Rule 68.7(1)	Notice of Application for Bail	Criminal Appeal Rules 1968, r 3.	Form 4
Rule 68.8(2)	Recognizance of appellant's surety	Criminal Appeal Rules 1968, r 4.	Form 8
Rule 68.8(2)	Recognizance of appellant's surety pending retrial	Criminal Appeal Rules 1968, r 4(2).	Form 10
Rule 68.8(5)	Certificate by Registrar of grant and of conditions of bail	Criminal Appeal Rules 1968, r 4(5) and (8).	Form 11
Rule 68.15(1)	Notice of application for witness order and/or leave to call a witness	Criminal Appeal Rules 1968, r 3	Form 6
Rule 68.16(1)	Witness Order	Criminal Appeal Rules 1968, r 9.	Form 13
Rule 68.22(1)	Notice of abandonment of proceedings	Criminal Appeal Rules, r 10	Form 14
Rule 68.26(1)	Notice of application for leave to be present	Criminal Appeal Rules, r 3	Form 5
Rule 68.28	Warrant directing conveyance of appellant to hospital	Criminal Appeal Rules 1968, r 14	Form 16
Rule 68.31	Notice of application for leave to arraign/to set aside order for retrial	Criminal Appeal Rules, rule 2A	Form 3A
Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 71: Appeal to the Court of Appeal under POCA 2002 – general rules			
Rule 71.10(1)(b)	Notice of application for leave to appeal to the House of Lords	Criminal Appeal (Confiscation, Restraint and	Form 5

		Receivership) Rules 2003, rule 22	
Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 72: Appeal to the Court of Appeal under POCA 2002 - prosecutor's appeal regarding confiscation			
Rule 72.1(1)(b)	Notice and grounds of application for leave to appeal and appeal by the prosecutor or the Director of the Assets Recovery Agency	Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003, rule 3	Form 1
Rule 72.1(2) Rule 72.2(2)	Notice and grounds of opposition to application for leave to appeal and appeal by Prosecutor or Director of Assets Recovery Agency	Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003, rules 3 and 4	Form 2
Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 73: Appeal to the Court of Appeal under POCA 2002 –restraint and receivership orders			
Rule 73.2(1)	Notice and grounds of application for leave to appeal and appeal against restraint or receivership decision	Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003, rules 7 and 8	Form 3

Rule 73.2(2) Rule 73.3(4)	Notice and grounds of opposition to application for leave to appeal and appeal against restraint or receivership decision	Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003, rules 7 and 8	Form 4
Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
Part 74: Appeal to the House of Lords			
Rule 74.1(1)	Notice of Application for leave to appeal to the House of Lords	Criminal Appeal Rules 1968, rule 23.1	Form 17
Rule 74.1(2)	Recognizance of defendant's surety on appeal to House of Lords	Criminal Appeal Rules 1968, rule 23.3	Form 19