

The Criminal Procedure (Amendment) Rules 2010
SI number 1921 of 2010 (L.12)

Guide for Court Users, Staff and Practitioners

August 2010

Summary

On 4th October 2010, The Criminal Procedure (Amendment) Rules 2010 will come into force, affecting procedures used in magistrates' courts, the Crown Court and the Court of Appeal, Criminal Division. This Guide explains the types of change and is intended for court users, staff and practitioners.

The following additions and revisions are included:

New procedure rules about

- trial timetables; and
- applications for witnesses to give evidence by 'live' link.

Simplified rules about

- warrants for arrest, detention or imprisonment;
- sentencing procedures in special cases;
- breach, revocation and amendment of community and other orders;
- enforcement of fines and other orders for payment; and
- road traffic penalties.

The rules include cross-references to relevant legislation: in particular measures recently, or likely soon to be, brought into force.

Background

Since 2005, the Criminal Procedure Rule Committee has made rules for the criminal courts in England and Wales. The rules govern the practice and procedure to be followed in the criminal courts - i.e. the criminal division of the Court of Appeal and (when dealing with any criminal cause or matter) the Crown Court and magistrates' courts. The Criminal Procedure Rules 2010 (SI no. 60 of 2010) came into force in April and this is the first amendment of them.

1. Arrangement of Rules

The Criminal Procedure Rules 2010 are arranged in 11 divisions, to reflect the main stages of a criminal case. Minor amendments have been made.

These take account of the removal of Part 30 (Use of live link other than for vulnerable witnesses) and the amendment of Part 44 (Breach, revocation and amendment of community and other orders in a magistrates' court). A new Part 42

(Sentencing procedures in special cases) means that Parts 43 (Committal to the Crown Court for sentence), 45 (Deferred sentence), 47 (Suspended sentences of imprisonment), 48 (Community penalties), 49 (Hospital and guardianship orders), 53 (Compensation orders) and 54 (Conditional discharge) are now omitted.

2. New Provisions in The Criminal Procedure (Amendment) Rules 2010

Part 2 When the Rules apply

Rule 2.1 (Definitions) is amended, to provide a definition in rule 2.2 for the Criminal Costs Practice Direction. The Lord Chief Justice gives guidance connected with the rules in Part 76 (Costs) and other matters.

The Note to rule 2.5 (Representatives) is amended to update a reference to legislation under which a person may be entitled to act as a legal representative: namely section 13 of the Legal Services Act 2007, instead of section 27 or 28 of the Courts and Legal Services Act 1990.

Rule 3 of the statutory instrument introduces these amendments.

Part 18 Warrants for Arrest, Detention or Imprisonment

A new Part 18 introduces streamlined rules about Warrants for arrest, for detention pending trial and for imprisonment. These replacement rules apply to all criminal courts, including the Crown Court and the Court of Appeal, Criminal Division.

Justices' clerks informed the Committee that the current rules imposed requirements that were longer necessary because of developments in information technology. In removing those requirements, the Committee took the opportunity to simplify Part 18 and make the rules apply in all criminal courts, not only magistrates' courts.

Rule 7 of the statutory instrument introduces the replacement Part 18, set out in Schedule 1.

Part 29 Measures to assist a witness or defendant to give evidence

Part 29 has been extended, to include a new Section (6) about applications to give evidence by 'live' link.

A 'special measures direction' already can be made for the benefit of a young, or otherwise vulnerable, witness under Section 3 of the rules in Part 29. A new Section 6 now sets out the court's powers to deal with an application for any witness to give evidence by 'live' link.

On 26th April 2010, section 51 of the Criminal Justice Act 2003 came into force. This provides for evidence to be given by closed-circuit tv 'live-link' from anywhere in the UK (that is outside the court building), if the court

decides that allowing evidence to be given in that way would be in the best interests of the efficient and effective administration of justice.

The new Section 6 rules are modelled on others in Part 29 which deal with similar types of arrangements, such as those in Section 3 dealing with young or vulnerable witnesses.

While doing this work, the Criminal Procedure Rule Committee took the opportunity to consolidate with the new rules the ones in Part 30 which supply the procedure under section 32 of the Criminal Justice Act 1988 for a witness to give evidence by 'live link' from abroad.

Rule 9 of the statutory instrument introduces these new rules in Part 29 and Rule 22 has the effect of deleting Part 30 from the Criminal Procedure Rules. (Note that Rule 22 omits other Parts too and these are mentioned elsewhere in this Guide, at the appropriate places.)

Part 42 Remittal from one magistrates' court to another for sentence

Part 42 is replaced; the new Part 42 is named **Sentencing Procedures in Special Cases** and these rules apply in all criminal courts in England and Wales.

As part of its programme to revise and simplify the Criminal Procedure Rules, the Committee decided to re-write the current rules about the various procedures to do with sentencing, which were scattered in Parts 43, 45, 47, 48, 49, 53 and 54. They decided to include rules that codify procedures that, up until now, either have been laid down in common law or just widely adopted in practice.

As usual, the new rules are supported by Notes, to help users find the relevant primary legislation that they might also want to look at when dealing with a criminal case.

The new rule 42.2 deals with the variation of a sentence. In making this rule, the Criminal Procedure Rule Committee has used a power in section 155 of the Powers of Criminal Courts (Sentencing) Act 2000. That power allows Criminal Procedure Rules to extend the statutory time limit within which the Crown Court can vary a sentence or order if another defendant is later tried on the same, or related, facts.

Rule 14 of the statutory instrument introduces the replacement Part 42, set out in Schedule 2.

Part 44 Breach, revocation and amendment of community and other orders in a magistrates' court

Part 44 of the Criminal Procedure Rules is amended to take account of changes in legislation made by the Criminal Justice Act 2003, the Criminal Justice and Immigration Act 2008 and the Policing and Crime Act 2009; and to apply the rules to the Crown Court as well, not only magistrates' courts.

As these legislative changes meant that there were lots of small amendments and alterations to make to the rules and the supporting notes, the Criminal Procedure Rule Committee decided that it would be neater to restate Part 44. There are no other changes to the rules.

Rule 15 of the statutory instrument introduces the replacement Part 44, set out in Schedule 3.

Part 52 Enforcement of fines

Part 52 has been replaced and the new Part 52 is named **Enforcement of fines and other orders for payment**.

Continuing its programme of progressive revision and simplification of the rules, the Criminal Procedure Rule Committee decided to tackle the current rules about the enforcement of fines.

The new Part 52 introduces revised and simplified rules. For the first time, there are rules to support the fine collection regime that is set out in Schedule 5 of the Courts Act 2003 and The Fines Collection Regulations 2006.

The new rules about warrants to take control of goods and sell them include the same provisions about signature that are set out in the new rules in Parts 5 and 18.

Rule 17 of the statutory instrument introduces the replacement Part 52, set out in Schedule 4.

Part 55 Road Traffic Penalties

A refreshed, revised Part 55 is substituted for the rules in the current Part 55.

Again, continuing its programme of progressive revision and simplification of the rules, the Criminal Procedure Rule Committee has reviewed the current rules about the road traffic penalties. The replacement Part 55 includes new notes and footnotes to help users.

Note that the recent new rule 55.5 about appeals against the recognition of a foreign driving disqualification, which came into force on 5 April 2010, is unchanged.

Rule 18 of the statutory instrument introduces the replacement Part 55, set out in Schedule 5.

3. Amendments of The Criminal Procedure Rules 2010

Some current rules in The Criminal Procedure Rules 2010 have been revised. The following **amendments** are made:

Part 3 Case management

Rule 3.10 is amended, to introduce a new rule about the timetabling of a trial.

This makes clear the court's powers to impose a timetable and to require parties to provide information so that the case can be properly managed through the trial process. The revised rule is intended to dispel any doubts about a court's power to impose a timetable, or to limit the examination of a witness or any stage of the hearing.

Rule 4 of the statutory instrument introduces this amendment.

Part 5 Forms and records

Rule 5.3 about signature of magistrates' courts' forms is amended, to provide that where a magistrates' courts' form requires a signature, that can be provided by means other than by putting pen to paper. For example, a signature can, these days, be generated electronically.

Justices' clerks informed the Criminal Procedure Rule Committee that rules requiring the conventional signature of magistrates' courts' documents were no longer needed where reliable and permanent records existed, anyway, of the identity of the person by whom the document had been issued or otherwise authorised. Requiring a conventional signature could make the process less efficient. For example, the issue of a document might be validly authorised by e-mail or other electronic means, but then delayed while waiting for the form to be signed by putting pen to paper in the conventional way. The Committee agreed that this would be an unnecessary, duplicated authorisation, introducing delay.

Note that the same principle applies to ordinary forms that require a signature and to the special cases of summonses and warrants – see the new rules 18.4 and 52.7, respectively.

Rule 5.7, about proof of proceedings in magistrates' courts, is amended to make it clear that the court register, or a certified extract of it, 'can' (rather than 'shall') be made available for admission in any legal proceedings.

Rule 5 of the statutory instrument introduces these amendments.

Part 7 Starting a prosecution in a magistrates' court

Rule 7.4 about the authentication of a summons is amended to provide that a summons need not identify the court that issued it, if that information is recorded elsewhere.

'Court' is defined in rule 2.2 to mean, for these purposes, a District Judge (Magistrates' Courts), a justice, justices, or a justices' clerk when exercising the powers of a justice.

Rule 6 of the statutory instrument introduces these amendments.

Part 19 Bail

Rule 19.17 (Crown Court procedure on appeal about the grant of bail by a magistrates' court) is amended. The Criminal Procedure Rule Committee has taken account of the judgment by the European Court of Human Rights in the case of *Allen v. UK*.

A substitute rule 19.17(4) provides that on a prosecution appeal against the grant of bail, a defendant has the right to be present. This removes restrictions set out in the current rule.

Rule 8 of the statutory instrument introduces this amendment.

Part 35 Evidence of bad character

Rule 35.3 Application to introduce evidence of a non-defendant's bad character

A correction is made, in the Note following rule 35.3 to substitute for 'rule 35.6', 'rule 35.5'.

Rule 10 of the statutory instrument introduces this amendment.

Rule 35.4 Notice to introduce evidence of a defendant's bad character

A correction is made, in the Note following rule 35.4 to substitute for 'rule 35.6', 'rule 35.5'.

Rule 11 of the statutory instrument introduces this amendment.

Part 37 Trial and sentence in a magistrates' court

Rule 37.10 Procedure if the court convicts

Rule 37.10 is amended at 37.3(d)(iii) to take account of the recent changes made to section 170 of the Criminal Justice Act 2003 by section 178 of the Coroners and Justice Act 2009. The reference to the Sentencing Guidelines Council has been deleted. This rule now provides that the prosecutor must take account of any sentencing guidelines issued, or guideline cases.

Rule 12 of the statutory instrument introduces this amendment.

The Note after rule 37.10 has been amended to take account of the change to the arrangements for the issue of sentencing guidelines. Section 120 of the Coroners and Justice Act 2009 provides that the Sentencing Council may issue sentencing guidelines and the note is updated accordingly.

Rule 13 of the statutory instrument introduces this amendment.

Part 50 Civil behaviour orders after verdict or finding

Part 50 has been amended in two places.

Rule 50.2 (Behaviour orders: general rules) is amended so that when the court decides not to make a football banning order, a parenting order, or a drinking banning order, even though the conditions for making one were met, the court must announce at a public hearing the reasons for that decision.

The Criminal Procedure Rule Committee decided that it would help users of the rules if rule 50.2 listed the occasions when a court, as well as explaining a sentence that it has imposed or order that it has made, is required by legislation to explain why it has decided not to make an order when it could have.

This approach has been used elsewhere in the Criminal Procedure Rules: see the new rule 42.1.

Rule 50.5 (Application to vary or revoke a behaviour order) is amended, to allow the court to decide whether, and how, an application to vary or revoke a civil behaviour order should be served.

It was reported to the Criminal Procedure Rule Committee that repeated attempts to serve applications to vary or revoke a behaviour order on a person protected by a behaviour order could add up to the sort of behaviour that the order had been made to bring under control, or stop. For example, making many attempts to serve applications about orders already made in cases involving harassment, or domestic violence.

The existing rule 50.5 allowed for a vexatious or abusive application to be dismissed without calling on the respondent to the application. The Committee decided to amend the rule so that the court bears the responsibility for deciding whether the application should be served at all: and if it is to be served, to allow for the application to be served by court staff instead of the person who made the application.

Rule 16 of the statutory instrument introduces the substitute rules 50.2 and 50.5.

Part 57 Proceeds of Crime Act 2002: rules applicable to all proceedings

Rule 57.15 (External requests and orders) is amended at rule 57.15(2).

A replacement table is introduced, showing how the provisions in The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 correspond with sections in the 2002 Act.

The new table simply corrects number-references to Articles in the Order.

Rule 19 of the statutory instrument introduces the substitute table.

Part 58 Proceeds of Crime Act 2002: rules applicable only to confiscation proceedings

Rule 58.10 (Compensation - general) is amended to take account of amendments to the Proceeds of Crime Act.

Rule 58.10(4)(b) now provides for the application and witness statement to be served on an authority by whom the compensation would be payable.

This was necessary to take account of paragraph 302(7A) of the Proceeds of Crime Act, which was inserted by section 79 of the Serious Crime Act 2007.

Rule 20 of the statutory instrument introduces the amendments.

Part 60 Proceeds of Crime Act 2002: rules applicable only to receivership proceedings

Minor editorial amendments are made in three places.

Rule 60.1 (Application for appointment of a management or enforcement receiver) is amended at rule 60.1(3)(e), to make broader reference to persons falling within section 55(8) of the 2002 Act, rather than to members of staff of the Crown Prosecution Service or the Revenue and Customs Prosecutions Office.

Rule 60.5 (Security) and Rule 60.6 (Remuneration)

These are amended at rule 60.5(1) and rule 60.6(1) to read, 'member of staff or on secondment', instead of 'member or he is on secondment'.

Rule 21 of the statutory instrument introduces the amendments.

4. Housekeeping

As a consequence of the consolidation and simplification of Parts, the following are omitted:

Part 30 Use of live television link other than for vulnerable witnesses

Part 43 Committal to the Crown Court for sentence

Part 45 Deferred sentence

Part 47 Suspended sentences of imprisonment

Part 48 Community penalties

Part 49 Hospital and guardianship orders

Rule 53 Compensation orders

Part 54 Conditional discharge

Rule 22 of the statutory instrument introduces the amendments.

The pre-ambule and the Arrangement of Rules

These are adjusted to reflect the changes made at various points in the statutory instrument.

Rules 23 and 24 introduce these amendments.

5. Other useful information about the effects of this amendment

The Criminal Procedure Rules 2010 continue to show a number of empty Parts, with a further eight being added as a result of these amendment rules. At present there are no plans to re-order the numbering sequence, as the major exercise of reviewing and restating the entire body of rules continues.

When the codification of the rules is completed, the Criminal Procedure Rules will be re-numbered, reducing the overall number of Parts. This may be brought about in 2015.

6. Useful Web Addresses

The **Ministry of Justice website** contains the complete **Criminal Procedure Rules, the Consolidated Criminal Practice Direction and Forms.**

This is the **'What's New?'** page - the best place to start when you are looking for information:-

http://www.justice.gov.uk/criminal/procrules_fin/index.htm

- The complete Criminal Procedure Rules can be viewed at:-

http://www.justice.gov.uk/criminal/procrules_fin/rulesmenu.htm

Please note that the Criminal Procedure Rules pages are not updated with amendments until they have actually come into force. This means that the fully revised text of The Criminal Procedure Rules 2010, as amended by The Criminal Procedure (Amendment) Rules 2010, will not appear on the website until 4th October, 2010.

- The related forms are available as Acrobat PDF files at:-

http://www.justice.gov.uk/criminal/procrules_fin/contents/formssection/formspage.htm

- When new Criminal Procedure Rules are made and the Statutory Instrument (SI) has been laid before Parliament, we post information on the Ministry of Justice website on the **'Changes to the Rules'** page. This provides advance notice of changes, to give the public information as soon as possible.

- The announcement page for this SI is:-

<http://www.justice.gov.uk/news/announcement110810a.htm>

- The **Statutory Instrument** which brought these new rules in to existence can be viewed in PDF and HTML formats on the OPSI website, at:-

<http://www.opsi.gov.uk/si/si201019>

- The link to the HTML version is:-

http://www.opsi.gov.uk/si/si2010/uksi_20101921_en_1

- **The Ministry of Justice home page for the Criminal Procedure Rule Committee** is:-

<http://www.justice.gov.uk/about/criminal-proc-rule-committee.htm>

- The Committee's statutory duty is to make Criminal Procedure Rules that are simple and simply expressed – wherever possible, having consulted beforehand. The statutory arrangements are set out in Part 7 of the Courts Act 2003, in sections 69-74. See:-

http://www.opsi.gov.uk/acts/acts2003/ukpga_20030039_en_9

- **The Ministry of Justice home page for policy background about the Criminal Procedure Rules** is:-

<http://www.justice.gov.uk/whatwedo/criminal-procedure-rules.htm>

- The **HM Courts Service (HMCS) website** hosts Word versions of forms to be used in connection with the Criminal Procedure Rules and the Consolidated Criminal Practice Direction.

- The route to these starts on the HMCS Forms and Guidance page at:-

<http://www.hmcourts-service.gov.uk/HMCSCourtFinder/FormFinder.do>

Select the 'Work-type' field in the centre of the screen and from the drop-down menu, choose 'Criminal Procedure Rules'. A list of forms will then appear, from which you can make your selection.

Note that some case management forms are available as 'e-docs' on this site, enabling users to complete them electronically.

We are continuing to develop ways to improve electronic access to these Word forms.