

A GUIDE TO THE CRIMINAL PROCEDURE (AMENDMENT) RULES 2022 (S.I. 2022/45)

Where to find the new Rules

The Criminal Procedure (Amendment) Rules 2022 are at this address:

<https://www.legislation.gov.uk/ukxi/2022/45/contents/made>

When the Rules come into force, the changes they make will appear at these addresses, too:

<https://www.gov.uk/guidance/rules-and-practice-directions-2020>

<https://www.legislation.gov.uk/ukxi/2020/759/contents>

What the new Rules are for

The new Rules amend the Criminal Procedure Rules 2020. They:

(a) include rules about—

- directions for a witness companion
- notice of a prosecution for a parent or guardian of a young defendant
- procedure on committal for sentence to the Crown Court
- written directions for jurors about the law
- notice of the progress of an appeal that may affect the enforcement of a confiscation order and may affect the payment of compensation to a victim of crime from the proceeds of the confiscation order

(b) make changes to the rules about—

- the time for entering a written guilty plea in a magistrates' court
- the time for a costs application in restraint or receivership proceedings.

When the new rules come into force

The changes made by these rules come into force on 4 April 2022.

What is in the new Rules

Witness companions

Where a witness is eligible for the assistance of special measures while giving evidence, because of age or incapacity or because of fear or distress about testifying, and gives evidence by live link, then section 24 of the Youth Justice and Criminal Evidence Act 1999 and rule 18.10 of the Criminal Procedure Rules allow for the witness to be accompanied. The Act does not apply where such a witness gives evidence in person in court. It has become court practice to allow such a witness to be supported by a companion, but that practice is not yet explicitly acknowledged by the Rules.

The Rule Committee heard that it would help courts and witness companions if the Rules acknowledged the court's powers. These Rules amend rules 3.3 and 3.8 of the Criminal Procedure Rules accordingly, to provide for the duties of the parties and of the court where the court decides that the witness needs a companion.

Notice of prosecution for a parent or guardian

Section 34A of the Children and Young Persons Act 1933 requires criminal courts to require the parent or guardian of a young defendant to attend court with that young person in the circumstances described in the Act. To give effect to that requirement it is the practice to send to the parent or guardian a copy of the summons or requisition to attend court which is delivered to the defendant, but although the Criminal Procedure Rules refer to that practice the Rules do not yet require it.

Proposed amendments to the 1933 Act that would be made by the Judicial Review and Courts Bill now before Parliament prompted the Rule Committee to reconsider that omission. The Committee decided to amend the rules to impose that requirement. These Rules amend rule 7.4 of the Criminal Procedure Rules accordingly.

Committal for sentence

In some cases, a magistrates' court must, or can, send a defendant to the Crown Court for trial. In some cases, a magistrates' court which convicts a defendant must, or can, commit the defendant for sentence to the Crown Court so that a more severe sentence can be imposed than a magistrates' court has the power to pass. In some cases, the circumstances in which a magistrates' court sends the defendant for trial, or commits the defendant for sentence, affects the sentencing powers of the Crown Court. Part 9 of the Criminal Procedure Rules deals with allocation and sending for trial. In Parts 24 and 28 of the Rules, which deal respectively with trial in a magistrates' court and special sentencing procedures, the rules refer to committal for sentence. However, those rules are less clear than they might be about the statutory provisions and about the relationship between sending for trial and committal for sentence.

In three appeals heard during 2021, *R v Jesseme*¹, *R v Gould and Others*² and *R v Jex and Others*³, the Court of Appeal dealt with cases in which misunderstandings and mistakes during sending for trial and committal for sentence had restricted the sentencing powers of the Crown Court in ways that had not been intended. At paragraph 2 of the judgment in *R v Gould* the court described the procedures as "governed by a formidably complicated battery of statutory provisions which have been supplemented and amended by Parliament frequently over many years". In response to those recent cases and members' own experiences the Rule Committee decided to rewrite the rules explicitly to incorporate the relevant procedures and to draw attention to the statutory provisions and their effects. These rules amend Parts 9, 24 and 28 of the Criminal Procedure Rules accordingly. They amend rule 5.4 of the Criminal Procedure Rules explicitly to require the recording of any statement or opinion of the magistrates' court which affects the Crown Court's powers.

Time limit for entry of written guilty plea

Under section 12 of the Magistrates' Courts Act 1980 a defendant may give written notice of a guilty plea, without attending court, if the crime alleged is a summary offence (that is, one that can be tried only in a magistrates' court) and if specified information has been delivered to the defendant with the summons or requisition to attend. The Act allows the defendant to give such a notice of guilty plea at any time before "the time ... appointed for the trial" but if court staff receive the notice too late to inform the court then that may obstruct the fair and efficient administration of justice. If the trial has to be adjourned then the defendant may be required to attend a postponed hearing which otherwise that defendant would not have needed, or wanted, to attend, and the defendant may not receive the sentencing discount that otherwise might have been available.

Rule 24.8 of the Criminal Procedure Rules incorporates the statutory procedure. Proposed amendments to section 12 of the 1980 Act that would be made by the Judicial Review and Courts Bill now before Parliament prompted the Rule Committee to discuss the rule. The Committee agreed that a procedural time limit for giving written notice of guilty plea would be a useful encouragement to a defendant to act promptly, even though the rule could not override the Act. These Rules amend rule 24.8 of the Criminal Procedure Rules accordingly, to require such a notice "as soon as practicable and in any event no later than the business day before the hearing date".

¹ [2021] EWCA Crim 175, available at <https://www.bailii.org/ew/cases/EWCA/Crim/2021/175.html>.

² [2021] EWCA Crim 447, available at <https://www.bailii.org/ew/cases/EWCA/Crim/2021/447.html>.

³ [2021] EWCA Crim 1708, available at <https://www.bailii.org/ew/cases/EWCA/Crim/2021/1708.html>.

Written directions for jurors

Rule 25.14 of the Criminal Procedure Rules codifies the very long-established practice requiring a Crown Court judge at a trial to give directions about the law and a summary of the evidence to help the jury reach its verdict. The present rule requires the judge to give directions about the law “at any time at which to do so will assist jurors to evaluate the evidence” but it does not explicitly require the established practice of giving such directions with the final summary of evidence. The present rule acknowledges the possibility of the judge giving “directions, questions or other assistance in writing” but it does not require or encourage written directions. In the case of *R v Grant*⁴ the Court of Appeal dealt with an appeal in which it was argued that a lack of written directions had led to an unsafe conviction. The court decided that, “The short answer to the complaint that the verdicts are unsafe because the judge decided not to provide written directions is that although it is now expected that judges will provide the directions in law or, at the very least, a route to verdict in all but the simplest of cases, the failure to do so does not render the verdict(s) unsafe as a complaint standing on its own. There would need to be some additional feature of sufficient seriousness to lead to that result. ... However, we respectfully suggest that this is a matter that should be considered afresh by the Criminal Procedure Rule Committee, namely as to whether the essentially permissive approach within the present Rules and Practice Directions in this regard should become more directive, bearing in mind the strength and the consistency of the observations on the need for written directions in law and a written route to verdict that are to be found in the numerous decisions of this court.”⁵

The Rule Committee discussed that judgment and the others to which the court had referred. It considered academic research from this and other jurisdictions. It received advice from Professor Thomas QC, Professor of Judicial Studies at the Faculty of Laws, University College London. It canvassed the views of Crown Court judges, among others. The Committee decided to require the giving of directions “orally and, as a general rule, in writing as well”, using words to convey a presumption which are already used in the Criminal Procedure Rules and which have been construed and approved in judgments in 2008 and 2019.⁶ These Rules amend rule 25.14 of the Criminal Procedure Rules accordingly.

Costs applications in restraint or receivership proceedings

In restraint and receivership proceedings the Crown Court can make orders to assist in the confiscation of proceeds of crime under the Proceeds of Crime Act 2002. Rule 33.47 of the Criminal Procedure Rules allows the court to make an order in those proceedings for the payment of legal costs. However, by contrast with the main procedure rules about costs in criminal cases which are in Part 45 of the Rules, rule 33.47 imposes no clear and explicit time limit for making an application. It was reported to the Rule Committee that sometimes applications under the rule are made long after the restraint or receivership proceedings in which those costs were incurred, which is unfair to the party against whom the order is sought and which results in an inefficient use of court time.

The Committee agreed that a time limit should apply and that any application for costs must be made “during the proceedings, or as soon as practicable following the conclusion of the proceedings, and in any event within 28 days of that conclusion”, subject to any extension of time that the court might allow in the court’s discretion. These Rules amend rule 33.47 of the Criminal Procedure Rules accordingly.

Notice of appeals affecting confiscation and compensation orders

At the end of a Crown Court case the court can make an order under the Proceeds of Crime Act 2002 confiscating the proceeds of a convicted defendant’s crimes. In some cases, the court will have to determine the extent of the defendant’s financial interest in a shared asset – a family home, for example – before deciding the amount of the confiscation order. In some

⁴ [2021] EWCA Crim 1243, available at <https://www.bailii.org/ew/cases/EWCA/Crim/2021/1243.html>.

⁵ At paragraphs 47 and 50 of the judgment.

⁶ See [R v H \[2008\] EWCA Crim 483](#) at [11] and [R v SA \[2019\] EWCA Crim 144](#) at [52].

cases, the court can make a compensation order in favour of a victim or victims of the defendant's crimes, and in some cases the court can order the payment of that compensation out of the confiscated proceeds of crime. Those decisions of the Crown Court can be appealed, not only by the defendant but also by a person whose financial interest in a shared asset has been determined. If there is an appeal in a case in which a compensation order has been made then the recipients of that compensation are not entitled to be paid until the appeal concludes. The result of all this is that there may be competing claims against the same confiscated proceeds of crime, first in the Crown Court and then again on appeal.

In the case of *R v Moore (Parker, interested party)*⁷ the Court of Appeal dealt with an appeal about a determination of financial interests in a house due to be sold to meet a confiscation order. The outcome of the appeal was that 32 victims of a fraud were compensated in part for their losses but one, whose existence had not emerged until late in the proceedings, received no compensation at all. The Court of Appeal criticised a lack of adequate arrangements for making sure that everyone affected by the appeal, including the court office responsible for enforcing the confiscation order, knew enough about the progress of the appeal to be able to act accordingly. As the Court of Appeal put it,⁸ "This is a systemic deficiency which can lead to injustice, as the present case demonstrates, and which ought to be considered on any future assessment of the provisions of POCA or the Criminal Procedure Rules. At the very least there ought to be a system in place whereby the Magistrates' Court is formally notified of the status of any appeal and kept updated, and a record is kept".

In response to that judgment, and working with the Registrar of Criminal Appeals and the National Court Enforcement Service of HM Courts and Tribunals Service, the Rule Committee decided to make rules to require (i) the giving of notice of such an appeal to anyone whose financial interest or entitlement might be affected, so that they can make representations if they wish to the Court of Appeal, (ii) the giving of notice of the progress of the appeal to the enforcing court staff, and (iii) pending the outcome of the appeal, the withholding of any payment of compensation the entitlement to which is temporarily suspended. The rules in Part 42 of the Criminal Procedure Rules apply to this type of appeal and these Rules amend those rules accordingly.

Criminal Procedure Rule Committee secretariat
16 February 2022

⁷ [2021] EWCA Crim 956, available at <https://www.bailii.org/ew/cases/EWCA/Crim/2021/956.html>.

⁸ At paragraph 53 of the judgment.