

A GUIDE TO THE CRIMINAL PROCEDURE (AMENDMENT) RULES 2023 (S.I. 2023/44)

Where to find the new rules

The Criminal Procedure (Amendment) Rules 2023 are at this address:

<https://www.legislation.gov.uk/ukSI/2023/44/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/ukSI/2020/759/contents>

What the new rules are for

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

(a) supplement provisions of the Police, Crime, Sentencing and Courts Act 2022 that amend other statutory provisions about—

- extending pre-charge bail, and
- sexual harm prevention orders.

(b) amend the rules about service of documents on court offices to remove the requirement separately to notify court staff where a document is served by uploading to the court's own electronic system.

(c) amend the rules about the supply of information by court staff to reporters and members of the public—

- to clarify the circumstances in which information about bail decisions must be supplied,
- to require a warning that reporting restrictions may apply to any further publication of information supplied by court staff, and
- to clarify the distinction between (i) requests for information under the authority of the rules alone, and (ii) requests for information under one of the statutory provisions that applies.

(d) amend the rules about starting a prosecution to include a better description of the statutory time limits that apply in some cases.

(e) amend the rules about applications for orders for witnesses to attend court—

- to make it possible for a witness to apply to a magistrates' court for a summons to that witness to be withdrawn even though the witness knew about the original application for the summons and did not object, and
- for consistency of expression with other rules.

(f) clarify the court officer's duty to keep applications for search warrants and investigation orders.

(g) correct some mistakes in previous Amendment Rules.

When the new rules come into force

The changes to the Criminal Procedure Rules made by these rules come into force on 3 April 2023.

What is in the new rules

Pre-charge bail

A person who has been arrested for an offence but not yet charged may be released on bail by the police subject to an obligation to attend a police station and subject to other conditions in the meantime. Sections [47ZA](#) and [47ZB](#) of the Police and Criminal Evidence Act 1984 limit the period during which that person may be subject to such bail. That period may be extended in specified circumstances on the authority of a senior police or other officer and

eventually, if the investigator needs to apply for a further extension of time, on the authority of a magistrates' court. Amendments to the 1984 Act made by the Police, Crime, Sentencing and Courts Act 2022 lengthened the time for which such bail could be given and made other adjustments to the statutory provisions about pre-charge bail. The new, longer, period, and the new provisions for its extension, apply only to people arrested on or after 28th October, 2022.

To accommodate those statutory changes these rules amend Parts 2 and 14 of the Criminal Procedure Rules, with a transitional provision in Part 2 and an amended description of the statutory provisions in Part 14. While making those amendments the Rule Committee noticed that the statutory time limit had been misdescribed in rule 14.18 of the Criminal Procedure Rules and corrected that error.

Service of documents on court offices

Part 4 of the Criminal Procedure Rules governs the "service" of documents, meaning the ways in which documents can be delivered to other parties in criminal proceedings and to the court. One way in which a document may be served is by uploading to a computer system to which the person to be served also has access. HM Courts and Tribunals Service presently uses two such systems, known as the [Crown Court Digital Case System](#) and the [Criminal Justice System Common Platform](#). Where the intended recipient is the court the service of a document may require action by court staff – for example, arranging for a judge to consider an application – or may have the effect only of placing a document in the court's electronic file for future use. To ensure that the intended recipient is aware that a document has been served by uploading the rules presently require the sender also to notify the recipient, which is usually done by email.

The Rule Committee was told that new electronic arrangements soon would be made to alert court staff automatically to documents served by uploading to the Criminal Justice System Common Platform if staff action was needed, so that there would be no need for staff to be given notice separately. This will mean that senders of documents to the court by uploading in most cases will not need to send court staff an email as well, and court staff will not need to sift through dozens of email notices to decide whether action is needed or not. These rules amend rules 4.6 and 4.11 of the Criminal Procedure Rules to allow for the new arrangements when they are introduced.

Information from court records

Rules 5.8, 5.9 and 5.10 of the Criminal Procedure Rules provide for access by the parties themselves and by reporters and members of the public to information held by the court. Rule 5.12 provides for applications for information from court records made under other legislation which confers on a specified person or authority a right to specified information in specified circumstances.

The Rule Committee was told that people requesting information sometimes failed to appreciate the distinction between occasions on which other legislation applied and occasions on which it did not, so that information requests sometimes omitted required details. The Committee was told, too, that one particular type of request, for information about proceedings to do with the grant or withholding of bail by the court, was especially prone to be misunderstood. These rules amend rules 5.8 and 5.12 of the Criminal Procedure Rules to emphasise the distinction between them and to help avoid all those misunderstandings.

The Committee was told, too, that HM Courts and Tribunals Service had adopted a practice of warning recipients of information from court staff that the supply of that information did not of itself mean that its publication – in social media, for example – was allowed and that reporting restrictions might apply. The Committee approves of that practice and these rules also amend rule 5.8 of the Criminal Procedure Rules to make the practice a requirement.

Time limit for starting a prosecution

Rule 7.2 of the Criminal Procedure Rules governs the procedure on an application to a magistrates' court for the issue of a summons alleging an offence. The rule refers to circumstances in which a statutory time limit applies to the making of such an application and requires the applicant prosecutor to demonstrate that the application is made in time if there is such a time limit. The usual time limit for starting a prosecution of a summary offence (meaning, an offence that can be tried only in a magistrates' court) is under [section 127 of the Magistrates' Courts Act 1980](#). That time limit is 6 months from the date of the alleged offence. However, the legislation that creates the offence may prescribe a different time limit and that time limit may be calculated by reference to a date other than the date of the alleged offence, for example the date on which the prosecutor becomes aware of sufficient information to prosecute.

In the case of *London Borough of Barking and Dagenham v Argos Ltd*¹ the High Court decided that where a time limit that applied ran from the date of the alleged offence then reference to that date would be enough to demonstrate whether the application had been made in time or not. In a subsequent case, *R (Chopstix Trading Ltd) v Luton Magistrates' Court*², the court made the same point. Paragraph 11 of that second judgment begins, "In relation to compliance with the rule, it is not necessary for the application to state explicitly what the time limit is where legislation imposes such a limit in order for the application to demonstrate that it is in time. The application for a summons is directed to the court. So long as the court can glean from the application information necessary to establish whether the application is in time there will be compliance with the rule."

In paragraph 44 of the *Argos* case judgment the High Court added, "If the Criminal Procedure Rule Committee choose to reconsider rule 7.2(3)(b)(i) in the light of this judgment, that rule might specifically require a prosecutor in a case to which a time limit other than the section 127 MCA 1980 time limit applies to say what that time limit is, and why the information is within it." In response to that observation the Rule Committee decided to expand on the note to the rule that describes the statutory time limit. These rules replace the relevant paragraph of the note to rule 7.2 of the Criminal Procedure Rules.

Application to withdraw a witness summons

[Section 97 of the Magistrates' Courts Act 1980](#) allows a magistrates' court to issue a summons for a proposed witness to attend court to give evidence. Similar powers are given to the Crown Court by [sections 2 to 4 of the Criminal Procedure \(Attendance of Witnesses\) Act 1965](#), but with some differences. The differences include the circumstances in which a witness can ask the court to withdraw the summons on the grounds that the witness has no relevant evidence to give. Under the 1965 Act, in the Crown Court a witness can only ask the court to withdraw the summons if the witness was not told about the original application for it. Under the 1980 Act, in magistrates' courts that restriction does not apply. The rules in Part 17 of the Criminal Procedure Rules govern applications under both Acts. For consistency of procedure the rules impose the same restrictions on applications to magistrates' courts that apply by statute to applications to the Crown Court.

The Rule Committee was told that sometimes the rule impeded a justifiable application by a witness who had known about the application for the summons but who had not then objected, perhaps because they had not been able to take legal advice. The rule for the Crown Court has to be as it is because of the 1965 Act but the Committee agreed to change the rule for magistrates' courts to remove the restriction. The rules in Part 17 of the Criminal Procedure Rules were made in 2006. While making this amendment the Committee took the opportunity to bring the expression of the rules up to date. These rules amend rules 17.7 and 17.8 of the Criminal Procedure Rules accordingly.

¹ [2022] EWHC 1398 (Admin), available at <https://caselaw.nationalarchives.gov.uk/ewhc/admin/2022/1398>.

² [2022] EWHC 3141 (Admin), available at <https://caselaw.nationalarchives.gov.uk/ewhc/admin/2022/3141>.

Sexual harm prevention orders

Part 31 of the Criminal Procedure Rules lays down standard procedures for dealing with court orders that the rules call 'behaviour orders', meaning orders for which a number of Acts provide, which can be made on a defendant's conviction (and in some cases on acquittal), and which impose prohibitions and requirements on the defendant's conduct to deter future offending. Chapter 3 of Part 10 of the Police, Crime, Sentencing and Courts Act 2022 amends [provisions of the Sentencing Act 2020 about sexual harm prevention orders](#). Among other things, those amendments allow courts under that legislation to impose requirements as well as prohibitions on a person made subject to an order, and allow courts to order the supervision and electronic monitoring of that person. The new supervision and monitoring provisions correspond with the provisions made by the Domestic Abuse Act 2021 in relation to domestic abuse protection orders.

These rules amend rules 31.3 and 31.10 of the Criminal Procedure Rules to accommodate the amended and new statutory provisions and to consolidate references to supervision and monitoring provisions in the notes to the rules.

Clarification and corrections

While considering potential future rule amendments not made by these rules the Rule Committee noticed that the obligation imposed on court officers by rule 47.3 of the Criminal Procedure Rules was unclear. Applications delivered to court officers under the rules in Part 47 are supposed to be kept by them unless the keeping is delegated to another person in accordance with that rule. These rules amend that rule accordingly.

Rule 45.4 of the Criminal Procedure Rules, about applications for costs out of central funds, and rule 47.25 of the Criminal Procedure Rules, about the exercise of the court's powers on an application for a search warrant, both contained mistakes made in a previous amendment. These rules correct those mistakes.

Criminal Procedure Rule Committee secretariat
14 February 2023