

## **A GUIDE TO THE CRIMINAL PROCEDURE RULES 2020 (S.I. 2020/759)**

### **Where to find the new Rules**

The Criminal Procedure Rules 2020 are at this address:

<http://www.legislation.gov.uk/ukSI/2020/759/contents/made>

When the Rules come into force, they will appear at this address, too:

<http://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu-2020>

### **What the new Rules are for**

The Criminal Procedure Rules 2020 replace the Criminal Procedure Rules 2015.

The 2020 Rules:

- (a) consolidate the rules made in 2015 with the 11 sets of amendments made to those rules since then.
- (b) rearrange Part 3 of the Rules, the rules about case management and pre-trial preparation, to restore the proper sequence of the rules in that Part.
- (c) replace rules in Part 44 which no longer have any practical use with rules more appropriate to that position within the Criminal Procedure Rules.
- (d) include a new rule about ground rules hearings in Part 3.
- (e) make changes to the rules about—
  - service of documents (Part 4)
  - the information required in an allegation of theft or damage (Part 7)
  - the information that must be passed to the Crown Court when a case is sent for trial (Part 9)
  - the content of an indictment (Part 10)
  - giving special measures directions (Parts 18 and 39)
  - powers exercisable by High Court officers in extradition appeal cases (Part 50).
- (f) substitute for time limits set by the 2015 Rules equivalent time limits expressed in business days.
- (g) include connective words omitted from the 2015 Rules.
- (h) maintain temporarily the temporary amendments to the Criminal Procedure Rules made by the Criminal Procedure (Amendment No. 2) (Coronavirus) Rules 2020.

### **When the new rules come into force**

The rules come into force on Monday 5 October 2020.

### **What is in the new Rules**

#### *Rearrangement of rules in Part 3*

Most of the rules included in the first Criminal Procedure Rules in 2005 were taken from previous rules but the Part 3 rules about case management were new. Since their original making in 2005 they have evolved steadily, to elaborate on the general principles included in the first version and to incorporate provision for most aspects of contemporary pre-trial case preparation and management. The rules about preparation for trial in magistrates' courts, about commissioning medical reports and, most recently, about hearings to inform the court of sensitive material all have been added since the Criminal Procedure Rules 2015 were made. To avoid repeatedly disturbing the arrangement of Part 3 each of those three rules has been added on to what already was there, with the result that the proper sequence of rules in the Part has been lost. The rules numbered 9.15 (Service of prosecution evidence) and 9.16 (Application to dismiss offence sent for Crown Court trial) in the Criminal Procedure Rules 2015 are more concerned with preparation for Crown Court trial than they are with

sending for trial, with which Part 9 is concerned. The rules about Crown Court trial venue and about the use of the Welsh language at trial in the Crown Court were added to Part 3 in 2013 but the corresponding rules for magistrates' courts still appear in the rules about trial and sentencing in Part 24. There is no good reason to maintain that different arrangement.

Taking those considerations into account, the Rule Committee decided to rearrange Part 3 accordingly, and to move to it what are now rules 9.15, 9.16 and 24.14 (Trial and sentence in a magistrates' court; Place of trial). At the end of this guide is a table of destinations and derivations showing how the content of Part 3 of the Criminal Procedure Rules 2020 corresponds with the content of that Part of the Criminal Procedure Rules 2015.

#### *Ground rules hearings*

Rule 3.9 of the Criminal Procedure Rules 2015 (Case preparation and progression) provides for the setting of ground rules for the conduct of questioning 'especially where the court directs that such questioning is to be conducted through an intermediary', and lists examples of such ground rules that may be set. However, no present rule contains any more detailed provision about the procedure for doing so. The Lord Chief Justice's Criminal Practice Directions provide, "Discussion of ground rules is good practice, even if no intermediary is used, in all young witness cases and in other cases where a witness or defendant has communication needs. Discussion before the day of trial is preferable to give advocates time to adapt their questions to the witness's needs. It may be helpful for a trial practice note of boundaries to be created at the end of the discussion. The judge may use such a document in ensuring that the agreed ground rules are complied with." A ground rules hearing will constitute an important feature of pre-trial preparation in a significant number of cases, therefore.

Taking those considerations into account, the Rule Committee decided to incorporate best practice in a new rule about ground rules hearings. During discussion it was pointed out that references to what the 2015 Rules describe as a 'speech impediment' is better now described as a 'speech disorder' and that expression was substituted.

#### *Service of documents on court offices*

Rule 4.6 of the Criminal Procedure Rules 2015 (Service by electronic means) provides for 'service' (meaning, the formal delivery of a document) by sending a document by electronic means to an electronic address which the person to be served 'has given', or by deposit at an electronic address to which the person to be served 'has been given access', in either case as long as the recipient has not refused to accept service at that electronic address. However, electronic addresses change, including court office email addresses, and although the fact of that change may be advertised by the person to be served, for example by substituting the new address for the court concerned in the online list of court office addresses published by HM Courts and Tribunals Service,<sup>1</sup> correspondents may overlook a change of address with the result that a document thought served in fact has not been received. It was reported to the Rule Committee that from time to time disputes arose over what constituted the 'giving' of a court office address.

For the purposes of service by handing over a document or by leaving or posting a document, in rules 4.3 and 4.4 of the Criminal Procedure Rules 2015, the address for service on a court officer is 'the relevant court office' which the rules define as 'the office at the address advertised by the Lord Chancellor as the place at which that court's business is administered'. To clarify the requirement for electronic service on a court officer, and to ensure consistency of the requirements for service by all the means for which the rules provide, the Rule Committee decided that a corresponding general definition of 'relevant court office' should be adopted. That definition now appears in rule 4.1 of these Rules.

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<sup>1</sup> At: <https://courtribunalfinder.service.gov.uk/search/>.

### *Service of an application to refer an unduly lenient sentence*

Since 2017 rule 4.11 of the Criminal Procedure Rules 2015 has provided that service of a document by electronic means will be treated as service on the same day as it is sent or uploaded if that day is a business day, as defined in the Rules, and if that document is sent or uploaded by no later than 2.30pm that day, or by no later than 4.30pm that day in an extradition appeal case in the High Court. If the document is sent or uploaded later that day then it will not count as served until the day after. The 28-day time limit for service by HM Attorney General on the Registrar of Criminal Appeals of an application for permission to refer to the Court of Appeal an instance of allegedly unduly lenient sentencing is set by the Criminal Justice Act 1988 and cannot be extended by the court. It was reported to the Rule Committee that from time to time information about such sentences reached the Attorney General's office so late that a period of as little as two or three hours on the last day of the statutory time limit could make a difference between the Attorney's power to refer a sentence and the loss of that power. The Attorney and the Registrar of Criminal Appeals asked the Committee to extend to 5.30pm the time limit for same-day service of such a sentencing reference by electronic means, so as not to impede the exercise of the power to refer a sentence in an appropriate case.

The Rule Committee agreed to do so. Service of such an application on the defendant, the time limit for which is not prescribed by the Act, is unaffected. Nor are the time limits for the service of other documents during the proceedings.

### *Low-level shoplifting*

'Low-level shoplifting', within the meaning of section 22A of the Magistrates' Courts Act 1980, is an offence of theft where the value of the stolen goods does not exceed £200; the goods were being offered for sale in a shop or other premises; and the defendant was, or was purporting to be, a customer or potential customer. Ordinarily, theft is an offence that can be tried in a magistrates' court or in the Crown Court: it is 'triable either way'. By contrast, low-level shoplifting is 'triable only summarily' unless the defendant is an adult and chooses Crown Court trial. That means that an allegation of theft from a shop can reach the Crown Court in any one of five ways: (i) it is low-level shoplifting and the defendant chooses Crown Court trial; (ii) it is low-level shoplifting and even though the defendant does not choose Crown Court trial the allegation is sent to the Crown Court for disposal there because it is related to another alleged offence sent to the Crown Court for trial; (iii) it is not low-value shoplifting and the magistrates' court decides it is sufficiently serious to be sent to the Crown Court for trial; (iv) it is not low-value shoplifting and even though the magistrates' court decides it is insufficiently serious to be sent to the Crown Court for trial still the defendant chooses Crown Court trial; or (v) it is not low-value shoplifting and the allegation is sent to the Crown Court for disposal there because it is related to another alleged offence sent to the Crown Court for trial. In each of circumstances (i), (iii), (iv) and (v) the defendant can be tried on indictment (or can plead guilty) and be sentenced in the Crown Court as for any offence of theft. In circumstance (ii), however, the offence remains triable only summarily and there are restrictions on the ways in which the Crown Court can deal with it. Therefore, it matters for the Crown Court to be clear about which of those five circumstances applies and in several cases heard by the Court of Appeal between 2017 and 2019 unlawful convictions had been entered, and sentences passed, because that had not been clear – even in some cases in which the defendant had pleaded guilty in the Crown Court.<sup>2</sup>

Although Criminal Procedure Rules cannot eliminate all possibility of error by prosecutors preparing papers for the Crown Court, the Rule Committee decided to make amendments to rules in Parts 7, 9 and 10 of the Rules to impose requirements and to include reminders to reduce the incidence of confusion. Rule 7.3 (Allegation of offence) is amended explicitly to require a statement of the value, if known, of any theft or damage alleged. Rule 9.5 (Duty of magistrates' court officer) is amended explicitly to require transmission to the Crown Court of a record of any decision by the defendant to choose to be tried in the Crown Court for low-

<sup>2</sup> See, most recently, *R v Yeo* [2019] EWCA Crim 2460, the judgment in which is available at: <https://www.bailii.org/ew/cases/EWCA/Crim/2019/2460.html>.

level shoplifting. Rule 10.2 (The indictment: general rules) is amended explicitly to refer to section 40 of the Criminal Justice Act 1988, which lists the only summary offences that can be included in a Crown Court indictment (and low-level shoplifting is not one of them).

#### *Special measures directions without application*

Special measures directions under the Youth Justice and Criminal Evidence Act 1999 allow witnesses to give their evidence in ways that facilitate the completeness, coherence and accuracy of that evidence. A witness may be eligible for the assistance of such a direction by reason of youth or disability, or where the quality of evidence given by the witness is likely to be diminished by reason of fear or distress. The rules about applications for such directions are in Part 18 of the Criminal Procedure Rules 2015. Rule 18.10 (Content of application for a special measures direction) lists the requirements for such an application, and courts also have power to make such directions on their own initiative. It is now a well-established practice at preparation for trial hearings in magistrates' courts and at plea and trial preparation hearings in the Crown Court for the court to invite the parties to indicate, there and then, whether a witness is eligible for the assistance of a special measures direction, or requires any other assistance and, if so, then as far as possible to give, at once, such directions as are appropriate.

It was reported to the Rule Committee that some courts nonetheless understood the rules to require an application under rule 18.10 in every case, even where there is no objection to the direction and where the court acts on its own initiative as described above. The Committee decided to make a new rule 18.9 (now, 'Special measures direction without application') to make it clear that in specified circumstances the court can make a direction without requiring a formal application.

#### *Relocation of rules about reopening cases in magistrates' courts*

Part 44 of the Criminal Procedure Rules 2015 contains rules that govern the procedure on a criminal court making a request to the European Union Court of Justice for a preliminary ruling on the interpretation of the Treaty on the Functioning of the European Union or of the Treaty on European Union. The procedure has almost never been invoked, the rules are about to become redundant, and Part 44 then will become vacant.

Rules 24.17 and 24.18 of the 2015 Rules concern, respectively, statutory declarations of ignorance of proceedings in magistrates' courts, under sections 14 and 16E of the Magistrates' Courts Act 1980, and applications to magistrates' courts to set aside a conviction or to vary a costs, etc. order, under section 142 of that Act. They govern procedures for the exercise of statutory remedies that have more to do with the aftermath of a trial than with the trial itself (which is the subject of Part 24), and that are in some respects like rights of appeal (which are the subject of Parts 34 to 43). In these circumstances the Rule Committee decided that Part 44 of these Rules would be a more appropriate location for what are presently rules 24.17 and 24.18.

#### *Powers of High Court officers in extradition appeal cases*

Rule 50.30 of the Criminal Procedure Rules 2015 (Constitution of the High Court) confers powers on court officers as well as on masters and deputy masters of the High Court, under the authority of section 66 of the Senior Courts Act 1981. Now, however, the exercise of judicial functions by court officers more appropriately is conferred under section 67B of the Courts Act 2003, and rule 2.6 of the 2015 Rules (Exercise of functions of the High Court) already now does that, to the same extent as rule 50.30. There is no need for that duplication and in these circumstances the Rule Committee decided to amend rule 50.30 of these Rules accordingly.

#### *Time limits in business days*

Rule 2.2(1) of the Criminal Procedure Rules defines 'business day' as meaning any day except Saturday, Sunday, Christmas Day, Boxing Day, Good Friday, Easter Monday or a bank holiday. Among other things, that allows for the imposition of short, but realistically

short, time limits for taking certain steps without needing to make allowance for the intervention of weekends or public holidays. A time limit of four days that begins on a Monday allows for more working time to complete a task than does the same time limit starting on a Thursday. A time limit of four business days, however, allows for the same working period no matter on which day time begins to run. Where the intervention of a non-business day is unlikely to make much practical difference, the convention adopted in the Criminal Procedure Rules 2015 is for such a longer period to be expressed in days only, not business days. Nevertheless, in describing what amounts to a fortnight the Rules already use '10 business days' in some instances and '14 days' in others, and there are some other discrepancies. That is inconsistent and in some cases may be unfair. In these circumstances the Committee decided in future to express all time limits set by the Criminal Procedure Rules themselves in business days. A total of 122 changes have been made, listed in the Explanatory Note to the 2020 Rules. No time limit has been changed, only the way in which it is expressed.

Time limits set by legislation other than Criminal Procedure Rules have not been converted to business days because that would be incompatible with that other legislation. Time limits imposed by the rules in Part 33 of the Criminal Procedure Rules 2015 (Confiscation and related proceedings) have not been changed either. That Part contains some definitions special to those rules that it would not be appropriate to disturb.

#### *Connective words expressing conjunction, disjunction or reservation*

Rule 36.15(1) of the Criminal Procedure Rules 2015 lists the circumstances in which the Court of Appeal, criminal division, is required to determine an application to reopen the previous determination of an appeal. The Rule Committee had meant the rule to be a list of alternatives but the word 'or' was not used. In the appeal case of *R v Cunningham, R v Di Stefano*<sup>3</sup> it was suggested that the list in the rule should be read accumulatively, not disjunctively, so that every listed circumstance had to be met before the case could be referred to the court. In the event, the court interpreted the rule as the Committee had intended, pointing out that, by contrast with other rules, "The lack of the word 'and' between rule 36.15(1)(a) and (b) means they are to be read disjunctively, thereby setting out alternatives." However, the Committee was concerned that that rule had been open to misinterpretation. It carried out a review of all the rules in which no connective word had been used, because it had been assumed that the meaning still would be clear, and decided that it would improve the clarity and consistency of those rules to include the appropriate connective. In all, a total of 378 rules have been amended, listed in the Explanatory Note to the 2020 Rules.

#### *Other amendments*

The glossary omits the expression 'justices' clerk' which no longer appears in the Rules, that office having been abolished by the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018. 25 rules and notes to rules have been amended to bring up to date the cross-references that they contain, both generally and in consequence of the re-arrangement of Part 3, as listed in the Explanatory Note to the 2020 Rules.

#### *Temporary amendments consequent on the Coronavirus Act 2020*

The provisions of the Crime and Disorder Act 1998 and the Criminal Justice Act 2003 which are temporarily modified by the Coronavirus Act 2020 allow for the use of live video and live audio links by people taking part in preliminary hearings, sentencing hearings and enforcement hearings, as defined in the 1998 Act, and by people taking part in 'eligible criminal proceedings' as defined in the 2003 Act (which includes trials and appeals). As modified, those Acts impose detailed requirements and limitations which are not the same as those imposed by the unmodified provisions. The temporary amendments maintained by rule 2.1(4) of the 2020 Rules remove the procedural requirements that supplement the unmodified Acts and substitute ones compatible with the modified versions. They also make

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<sup>3</sup> The judgment is available at: <https://www.bailii.org/ew/cases/EWCA/Crim/2019/2101.html>.

temporary amendments (i) to supplement modifications to the Extradition Act 2003 which allow for the use of live video links in extradition hearings and in hearings in preparation for extradition hearings, and (ii) to supplement a modification to the Courts Act 2003 which allows courts in specified circumstances to make broadcasting and recording directions where proceedings take place wholly by live link.

Ordinarily, a criminal court can make orders for a defendant's detention and treatment under the Mental Health Act 1983 only after receiving the evidence of at least two registered medical practitioners, at least one of whom is approved as having special experience in the diagnosis or treatment of mental disorder. The Coronavirus Act 2020 modifies provisions of the 1983 Act so that where that requirement is impractical, or would involve undesirable delay then the court may act on the evidence of only one such practitioner. These Rules make temporary amendments to notes to the relevant Criminal Procedure Rules so that those notes describe the effect of the modified provisions.

Criminal Procedure Rule Committee secretariat  
22 July 2020

**CrimPR Part 3 destination and derivation table**

The rules in Part 3 of the Criminal Procedure Rules 2020 correspond with the rules in Part 3 of the Criminal Procedure Rules 2015 as follows:

<i>Destinations</i>		<i>Derivations</i>	
<i>2015 Rules</i>	<i>2020 Rules</i>	<i>2020 Rules</i>	<i>2015 Rules</i>
3.1	3.1	3.1	3.1
3.2	3.2	3.2	3.2
3.3	3.3	3.3	3.3
3.4	3.4	3.4	3.4
3.5	3.5	3.5	3.5
3.6	3.6	3.6	3.6
3.7	3.7	3.7	3.7
3.8	3.15	3.8	3.9
3.9	3.8	3.9	<i>New rule</i>
3.10	3.12	3.10	3.28
3.11	3.13	3.11	3.29
3.12	3.14	3.12	3.10
3.13	3.21	3.13	3.11
3.14	3.22	3.14	3.12
3.15	3.23	3.15	3.8
3.16	3.24	3.16	3.27
3.17	3.25	3.17	24.14
3.18	3.26	3.18	24.14
3.19	3.27	3.19	9.15
3.20	3.28	3.20	9.16
3.21	3.29	3.21	3.13
3.22	3.30	3.22	3.14
3.23	3.31	3.23	3.15
3.24	3.32	3.24	3.16
3.25	3.33	3.25	3.17
3.26	3.34	3.26	3.18
3.27	3.16	3.27	3.19
3.28	3.10	3.28	3.20
3.29	3.11	3.29	3.21
9.15	3.19	3.30	3.22
9.16	3.20	3.31	3.23
24.14	3.17 & 3.18	3.32	3.24
		3.33	3.25
		3.34	3.26