

## **A GUIDE TO THE CRIMINAL PROCEDURE (AMENDMENT No. 2) RULES 2023 (S.I. 2023/786)**

### **Where to find the new rules**

The Criminal Procedure (Amendment No. 2) Rules 2023 are at this address:

<https://www.legislation.gov.uk/ukSI/2023/786/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) add rules to replace former Practice Directions about—
  - the duties of justices' legal advisers,
  - the prosecution of a defendant for the offence of failing to give name and date of birth when required to do so by a court,
  - the criteria for deciding whether or not to adjourn a court hearing, including a trial,
  - the procedure to follow when police bring a defendant to court in custody after arrest,
  - binding over as a sanction for misbehaviour, and
  - the criteria to be taken into account when imposing a penalty for contempt of court.
- (b) add other rules about—
  - requiring a defendant's address to be given in public in court,
  - recording proceedings in the Crown Court on an application for a search warrant or investigation order,
  - setting a timetable for any video recorded cross-examination and re-examination of a witness, and
  - reading a victim personal statement in a youth court.
- (c) amend rules about—
  - forms used in criminal cases, for consistency with new Practice Directions,
  - publication in court buildings of information about cases due to be heard there,
  - publication online of information about single justice procedure cases, to accommodate statutory amendments,
  - obtaining information from court records under legislation other than Criminal Procedure Rules,
  - single justice procedure cases, to accommodate new statutory provisions,
  - behaviour orders, to accommodate new statutory provisions about serious disruption prevention orders,
  - applications to vary behaviour orders,
  - citation of judgments in cases in the Court of Appeal, criminal division, and
  - applications to change the solicitor assigned to a defendant by a legal aid order.

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

The changes to the Criminal Procedure Rules made by these rules come into force on 2 October 2023.

## What is in the new rules

### *Rules to replace Practice Directions*

The Lord Chief Justice gives directions about the practice and procedure of the criminal courts under section 74 of the Courts Act 2003. Those practice directions and the Criminal Procedure Rules complement each other. In April the Lord Chief Justice issued the Criminal Practice Directions 2023<sup>1</sup>, replacing the Criminal Practice Directions 2015.<sup>2</sup> He and the Rule Committee agreed that some subjects dealt with in the 2015 Practice Directions should be left out of the new Practice Directions and included as soon as possible in the Criminal Procedure Rules instead.<sup>3</sup> These Rules amend the Criminal Procedure Rules to include those subjects. In each case the existing requirements remain the same.

### *Defendant's address*

The requirement for a defendant to give the court at least one address for correspondence about the case, usually a residential address, and to do so in court in public, is a common law requirement, not one imposed by legislation (though legislation may require the defendant to give an address for other reasons, for example as a condition of bail). It was suggested to the Rule Committee that it would clarify established practice to incorporate that requirement in the Criminal Procedure Rules.

The Criminal Procedure Rules already supplement the statutory requirements to give name, date of birth and, in some circumstances, nationality. These Rules add the procedure to follow in the event of a failure to comply which used to be in the Criminal Practice Directions. The Committee decided to consolidate all these requirements and rule 4 of these Rules amends rule 3.2 of the Criminal Procedure Rules for that reason.

### *Forms for use in connection with Criminal Procedure Rules*

Rules 5.1 and 5.2 of the Criminal Procedure Rules allow for forms to be authorised by the Lord Chief Justice through the Criminal Practice Directions for use in connection with the Rules. The way in which the new Criminal Practice Directions describe the authorisation and amendment of forms differs from the description used in the Criminal Practice Directions 2015 and the present rules no longer correspond with that description. The Rule Committee agreed to amend the rules for that reason.

### *Recording an application to the Crown Court for a search warrant, etc.*

Rule 5.5 of the Criminal Procedure Rules supplements section 32 of the Criminal Appeal Act 1968 and requires the audio recording of proceedings in the Crown Court from which an appeal can be made to the Court of Appeal, criminal division. The present rule, and that Act, do not apply to other proceedings in the Crown Court, including applications for search warrants and other sorts of investigation order to which Part 47 of the Criminal Procedure Rules applies. The Criminal Practice Directions 2015 required the recording of such applications and it is now established practice. However, the new Criminal Practice Directions do not require it. Such applications are made in private, usually in the absence of the person whose premises are to be searched or from whom information is required. To make a recording of such an application helps to establish what the court has been told, in case of dispute. It was suggested to the Rule Committee that it would clarify and authorise established practice to incorporate in the Criminal Procedure Rules that practice and the former Practice Direction requirement. The Committee agreed to do so and rule 5 of these Rules amends rule 5.5 of the Criminal Procedure Rules for that reason.

### *Information about court hearings*

Rule 5.11 of the Criminal Procedure Rules requires the publication of lists of forthcoming court hearings and requires those lists to include information about the offence or offences alleged, if that is practicable. Hearing lists are published online and displayed in the court

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<sup>1</sup> <https://www.judiciary.uk/guidance-and-resources/message-from-lord-burnett-lord-chief-justice-of-england-and-wales-new-criminal-practice-directions-2023/>.

<sup>2</sup> <https://www.judiciary.uk/guidance-and-resources/14th-amendment-to-the-criminal-practice-directions-2015-august-2022/>.

<sup>3</sup> Those subjects are listed [here](#).

building in which the case will be heard. Until recently it had not been practicable to include information about offences in the lists but new IT arrangements introduced by HM Courts and Tribunals Service now allow that. It was reported to the Rule Committee that the display of offence information in court buildings had led directly to an increasing number of incidents of disorder and threats of violence inside those buildings and in their vicinity which had put defendants, their legal representatives, members of the public and court staff at risk of injury.

The Committee decided that it would be compatible with the open justice principle recognised in the Criminal Procedure Rules to remove the requirement to display offence information in court buildings so as to minimise that risk. Rule 5 of these Rules amends rule 5.11 of the Criminal Procedure Rules for that reason. Information about the alleged offence still will be available online. It still will be supplied routinely to media representatives. It still will be announced in the courtroom where the case is heard.

#### *Information about single justice procedure cases*

The single justice procedure allows a magistrate to try a defendant in private without a court hearing on the basis of specified documents and to pass a sentence if the magistrate decides to convict. Rule 5.11 of the Criminal Procedure Rules requires the publication of information about a single justice procedure case “where a case is ready to be tried”. A single justice procedure case is ready to be tried 15 business days after (usually the same as 3 weeks after) notice of the case is sent to the defendant. Now that amendments made by the Judicial Review and Courts Act 2022 will allow a defendant in some cases to plead guilty online and to accept a penalty without a trial at all the Rule Committee decided to amend rule 5.11 so that information about the case still must be published even if no trial will take place. For that reason, rule 5 of these Rules amends rule 5.11 of the Criminal Procedure Rules to refer to that period of 15 business days instead of referring to a trial.

#### *Request for certificate, extract or information from court records under other legislation*

Rule 5.12 of the Criminal Procedure Rules allows for requests for information from court records made under other legislation that confers on a specified person or authority a right to specified information in specified circumstances. Other legislation often is relied on as the legal authority for obtaining information from court offices. Despite recent amendments to the rule it was reported to the Rule Committee that such requests frequently still were misunderstood. The Committee agreed to make further amendments to rule 5.12 for that reason and rule 5 of these Rules does so.

#### *Timetabling arrangements for a video recorded cross-examination*

Section 28 of the Youth Justice and Criminal Evidence Act 1999 provides for a video recording of a witness’ cross-examination and re-examination made before the rest of the trial to be admitted as part of the witness’ evidence as a “special measure” for that witness under the Act. The new Criminal Practice Directions include some supplementary provisions and in practice courts set a timetable for arrangements for the recording. It was suggested to the Rule Committee that it would clarify and authorise that practice, and promote consistency, to incorporate in the Criminal Procedure Rules a requirement for such a timetable to be set. The Committee agreed to do so and rule 9 of these Rules amends rule 18.8 of the Criminal Procedure Rules for that reason.

#### *Single justice procedure: the automatic online conviction option*

As mentioned above, the single justice procedure allows a magistrate to try a defendant in private without a court hearing on the basis of specified documents and to pass a sentence if the magistrate decides to convict. The procedure was created by sections 16A to 16D of the Magistrates’ Courts Act 1980 which were added to that Act in 2015. Amendments by the Judicial Review and Courts Act 2022 will allow a defendant in some single justice procedure cases to plead guilty online and accept conviction and a penalty without a trial at all: “the automatic online conviction option”, as the Act calls it. Rule 24.9 of the Criminal Procedure Rules supplements the present single justice procedure. Rule 10 of these Rules amends that rule to allow for the new statutory provisions.

One of the new statutory provisions requires Criminal Procedure Rules to prescribe the time when a conviction takes effect if the defendant accepts the automatic online conviction option. These Rules amend rule 24.9 of the Criminal Procedure Rules to prescribe as that time the end of 5 business days after the defendant accepts that option, which is the same as one working week after. Before Parliament passed the Judicial Review and Courts Act it was suggested to the Rule Committee that Criminal Procedure Rules should allow for a “cooling-off” period as a safeguard for vulnerable or impetuous defendants who might plead guilty online and then regret their decision. The Committee agreed. The Parliamentary Under-Secretary of State at the Ministry of Justice referred to this during debate on the Bill in the House of Lords.<sup>4</sup>

The new statutory provisions allow a magistrates’ court to set aside a penalty or a conviction after a defendant accepts the automatic online conviction option. Rules 11 and 19 of these Rules amend rules 28.4 and 44.3 of the Criminal Procedure Rules respectively to provide for that.

#### *Reading a victim personal statement in a youth court*

The victim of a crime may make a victim personal statement about its effect on them. Paragraph 9.5 of the new Criminal Practice Directions provides for such statements and rules 24.11 and 25.16 of the Criminal Procedure Rules require magistrates’ courts and the Crown Court to take account of any such statement when passing sentence. The statement may be read to the court by the prosecutor or the victim may wish to read it out themselves.

When a magistrates’ court deals with a defendant under 18 it is known as a youth court. Access to a youth court is restricted by section 47 of the Children and Young Persons Act 1933 and a victim who wants to read a victim personal statement to a youth court may need permission to attend. It was reported to the Rule Committee that this requirement sometimes was overlooked and that it would be helpful for rules to supply a consistent procedure. The Committee agreed. Rule 10 of these Rules amends rule 24.11 of the Criminal Procedure Rules for that purpose.

#### *Serious disruption prevention orders*

Part 31 of the Criminal Procedure Rules sets out procedures for dealing with all sorts of court orders that the rules call “behaviour orders”, meaning orders for which a number of Acts provide, which are 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. The Public Order Act 2023 creates a “serious disruption prevention order” which a criminal court can make if a defendant is convicted of a protest-related offence, as defined by the Act, and within the previous 5 years the defendant has been convicted of another such offence, or has been found in contempt of court for protest-related disobedience to a civil court injunction. Rule 13 of these Rules amends rules in Part 31 of the Criminal Procedure Rules to accommodate these new orders.

#### *Applications to vary, etc. behaviour orders*

Behaviour orders are described above. Rule 31.5 of the Criminal Procedure Rules supplies a procedure to follow where the Act that creates a behaviour order gives the court power to vary, renew, discharge or revoke the order. Some Acts impose limitations on applications to the court to exercise that power but others do not. For example, section 361 of the Sentencing Act 2020 imposes no limit on the frequency of applications to vary or discharge a restraining order made to protect someone from harassment by the defendant and it anticipates that each such application will be heard in court.

The Criminal Procedure Rules already contain provisions to help the court prevent a defendant who is subject to a restraining order from making applications repeatedly to harass

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<sup>4</sup> See Hansard [HL deb 24 February 2022, vol 819, col 371](#).

the protected person. The rule recognises the court's discretion not to inform the protected person of an application which the court does not expect to allow. However, it was reported to the Rule Committee that repeated applications to vary an order, every one of which the court had to consider at a hearing, abused the court's process and wasted the court's time. After discussing decisions of the High Court and Court of Appeal about the extent of a criminal court's inherent powers to prevent abuse of its process the Committee agreed that (i) a court could determine without a hearing a second or subsequent application to vary the same order if no material circumstance had changed, and (ii) rule 31.5 should recognise that power explicitly. Rule 13 of these Rules amends that rule for that purpose.

#### *Frequently cited authorities in the Court of Appeal*

Rules in Parts 37, 38, 39 and 41 of the Criminal Procedure Rules require the appellant and the respondent in an appeal to the Court of Appeal to identify the case law on which they rely and to provide electronic copies of law reports of those cases. Some cases are often relied upon. To remove the need for the parties to provide copies of that case law in every appeal in which it is mentioned the Vice-President of the Court of Appeal, criminal division, and the Registrar of Criminal Appeals have published a list of frequently cited cases copies of the reports of which court members always will have.<sup>5</sup> The Registrar asked the Rule Committee to amend the Criminal Procedure Rules to accommodate that new arrangement. The Committee agreed and these Rules amend the Criminal Procedure Rules accordingly.

#### *Application to change the solicitor assigned by a legal aid order*

The purpose of this amendment is to clarify rule 46.3 of the Criminal Procedure Rules and to relieve defence solicitors of some of the burden imposed on them when a defendant applies to the court to change the solicitor named in a legal aid order.

The present rule supplements the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013. It was made in 2015 in response to requests for procedure rules about applications under those Regulations. It requires the defendant and the current solicitor between them to explain how the criteria under the Regulations for a change of solicitor, or for the withdrawal from the case of the current solicitor, are met. The court must be satisfied that there has been a breakdown in the relationship between the defendant and the solicitor which is sufficiently serious to justify allowing a change of legal aid representative. The court will rely on information given in the application and in the current solicitor's response to that application, supplemented by information from court records. The present rule requires the current solicitor to explain, among other things, "whether, and if so in what way, in the current representative's opinion, there has been a breakdown in the relationship with the applicant such that neither the individual representing the applicant nor any colleague of his or hers any longer can provide effective representation". Such an explanation often is understood to require a full description of the current solicitor's work on the case for the defendant whether the current solicitor agrees or disagrees with what the defendant's application says; for which explanation the current solicitor is not paid anything unless the application is determined at a hearing.

It was reported to the Rule Committee that sometimes the requirements of the Regulations still are overlooked or ignored and that occasionally the procedure appears to have been abused. The Committee invited comments on draft rule amendments from organisations representing defence solicitors and barristers and from judges and magistrates. Taking those comments into account the Committee decided to (a) substitute the present rule with three new rules and to clarify their expression in various respects; (b) include a requirement for the proposed new representative to confirm that that representative has "informed the current representative of the defendant's wish to select a new representative" and has "discussed the defendant's grounds for the proposed application with the current representative" before the application is made; (c) include a requirement for the proposed new representative to confirm that that representative has "explained to the defendant what it means to waive the

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<sup>5</sup> The list is published at <https://www.judiciary.uk/wp-content/uploads/2023/05/List-of-Frequently-Cited-Authorities-CACD.docx>.

legal professional privilege attaching to the defendant's communications with the current representative and the potential consequences of not doing so"; (d) replace the present requirement for a full description of the current solicitor's work on the case with a requirement only to comment on assertions in the application that are not agreed and to "include any comments that the current representative thinks may assist the court"; (e) maintain the present provision that allows the court to determine an application without a hearing but include provision for a hearing "if that is needed to resolve matters in dispute or other matters unclear to the court"; (f) include a new provision acknowledging the court's power to postpone the date on which any withdrawal of legal aid takes effect; and (g) include a requirement for service on the prosecutor of notice of any withdrawal of legal aid. For those reasons rule 20 of these Rules substitutes new rules for rule 46.3 of the Criminal Procedure Rules.

#### *Consequential amendments*

The new rules and rule amendments described above require for consistency consequential amendments to Criminal Procedure Rules and notes to rules which are listed in the Explanatory Note at the end of the Amendment Rules. Rule 23 of these Rules and the Schedule amend references to forms consequent on the amendments to rule 5.1 and 5.2 of the Criminal Procedure Rules described above.

Criminal Procedure Rule Committee secretariat  
26 July 2023