

A GUIDE TO THE CRIMINAL PROCEDURE (AMENDMENT) RULES 2024 (S.I. 2024/62)

Where to find the new rules

The Criminal Procedure (Amendment) Rules 2024 are at this address:

<https://www.legislation.gov.uk/ukSI/2024/62/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) include new rules about independent domestic violence advisors and independent sexual violence advisors
- (b) clarify the application of existing rules about live links
- (c) provide for the correction of court records
- (d) amend the rule about applications to vary the conditions of pre-charge bail
- (e) revise and clarify the rules about prosecution and defence disclosure obligations and include new rules about prosecution disclosure management documents
- (f) provide for the editing of video recordings of pre-trial cross-examination
- (g) revoke rules that supplement unimplemented statutory provisions about defendant's evidence directions
- (h) implement Law Commission recommendations about confiscation and restraint order proceedings
- (i) align the way in which time limits are described in confiscation and restraint proceedings with the way in which time limits are described in all other Criminal Procedure Rules, and
- (j) make extensive amendments to rules about property confiscation and seizure, and to rules about search warrants, production orders and other comparable orders, to supplement the Economic Crime and Corporate Transparency Act 2023 and the National Security Act 2023.

When the new rules come into force

The changes to the Criminal Procedure Rules made by these rules come into force on 1 April 2024.

What is in the new rules

Witness companions

Rule 3.8 of the Criminal Procedure Rules, about case preparation and progression, already refers to the court's power to allow someone to keep a witness company in the court room and to give them emotional support where that is in the interests of justice. However, unlike the practice directions that supplement Family Procedure Rules¹, the Criminal Procedure Rules do not yet refer explicitly to the professional supporters known as independent domestic violence advisors and independent sexual violence advisors ("IDVAs" and "ISVAs") whose services gradually have become more widely available during recent years.

¹ See https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/practice-direction-27c-attendance-of-idvas-and-isvas.

It was suggested to the Rule Committee that it would promote consistency in dealing with applications for a witness to be accompanied if the existing rule could be revised and elaborated to refer explicitly to IDVAs and ISVAs. The Committee agreed. Rule 4 of these Rules amends rule 3.8 of the Criminal Procedure Rules accordingly.

Live links

A “live link” is an arrangement by which someone can take part in a court hearing by telephone or video link. The Police, Crime, Sentencing and Courts Act 2022 amended the Criminal Justice Act 2003 to allow participants in criminal cases to attend court by live link in more circumstances than before, and made similar amendments to the Extradition Act 2003. In August, 2022, the Criminal Procedure Rules were changed to supply live link rules that now apply to ordinary criminal proceedings, but extradition proceedings were not then included. Rules 3, 4 and 13 of these Rules correct that by making amendments to rules 2.2, 3.1, 3.35 and 50.3 of the Criminal Procedure Rules.

Among other changes the law in England and Wales now allows a person to attend court by live link from abroad if the court here agrees. However, that change in the law here does not affect the requirements of other countries’ laws, and in many cases permission must be obtained, too, from the authorities in the country from which that person will take part, so as to comply with that country’s laws. It was reported to the Rule Committee that that was not widely understood. The Committee has made other rule amendments to make it clear that the applicant for a live link direction here must show that they have obtained, or will obtain, any permission needed from the authorities for the country from which the live link will be used: rule 4 of these Rules amends rule 3.35 of the Criminal Procedure Rules for that reason.

Correcting court records

The statutory requirements for the sending of a defendant for trial from a magistrates’ court to the Crown Court, and for the committal of a defendant by a magistrates’ court after conviction for sentence in the Crown Court, are complex and interconnected. Provisions of the Magistrates’ Courts Act 1980, the Crime and Disorder Act 1998 and the Sentencing Act 2020 all are involved, and the exact way in which those provisions are used in the magistrates’ court may affect the powers of the Crown Court. The statutory procedures are incorporated in rules in Part 9 of the Criminal Procedure Rules, about allocation and sending for trial, and in Part 28 of the Rules, about committal for sentence and sentencing after committal.

In several decisions of the High Court and the Court of Appeal, most recently in the judgment of the Court of Appeal in *R v Butt, R v Jenkins*,² those courts have discussed mistakes made in the recording of decisions reached in magistrates’ courts, mistakes made in the interpretation of those decisions in the Crown Court, and the application of the Acts of Parliament listed above. Most of the questions raised have been answered by those decisions but it emerged that no present procedure rule applies to the exercise of the power to correct a court record which court staff, or a party to the decision, or the court itself, or another court, can see may be wrong. The Rule Committee agreed to make rules to govern that procedure. Rules 3, 5 and 10 of these Rules amend rules 2.8, 5.4 and 44.3 of the Criminal Procedure Rules to deal with the powers to correct inaccurate records and, if necessary, to substitute a valid decision for one which a court, as it later appears, had no power to make.

Applications to vary conditions of pre-charge bail

A person who has been arrested for an offence but not yet charged may be released on police bail subject to a requirement to return to a police station and subject to other conditions in the meantime: conditions about where that person must live, for example, or conditions prohibiting contact with a complainant. Sections 47ZA³ and 47ZB⁴ of the Police

² [2023] EWCA Crim 1131.

³ <https://www.legislation.gov.uk/ukpga/1984/60/section/47ZA>.

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 thinks it necessary to apply for a further extension, on the authority of a magistrates' court. A magistrates' court can also vary bail conditions imposed on the person by the police.

Rule 14.6 of the Criminal Procedure Rules requires that an application by a person on pre-charge bail to vary a bail condition must be made to the magistrates' court for the police station to which that person must return. In most cases that will be the most appropriate court. In some circumstances, though, an extension of pre-charge bail may have been authorised by a different magistrates' court: in which case it will be more appropriate, fair and efficient for the application to vary to be made to the court which authorised the extension and has already considered the case. When this was pointed out the Rule Committee agreed to amend the present rule accordingly. Rule 6 of these Rules does so.

Disclosure

The Criminal Procedure and Investigations Act 1996 requires the prosecutor to disclose to the defendant any material in the prosecutor's possession which is not due to be used as evidence against the defendant and which reasonably might be considered capable of undermining the case for the prosecutor or assisting the case for the defendant. The Act requires the defendant to give prescribed details of the proposed defence and of the witnesses for the defendant. The provisions of the Act are supplemented by rules in Part 15 of the Criminal Procedure Rules.

Encouraged by the Attorney General's *Guidelines on Disclosure*⁵ and by case management directions that courts routinely give, during the last few years a prosecution practice has been established by which the prosecutor may describe in a "disclosure management document" the prosecution approach to disclosure and the reasons for that approach. This is especially valuable in a case in which there are many documents to disclose (a complex fraud case, for example) or in a case in which the prosecutor is aware of potentially relevant material held by other people or authorities. It allows for comment by the defendant on how the prosecutor intends to deal with disclosure, to help the court give directions for the preparation of the case for trial.

It was suggested that the Criminal Procedure Rules should refer to that practice explicitly. The Rule Committee agreed, and took the opportunity to revise and clarify the rules in Part 15 about prosecution disclosure and about the statutory obligations on the defence. Rule 7 of these Rules amends Part 15 of the Criminal Procedure Rules accordingly. An associated amendment made by rule 4 of these Rules to rule 3.19 of the Criminal Procedure Rules, which is the rule about when prosecution evidence must be served on the defendant, allows Part 15 better to describe the time at which the prosecution obligation to disclose material arises: which depends on the Criminal Procedure and Investigations Act 1996 and on other legislation.

Editing a video recording of pre-trial cross-examination

Section 28 of the Youth Justice and Criminal Evidence Act 1999⁶ allows for the pre-trial video recording of cross-examination of a vulnerable witness. Rules in Part 18 of the Criminal Procedure Rules, about measures to help a witness or defendant to give evidence or otherwise participate, supplement the provisions of the Act.

Sometimes it may be necessary with the court's permission to edit the recording to be used as evidence, for example where a change of circumstances has made part of that recording irrelevant. The Criminal Practice Directions made by the Lady Chief Justice already refer to

⁴ <https://www.legislation.gov.uk/ukpga/1984/60/section/47ZB>.

⁵ <https://www.gov.uk/government/publications/attorney-generals-guidelines-on-disclosure>.

⁶ <https://www.legislation.gov.uk/ukpga/1999/23/section/28>.

the possibility of editing⁷ but the Criminal Procedure Rules do not. It was reported to the Rule Committee that this sometimes led to uncertainty about the court's powers. It was suggested that the Rules, too, should acknowledge the power to allow editing. The Committee agreed, and rule 8 of these Rules amends rule 18.8 of the Criminal Procedure Rules accordingly.

Defendant's evidence direction

Sections 33BA and 33BB of the Youth Justice and Criminal Evidence Act 1999 allow for an intermediary to help a defendant to give evidence. They were added to that Act by the Coroners and Justice Act 2009⁸. They are supplemented by rules 18.14 to 18.17 of the Criminal Procedure Rules, which the Rule Committee made soon after the 2009 Act was passed. However, the 2009 Act amendments have not been brought into force.

In April, 2021, the Committee added rules 18.23 to 18.28 to the Criminal Procedure Rules, which are general rules about intermediaries. The Explanatory Memorandum published with the Criminal Procedure (Amendment) Rules 2021⁹ described the Committee's decision to codify procedural requirements identified in case law by the courts and contained in advice and guidance which by then had been published. For most purposes those general rules supersede the unimplemented statutory provisions. Recently it was pointed out to the Committee that keeping rules about statutory defendant's evidence directions had begun to cause confusion about which rules ought to apply on an application to the court for an intermediary. It was suggested that the rules about the unimplemented statutory directions should be removed. The Committee agreed. For that reason, rule 8 of these Rules revokes the rules in Part 18 of the Criminal Procedure Rules that refer to those statutory directions.

Confiscation and restraint proceedings

The Proceeds of Crime Act 2002 allows the Crown Court to order the confiscation of property held by a convicted defendant up to the value of the defendant's financial benefit from their crime or crimes. Where it seems likely that a defendant has benefited from crime then the Act allows the Crown Court to make a restraint order that prevents any dealing with property to which the order applies. In November, 2021, the Law Commission published a report that recommended changes to the law and procedure about confiscation and restraint orders.¹⁰ Some of the Commission's recommendations were addressed to the Rule Committee.¹¹

In response to those recommendations the Committee has completely rewritten rule 33.13 of the Criminal Procedure Rules, which is the main rule about the conduct of confiscation proceedings. It has amended rule 33.53 about applications by defendants before trial to release any property to which a restraint order applies for living expenses. It has completely rewritten the rules about orders for the payment of legal costs by one party to the other in restraint proceedings so as to correspond more closely with comparable statutory provisions about costs orders in unexplained wealth order proceedings.¹² Rule 9 of these Rules amends rules in Part 33 of the Criminal Procedure Rules accordingly, and rule 11 of these Rules amends the rules about costs in Part 45 of the Criminal Procedure Rules.

References to time limits in Part 33 of the Criminal Procedure Rules

While amending the rules in Part 33 of the Criminal Procedure Rules, as described above, the Rule Committee took the opportunity to make references to time limits in that Part consistent with references in other Criminal Procedure Rules. References to times expressed in days are replaced with references to "business days" as defined in rule 2.2 of the Criminal Procedure Rules, so that the time available for making an application, or giving a notice, will

⁷ <https://www.gov.uk/guidance/rules-and-practice-directions-2020#criminal-practice-directions-2023-contents>, at paragraphs 6.3.39 and 6.3.41.

⁸ <https://www.legislation.gov.uk/ukpga/2009/25/section/104>.

⁹ <https://www.legislation.gov.uk/uksi/2021/40/memorandum/contents>.

¹⁰ <https://www.lawcom.gov.uk/project/confiscation-under-part-2-of-the-proceeds-of-crime-act-2002/>.

¹¹ Numbers 10, 11, 12, 13, 14, 15, 20, 33, 45, 48, 55, 90 and 92.

¹² [Section 362U, Proceeds of Crime Act 2002](#).

be the same whether or not a weekend or public holiday occurs during the time limit. Rule 9 of these Rules includes the relevant amendments to the Part 33 rules.

Rules to accommodate new statutory provisions

The Economic Crime and Corporate Transparency Act 2023 amends the Terrorism Act 2000 and the Proceeds of Crime Act 2002 (i) to allow the court to exercise various powers of seizure and confiscation of property in relation to cryptoassets, and (ii) to allow the court to require the giving of information in prescribed circumstances not only in relation to a specific investigation but also for the purposes of gathering information about criminal activity generally.

The National Security Act 2023 creates new powers for courts (i) to authorise search for evidence of crime, (ii) to order the production of material that may be evidence of crime, and (iii) to authorise the obtaining of other information in connection with the investigation of crime. In many respects the new powers correspond with existing powers under the Terrorism Act 2000 (which the new Act also amends).

By rules 9 and 12 of these Rules the Rule Committee has made extensive amendments to rules in, respectively, Part 33 of the Criminal Procedure Rules, about confiscation of the proceeds of crime, and in Part 47 of the Rules, about investigation orders and warrants, to supplement these new statutory provisions and to govern the making of applications to the court for their exercise. While doing so the Rule Committee took the opportunity to clarify the rule in Part 47 about the requirements for the content of a search warrant.

Criminal Procedure Rule Committee secretariat
12 February 2024