

A GUIDE TO THE CRIMINAL PROCEDURE (AMENDMENT No. 2) RULES 2024 (S.I. 2024/842)

Where to find the new rules

The Criminal Procedure (Amendment No. 2) Rules 2024 are at this address:

<https://www.legislation.gov.uk/uksi/2024/842/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) replace the rules about allocating and sending cases for trial in the Crown Court, to allow for the operation of an online written procedure under new statutory provisions. The new rules (i) define some circumstances in which the new written procedure may not be used, (ii) define the criteria for sending an offence for trial because of its connection with another offence, and (iii) include detailed requirements for explanations to defendants.
- (b) require the publication of information about cases dealt with by the new online written arrangements that correspond, as nearly as may be, with existing rules about the publication of information concerning cases heard in a court room.
- (c) clarify the extent of the information that must be published and supplied on request about (i) alleged offences, and (ii) conditions of bail.
- (d) supplement the court's power to prohibit the supply of specified information without a specific court order.
- (e) allow an authorised court officer to decide whether or not to issue a summons in the Crown Court.
- (f) codify the existing practice by which courts take into account for sentencing purposes confidential information about assistance given to investigators by a defendant, and distinguish between that practice and the comparable statutory procedure.
- (g) supplement new statutory provision that confers new rights of appeal about domestic abuse protection orders.
- (h) supplement new statutory provision for the reference to the Court of Appeal of disputes about the interpretation or application of case law that evolved under the influence of European Union law.
- (i) supplement new statutory powers to extend the periods for which fingerprints, DNA samples and DNA profiles may be retained by the police.
- (j) clarify the rules about appeals to the High Court in extradition cases by (i) supplying new procedures that encourage the prompt provision of information needed by the court, and (ii) incorporating the interpretation of the statutory time limit for appeal that has been set by case law.

When the new rules come into force

The changes to the Criminal Procedure Rules made by these rules come into force on 7 October 2024, except for the changes summarised at paragraphs (a), (g) and (h) above which come into force when those new statutory provisions come into force.

What is in the new rules

Allocation and sending for trial

Part 9 of the Criminal Procedure Rules applies to the exercise of a magistrates' court's powers under the Magistrates' Courts Act 1980 and the Crime and Disorder Act 1998 to send a defendant for trial in the Crown Court, or to retain the case for trial in the magistrates' court, according to the classification of the offence, the defendant's age, and specified other circumstances. The Part 9 rules apply also to the exercise of a magistrates' court's powers to commit a convicted defendant for sentence in the Crown Court, and to the exercise of the Crown Court's power in some circumstances to send a defendant back to a magistrates' court for trial. The present statutory provisions are amended extensively by the Judicial Review and Courts Act 2022, to allow allocation and sending for trial to take place in writing, without a court hearing, and to include a new right for the defendant to require Crown Court trial without a full allocation procedure first taking place. In future, allocation and sending for trial may take place at a hearing, as it does now, or it may take place online, in writing; and, depending on the circumstances, procedure that begins in writing may continue at a hearing, and vice versa. As well as governing procedure at an allocation and sending hearing in a magistrates' court, in future Criminal Procedure Rules will govern the new written procedure, too; which will be available online if the defendant has a legal representative. The 2022 Act gives two new powers to Criminal Procedure Rules, (i) a power to define circumstances in which a new written procedure may not be used, and (ii) a power to define criteria for sending an offence for trial because of its connection with another offence. Explanatory Notes published with the 2022 Act¹ describe the amendments that it makes in more detail.

To accommodate the various combinations of circumstance that in future may arise the Rule Committee has substantially replaced the Part 9 rules, amending existing rules and adding to them. The new rules include provision for:

- (a) circumstances in which the court need not initiate, or pursue, written procedures.
 - (i) amendments to the Crime and Disorder Act 1998 require magistrates' courts to adopt written procedures for sending proceedings but the statutory provisions "have effect subject to any provision in Criminal Procedure Rules ... about circumstances in which *[the obligation to use written procedures]* does not apply".² Such circumstances are prescribed by new rules 9.8(2)(a), 9.8(6) and 9.23(3). Where the court otherwise would have to send for trial by the written procedure that statutory obligation is disapplied if (i) a hearing is imminent, or (ii) before sending the court requires a hearing to consider bail, to collect or consider information required for the purposes of case management, because the defendant appears to have no legal representative (or having had a legal representative appears no longer to have one), or in any other circumstance which the court thinks makes it necessary to convene a hearing. For a young defendant, these same exceptions apply to the youth allocation procedure under new rule 9.19.
 - (ii) amendments to the Magistrates' Courts Act 1980 require magistrates' courts to adopt written procedures for allocation proceedings, "But Criminal Procedure Rules may make provision about circumstances in which *[the obligation to use written procedures]* does not have effect".³ Such circumstances are prescribed by new rules 9.10 and 9.19. Where the court otherwise would have to allocate for trial by the written procedure that statutory obligation is disapplied if a hearing is imminent (in practice, in any case in which the defendant has been arrested and is brought to court in custody, and in any case in which a guilty plea and sentencing in the magistrates' court was anticipated before the defendant was given bail by the police).
- (b) offences connected with other offences.

Present sections 51(3) to (12) and 51A(4) to (10) of the Crime and Disorder Act 1998 list criteria by reference to which, in a case in which one offence is sent to the Crown Court for trial, another offence, or other offences, may, and sometimes must, be sent,

¹ See paragraphs 33 – 38 at <https://www.legislation.gov.uk/ukpga/2022/35/notes/division/3/index.htm>.

² See sections 51(1) and (2A) to (2E), and 51A(A1) and (3A) to (3E) of the amended 1998 Act.

³ See sections 17ZA(2), 17ZB(2), 17ZC(2) and 24ZA(2) of the amended 1980 Act.

too, without requiring allocation. Some of those criteria depend upon the occasion or occasions upon which the offences are sent, giving rise to considerable complexity. Amendments to those two sections made by the 2022 Act require Criminal Procedure Rules to “make provision about situations where (a) a condition in subsection (2) [*the sending conditions*] is met in relation to an alleged offence, and (b) any other alleged offence is, or appears to be, related (in such a way as is specified in the Rules) to the alleged offence referred to in paragraph (a)”.⁴ Those powers are exercised by new rule 9.2(3) and (4).

(c) explanations for defendants.

The present statutory provisions require the court to explain allocation and sending procedures to the defendant. The present rules incorporate and elaborate on those requirements. The new statutory provisions will require more such explanations, some prescribed by statute and others delegated to Criminal Procedure Rules. At a hearing, explanations of why questions are about to be asked and choices offered can be adapted to the circumstances and to the defendant. In written procedures that is not possible and circumstances and choices may be complex. The Rule Committee decided to include detailed requirements for what must be explained to a defendant.

Publishing information about written allocation and sending proceedings

Rule 5.11 of the Criminal Procedure Rules presently applies to cases due to be heard in public and to cases due to be dealt with without a hearing under the single justice procedure in magistrates’ courts. The rule requires the publication of specified information about each case, including the identities of the prosecutor and defendant and the statement of the alleged offence. In a case that is allocated and sent for trial under the new written procedures described above there will not be a hearing until the defendant attends for trial and sentencing in a magistrates’ court, or at the Crown Court. To maintain the public availability of information about those cases the Rule Committee decided to amend the present rule to require publication during the written procedure of the same information that would be published in relation to an allocation and sending hearing.

Information about alleged offences and about conditions of bail

Rule 5.8 of the Criminal Procedure Rules requires the supply by court staff to members of the public on request of information from court records about, among other things, the offence or offences alleged in a case, and about whether the court has granted bail. Rule 5.11 requires the publication of that information in the circumstances to which that rule applies. Already court staff correctly interpret those requirements to exclude as disproportionate (i) the narrative particulars of the alleged offence that usually will identify a victim, and (ii) details of any condition of bail imposed which may include a defendant’s home address and other personal details. However, it was reported to the Rule Committee that occasionally doubts arose about the extent of the information required by the present rules to be supplied and published. The rule amendments clarify those two exclusions.

Prohibiting the supply of information without a court order

Rule 5.8 of the Criminal Procedure Rules lists the categories of information from court records that must be supplied by court staff to members of the public on request. Information that is not in that list may be supplied only if a judge or magistrate so orders, under rule 5.10. Occasionally there may be a reason why information that usually must be supplied on request ought not be supplied without a court order. Unlike the Civil Procedure Rules, however, at present the Criminal Procedure Rules make no reference to that possibility. The rule amendments include provision for it.

Summons to attend breach of community order, etc. proceedings in the Crown Court

Part 32 of the Criminal Procedure Rules governs the procedure on an application to the court for a defendant to be dealt with for failing to comply with a sentencing order to which that Part applies. The defendant must attend those proceedings and section 80 of the Senior

⁴ See sections 51(3A) and (3B) and 51A(4A) and (4B).

Courts Act 1981 allows the Crown Court to issue a summons. The decision to issue a summons is a judicial function but it involves the exercise of only little discretion, and the Rule Committee decided that it was one that appropriately could be delegated to authorised staff. The amendment to rule 2.7 of the Criminal Procedure Rules provides for that.

Assisting an investigator: confidential information for a sentencing court

Rule 28.11 of the Criminal Procedure Rules supplies a procedure that supplements (i) sections 74 and 388 of the Sentencing Act 2020, about an application to the Crown Court to reduce a defendant's sentence in recognition of assistance, or agreement to assist, a police or other investigator, and (ii) section 387 of the 2020 Act, about an application to the Crown Court to increase a defendant's sentence for failing to give assistance that had been promised and that was taken into account in sentencing. In addition to that statutory scheme criminal courts have inherent powers to reduce a defendant's sentence where that defendant has assisted an investigator or prosecutor before being sentenced. However, the Criminal Procedure Rules presently supply no procedure to supplement the exercise of that inherent power. The case of *R v Royle and Others*⁵ in the Court of Appeal drew attention to that omission. These rules amend Part 28 of the Criminal Procedure Rules for that purpose.

Appeal about a decision on an application to vary or discharge a domestic abuse protection order

The Domestic Abuse Act 2021 creates domestic abuse protection orders to protect people connected with a defendant from domestic abuse, or the risk of domestic abuse. In a criminal case an order can be made on the conviction or the acquittal of a defendant. Under section 44 of the Act a defendant, a person for whose protection an order has been made and the police each can apply for the variation or discharge of an order. On such an application rule 31.5 of the Criminal Procedure Rules supplies a special procedure the purpose of which is to reduce to a minimum the need for correspondence between a defendant and a protected person, to minimise the risk of further conflict. Under section 46 of the Act a protected person and the police can appeal against a decision made on an application to vary or discharge a domestic abuse protection order.

Part 34 of the Criminal Procedure Rules applies to an appeal from a magistrates' court to the Crown Court but the rules in Part 34 include nothing equivalent to the special procedure under rule 31.5. That special procedure would be as useful on an appeal as on the application which led to that appeal. These rules amend rule 34.2 of the Criminal Procedure Rules to include that procedure.

Reference of assimilated EU case law to the Court of Appeal

As amended by the Retained EU law (Revocation and Reform) Act 2023, the European Union (Withdrawal Agreement) Act 2020 allows for the determination of questions about the interpretation and application of "assimilated case law" by the reference of points of law to the Court of Appeal.⁶ The 2020 Act provides, too, for the potential intervention of UK Law Officers in proceedings about such case law in that court.

Part 41 of the Criminal Procedure Rules already applies to references to the Court of Appeal under other legislation. Part 43 already applies to the procedure in that court on the initial

⁵ [\[2023\] EWCA Crim 1311](#); judgment of 13th November, 2023.

⁶ In summary, "assimilated case law" means case law that magistrates' courts and the Crown Court are bound to apply but the interpretation and application of which is affected by the withdrawal of the United Kingdom from the European Union and from the jurisdiction of the European Court of Justice. The full statutory definition provides that "assimilated case law" means (a) assimilated domestic case law, and (b) assimilated EU case law, and that "assimilated domestic case law" means any principles laid down by, and any decisions of, a court or tribunal in the United Kingdom, as they have effect immediately before IP completion day and so far as they (a) relate to anything to which section 2 or 3 of *[the 2020 Act]* applies, and (b) are not excluded by section 5 or Schedule 1, (as those principles and decisions are modified by or under *[the 2020]* Act or by other domestic law from time to time);" and "assimilated EU case law" means any principles laid down by, and any decisions of, the European Court, as they have effect in EU law immediately before IP completion day and so far as they (a) relate to anything to which section 2 or 3 applies, and (b) are not excluded by section 5 or Schedule 1, (as those principles and decisions are modified by or under this Act or by other domestic law from time to time)".

stages of a further appeal to the Supreme Court. Part 36 already applies to potential interventions under other legislation. These rules amend the rules in Parts 36, 41 and 43 so that they apply also to these new types of reference.

Orders for the retention of fingerprints, etc.

Schedule 6 to the National Security Act 2023 provides for, among other things, the taking and retention of fingerprints and DNA samples from a person arrested under the Act. The Schedule provides for applications by the police to a magistrates' court to extend the period for which such fingerprints and samples, and DNA profiles derived from such samples, may be retained; and for appeals to the Crown Court against a magistrates' court's decision.

Section 5 of Part 47 of the Criminal Procedure Rules already applies to corresponding applications and appeals under provisions of the Police and Criminal Evidence Act 1984 and of the Terrorism Act 2000. The rules govern the procedure by which such applications and appeals must be made. These rules amend rules 47.42 and 47.45 of the Criminal Procedure Rules so that they apply also to the exercise of these new powers.

Extradition appeals

Part 50 of the Criminal Procedure Rules governs procedure in extradition proceedings in magistrates' courts and on an appeal to the High Court by the alleged fugitive or by the requesting state. The rules supplement the provisions of the Extradition Act 2003.

On an appeal the 2003 Act requires the High Court to give permission before the appeal can be fully considered. To be able to do so, the court needs to know why the appellant says that the magistrates' court's decision was wrong, and needs other information about the case. In the case of *Kurta v Poland, Al-Jaban v Belgium*⁷ the court gave a judgment about the omission of that information and about the High Court's power to deal with that omission. These rules amend rule 50.20 of the Criminal Procedure Rules to specify in detail the information required and to provide explicitly for the procedure that must be followed where such information is requested but not supplied.

In the case of *Da Cruz and Another v Portuga*⁸ the High Court drew attention to the effect of the short statutory time limit (7 days) for appeal. That time limit has been interpreted by the courts to mean that an appeal notice which is formally sent ("served") by email will be in time even if the email is sent after the court office has closed, as long as it is sent before midnight on the last day allowed by the 2003 Act. That is not fully reflected by the Criminal Procedure Rules. These rules amend rule 4.11 of the Criminal Procedure Rules so that it corresponds with that interpretation.

Criminal Procedure Rule Committee secretariat
12 August 2024

⁷ [\[2022\] EWHC 1906 \(Admin\)](#); judgment of 22nd July, 2022.

⁸ [\[2024\] EWHC 417 \(Admin\)](#); judgment of 27th February, 2024.