

## **A GUIDE TO THE CRIMINAL PROCEDURE RULES 2014 (S.I. 2014/1610)**

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

The Criminal Procedure Rules 2014 replace the Criminal Procedure Rules 2013, the Criminal Procedure (Amendment) Rules 2013 and the Criminal Procedure (Amendment No. 2) Rules 2013.

The new Rules:

- (a) include new rules about—
  - preparation for trial, and trial, in the Crown Court, in Parts 3, 38 and 39 of the Criminal Procedure Rules
  - appeal to the High Court in extradition cases, in Part 17 of the Rules
  - the introduction of expert evidence, in Part 33 of the Rules
  - the procedure to be followed where proceedings become void, or where an order is set aside, in a magistrates' court, in Part 37 of the Rules
- (b) make changes to the rules about—
  - service of documents (Part 4)
  - applications for access to material used to obtain a search warrant, etc. (Part 5)
  - sending for trial where a defendant is charged with low-value shoplifting (Part 9)
  - production of indictments in the Crown Court (Parts 12 and 14)
  - applications for witness summonses (Part 28)
  - variation of sentence (Part 42)
  - behaviour orders (Part 50)
  - endorsing driving records (Part 55)
- (c) include up to date references to other legislation, and make some amendments in consequence of the changes listed above.

In all other respects, this restatement of the Criminal Procedure Rules repeats the existing rules.

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

The new Rules come into force on Monday 6<sup>th</sup> October, 2014. To make the transition from the Criminal Procedure Rules 2013, new rule 2.1(3) preserves any right or duty which exists under those rules at that date. The new extradition appeal rules apply to an appeal which starts on or after that date.

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

#### *Consolidating existing rules*

When the Rule Committee made the Criminal Procedure Rules 2005, it announced that after 5 years it would make a legislative consolidation of those Rules with any subsequent amendments, and it did so in the Criminal Procedure Rules 2010. The Committee consulted on the possibility of continuing to consolidate and restate the Rules at regular intervals, and decided to do so in each subsequent year.

#### *Case management: preparation for Crown Court trial*

Part 3 (Case management) is enlarged to include new rules about preparation for Crown Court trial, and some of the existing rules are changed in consequence of including those new rules. Rule 3.1 redefines the scope of Part 3. New rule 3.8 allows the court to vary the requirements of other rules in Part 3. The rules about pre-trial hearings in the Crown Court, and about identifying the defence trial advocate, move from rule 3.9 to the new rules. New

rules 3.13 to 3.26 are included to govern preparation for trial in the Crown Court. They include the rules about preparatory hearings which were in Part 15 of the Criminal Procedure Rules 2013.

As part of the Rule Committee's programme of codification and rule reform, the Committee has made the first ever comprehensive set of procedure rules to govern preparation for trial, and trial, in the Crown Court. The rules incorporate and codify a number of statutory and common law requirements, some of considerable antiquity. The new rules about preparation for trial appear in Part 3, and the new rules about trial and sentencing, and about jurors, appear in Parts 38 and 39 respectively. After consulting on the proposal, the Committee decided that it would be consistent with the statutory objective set for Criminal Procedure Rules to codify Crown Court trial practice and procedure, in rules that would be accessible to all.

The new rules in Part 3 deal with the procedures that ordinarily take place before the trial begins. For some purposes, though, the Part 3 rules about trial preparation and case management apply during the trial as well.

*Service of documents: special provision for some road traffic cases, and other amendments*

In Part 4 (Service of documents), rules 4.1 and 4.7 are amended so that the Part 4 rules will govern the service of documents in a case to which section 12 of the Road Traffic Offenders Act 1988 applies (proving the identity of the driver of a vehicle). Rules 4.3 and 4.4 are amended to provide for the service of documents in extradition appeal cases. Rule 4.10 is amended to create a general presumption that a document produced by a computer system for dispatch by post will have been posted unless something different is shown.

The Criminal Procedure Rules have not until now supplied a procedure to supplement section 12, even though that section allows the Rules to do so. The Crown Prosecution Service suggested to the Rule Committee that it would be helpful if they did, and the Committee agreed. While considering those rules, the Rule Committee decided that it would assist, in road traffic and other cases, if the presumption of posting under rule 4.10 which until now has applied only to documents produced by a court computer system applied also to other computer dispatch systems.

Now that the Criminal Procedure Rules will apply in extradition appeal cases (see beneath), the Committee thought it important to specify in the Rules the court office to which such appeals should be delivered.

*Applications for access to confidential material used to obtain a search warrant, etc.*

In Part 5 (Forms and court records), rule 5.7 is amended to supply a procedure for the hearing of an application for access to the information and material used to obtain a search warrant or comparable order, where the investigator wants the court to withhold that information and material from the applicant. The rule provides that the court can hear representations from the investigator in the absence of the applicant, using the same procedure for which other Criminal Procedure Rules already provide where confidential material is being considered.

In response to the judgment of the High Court in *Commissioner of Police for the Metropolis v Bangs* [2014] EWHC 546 (Admin), in which case the court approved the use of this procedure, the Rule Committee decided to codify that decision by this amendment.

*Sending for trial for low-value shoplifting*

In Part 9 (Allocation and sending for trial), rule 9.7 is amended to set out the procedure for dealing with a case in which the defendant is charged with low-value shoplifting.

Under section 22A of the Magistrates' Courts Act 1980, recently added to that Act by the Anti-social Behaviour, Crime and Policing Act 2014, a defendant can be tried for low-value

shoplifting only in a magistrates' court unless he or she chooses to be tried in the Crown Court. The magistrates' court does not have to decide in which court the offence should be tried, as otherwise is the case where theft is alleged. The rule amendments require the defendant to be informed of the right to choose, and for him or her then to make a choice.

#### *Marking paper copies of the Crown Court indictment*

In Part 12 (Deferred prosecution agreements) and in Part 14 (The indictment), rules 12.4 and 14.1 are amended so that if a paper copy of an indictment is made then that copy must be endorsed with a note to identify it as the indictment, and with a note of the date on which that indictment was served on the court.

The indictment, which is the formal statement of the charge against the defendant in the Crown Court, can be created and served on the court electronically and, if it is, then the date of its service will be clear. However, if court staff make a paper copy for the court's use then the date may not be obvious; and that copy may be confused with previous drafts, or later amendments, of the indictment. To establish for what offence, exactly, the defendant was on trial is obviously of crucial importance; but the Registrar of Criminal Appeals reported to the Rule Committee that in some cases, where paper copies had been prepared for the court, that was unclear. So the Committee agreed to impose requirements for the endorsement of any paper copy.

#### *Appeal to the High Court in an extradition case*

Part 17 (Extradition) is enlarged to include new rules governing the procedure in the High Court on an appeal to that court from a decision of the magistrates' court or of the Secretary of State. Some of the existing rules are amended as a result of including the new rules. Rule 17.1 is amended to redefine the scope of the Part.

Part 12 of the Anti-social Behaviour, Crime and Policing Act 2014 makes amendments to the Extradition Act 2003 which, among other things, introduce a requirement that someone who wants to appeal to the High Court must first obtain that court's permission ('leave'); and which amend the Civil Procedure Act 1997, and the Courts Act 2003, to allow the Criminal Procedure Rule Committee to make rules for the appeal proceedings in the High Court, instead of those rules being contained in the Civil Procedure Rules as they have been until now. The Rule Committee has made rules 17.17 to 17.31 in exercise of that new power.

Rule 17.17(4) describes the test which the High Court will apply when deciding whether or not to give permission to appeal (the court will decide whether a ground of appeal is 'reasonably arguable'); rule 17.22, read with rule 17.17(1), prescribes the procedure for renewing an application for permission to appeal which the court has refused without a hearing; rule 17.27 sets out a procedure for applying to the High Court to reopen an appeal; and rule 17.31 sets out the procedure to be followed where a court fee that is payable is not paid. The other rules restate the procedures which until now have been prescribed by the Civil Procedure Rules, but now expressed in terms consistent with other Criminal Procedure Rules.

#### *Summoning a witness from whom a deposition is required*

In Part 28 (Witness summonses, warrants and orders), rule 28.1 is amended to redefine the scope of the Part so that the rules will apply where a witness is required to attend court to make a deposition.

Schedule 3 to the Crime and Disorder Act 1998 allows a magistrates' court to take a sworn deposition from a witness where a case has been sent to the Crown Court for trial, under the rules in Part 9 of the Criminal Procedure Rules and under the other legislation to which the rules and notes in that Part refer. The power to take a deposition is rarely used, and until now Criminal Procedure Rules have not supplied a procedure to supplement it. It was reported to the Rule Committee that it would be helpful if the Rules did so, and the Committee agreed.

The rules in Part 28 already set out a procedure to be followed where the court exercises similar powers, so those rules now will apply to this power, too.

#### *Expert evidence*

Part 33 (Expert evidence) is amended to include new rules about an expert witness' duty to the court and about establishing the reliability of expert evidence. Rule 33.1 is amended to redefine the scope of the Part. Rule 33.2 is amended to redefine an expert's duty to the court. Rule 33.3 is amended to supply the procedure for introducing a summary of an expert's conclusions, and to require service of information detrimental to an expert's credibility. Rule 33.4 is amended to require that an expert's report must include information relevant to assessing the reliability of the expert's opinion.

In Law Commission Report No. 325, entitled 'Expert Evidence in Criminal Proceedings', published in March, 2011, the Commission concluded that "special rules are required for assessing the reliability of expert evidence as a factor bearing on admissibility, and ... opinion evidence with insufficient indicia of reliability (that is, pointers to reliability) ought not to be admitted in criminal proceedings ... there should be further disclosure obligations in relation to all expert evidence, whether the evidence is relied on by the prosecution or by the defence" (from paragraphs 1.8 to 1.12 of the Report). The Commission recommended that Parliament should enact legislation which, among other things, would contain a list of 'indicia of reliability'. The Government's response was published last year. Instead of introducing a Bill, it asked the Rule Committee to make changes to the Criminal Procedure Rules, so as to encourage the prompt introduction of expert evidence due to be relied upon at trial, in order that parties and courts would have enough time to consider it carefully, and so as to require that experts' reports should deal explicitly with reliability, especially the reliability of scientific evidence.

In response, the Rule Committee has made a number of amendments to the rules accordingly, the purpose of all of which is to clarify what information the court must have so as to be able to make an informed decision about the admissibility of expert evidence, having regard to the reliability of the expert's opinion and, where relevant, having regard to the expert's credibility. Where expert evidence is unlikely to be in dispute, the rules now provide for it to be introduced in a summary, with a full report required only if the conclusions are contested. Although the rules do not list 'indicia of reliability' of the sort recommended by the Law Commission, the Rule Committee has asked the Lord Chief Justice to amend the Criminal Practice Directions that supplement Part 33 of the Rules to include such indicia and to give courts guidance on how to apply them.

#### *Voiding proceedings, setting aside convictions and varying sentences*

Part 37 (Trial and sentence in a magistrates' court) is amended to include new rules about voiding proceedings under section 14 of the Magistrates' Courts Act 1980, and about setting aside a conviction or other order under section 142 of that Act. Rule 37.1 is amended to redefine the scope of the Part. Rules 37.11 and 37.15 are amended, and rule 37.16 is added, to supply a procedure for dealing with a section 14 statutory declaration. Rule 37.17 is added to supply a procedure for dealing with a section 142 application. In Part 42 (Sentencing procedures in special cases), rule 42.4 (Variation of sentence) is amended.

Section 14 of the Magistrates' Courts Act 1980 provides that magistrates' court proceedings 'shall be void' where the defendant makes a statutory declaration of his or her ignorance of those proceedings until after the beginning of the trial. Until now, the Criminal Procedure Rules have referred to that section but have not set out a procedure to follow where such a statutory declaration is made. It was suggested to the Rule Committee by Her Majesty's Courts and Tribunals Service that it would be helpful if the Rules did so, and the Committee agreed. New rule 37.16 provides for two possibilities, the first where the defendant attends court personally to deliver the statutory declaration and the second where the defendant delivers it by post or through someone else. In each case, the rule requires the court to proceed as soon as possible with a fresh trial.

Section 142 of the Magistrates' Courts Act 1980 allows a magistrates' court to set aside a conviction, or vary or rescind a sentence or other order, where doing that appears to the court to be in the interests of justice. Until now, the Criminal Procedure Rules have referred to that section, and have included a rule governing the procedure where that power is used to vary a sentence, but have not prescribed the procedure to follow where, under that section, the court is asked to set aside a conviction, or to vary or rescind a costs order or a behaviour order. It was again suggested to the Rule Committee by Her Majesty's Courts and Tribunals Service that it would be helpful if the Rules did so, and again the Committee agreed. New rule 37.17 requires notice to be given to the other party and, where a party proposes that a conviction should be set aside, the new rule imposes the same requirements that apply where a defendant applies to withdraw a guilty plea. While considering that rule, the Rule Committee decided that it would assist to amend rule 42.4, the variation of sentence rule, to allow the court, in its discretion, to vary a sentence in the defendant's absence where, for example, the court discovers that it has made a mistake, as long as the variation is favourable to the defendant.

#### *Trial and sentence in the Crown Court*

New Part 38 (Trial and sentence in the Crown Court) and new Part 39 (Jurors) are substituted for the old rules in Part 39 of the Criminal Procedure Rules 2013. As part of the Rule Committee's programme of codification and rule reform, they incorporate and codify a number of statutory and common law procedural requirements that govern jury trial, and formalise practice that has been followed for some years at some Crown Court centres and which the Rule Committee agreed should be applied throughout the Crown Court.

Part 38 sets out, in a sequence that corresponds with the stages of the trial, rules to govern the procedure at each stage, including taking a guilty plea, if one is entered, or selecting a jury to try a contested case; the receipt of evidence; the summing up of the case and the taking of a verdict; and the passing of sentence in the event of conviction. Rule 38.6, which governs selection of a jury, allows for the selection of 13 or 14 jurors for the opening stage of what is expected to be a long trial, so that if a juror has to be discharged during that stage the trial can continue with 12. Part 39 includes rules about providing appropriate information for jurors, and about enquiring into jurors' availability for a trial that is due to last for longer than they had expected to serve.

#### *Sexual harm prevention orders and criminal behaviour orders*

In Part 50 (Civil behaviour orders after verdict or finding), rule 50.3 (Application for behaviour order and notice of terms of proposed order: special rules) is amended to apply it to two new types of behaviour order introduced by the Anti-social Behaviour, Crime and Policing Act 2014, namely sexual harm prevention orders and criminal behaviour orders; and to supply a procedure for an application for a special measures direction to assist a witness on an application for a criminal behaviour order or for an anti-social behaviour order (before the latter type of order eventually is replaced).

#### *Endorsing a defendant's driving record*

In Part 55 (Road traffic penalties), rule 55.2 (Information to be supplied on order for endorsement of driving record, etc.) and rule 55.3 (Statutory declaration to avoid fine after fixed penalty notice) are amended to remove the requirements for endorsing counterpart driving licences, unless other legislation requires that. The Rule Committee was asked to make these rule changes in anticipation of the bringing into force of the Road Safety Act 2006 which abolishes the requirement for counterpart licences.

#### *Other changes made by the new Rules*

Rule 6.1 (Investigation orders and warrants: when the rules apply) is amended to clarify the type of appeal to which the associated other rules in Part 6 apply. Rule 8.1 (Discontinuing a prosecution: when the rules apply) is amended to omit the reference to the Director of Revenue and Customs Prosecutions, consequent on the merger of that office with that of

Director of Public Prosecutions. Part 15 is omitted and the rules that were in that Part now appear in Part 3 as rules 3.14 to 3.18. Rules 17.3, 17.6 and 17.13, about extradition proceedings in a magistrates' court, are amended to take account of recent amendments to the Extradition Act 2003. Rule 42.10 (Information to be supplied on committal for sentence, etc.) is amended to allow the court which convicts a defendant to transfer information by electronic means to the court which will pass sentence, where that is different. Rule 76.5 (Costs on conviction and sentence, etc.) is amended to apply the rule to costs orders made by the High Court in an extradition appeal.

The note at the beginning of Part 33 is omitted and its content removed to the notes to other rules in Part 33. Rule 65.2; the note at the end of Part 3; the note at the beginning of Part 28; and the notes to rules 3.1, 3.5, 3.11, 4.1, 8.1, 9.6, 9.7, 17.1, 17.2, 17.3, 17.6, 17.13, 28.3, 33.3, 33.4, 37.1, 37.11, 37.12, 42.4, 50.1, 50.3, 52.5, 55.2, 63.3 and 66.1: all are amended to bring up to date the cross-references they contain.

Criminal Procedure Rule Committee secretariat  
25<sup>th</sup> June, 2014