

A GUIDE TO THE CRIMINAL PROCEDURE (AMENDMENT) RULES 2020 (S.I. 2020/32)

Where to find the new Rules

The Criminal Procedure (Amendment) Rules 2020 are at this address:

www.legislation.gov.uk/ukSI/2020/32/contents/made

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

www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu-2015

What the new Rules are for

The new Rules amend the Criminal Procedure Rules 2015. They:

(a) include new rules about—

- authorising court staff to exercise some judicial functions, under powers conferred by the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018
- notifying courts where there is an especially sensitive background to a case
- adding new charges to existing prosecutions in magistrates' courts
- sending any medical reports that a court may have about a defendant to any prison to which that defendant is sent
- appealing to the Court of Appeal where the defendant has been found unfit to be tried

(b) make changes to the rules about—

- providing information about cases to journalists
- the supplementary 'behaviour orders' that can be made where a defendant is convicted, to provide for the power to make a knife crime prevention order under the Offensive Weapons Act 2019.

When the new rules come into force

The rules come into force on Monday 6 April 2020.

What is in the new Rules

Exercise of judicial functions by authorised court staff

Under section 67A of the Courts Act 2003, which is added to the Courts Act by the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018, a 'relevant judicial function' means a function of a court to which the general duty of the Lord Chancellor under section 1 of the Courts Act applies but does not include, among other things, any function so far as its exercise involves authorising a person's committal to prison, or (with some exceptions) any function so far as its exercise involves authorising a person's arrest. Under section 67B of the 2003 Act, rules of court – which include Criminal Procedure Rules – may provide for the exercise of relevant judicial functions by court staff who satisfy any requirements specified in those rules about qualifications or experience. A staff member may exercise such a function only if authorised to do so by the Lord Chief Justice.

Rule 3 of the Amendment Rules amends Part 2 of the Criminal Procedure Rules to allow for the exercise by authorised court staff of specified judicial functions in each of the courts in which the Rules apply, namely the criminal division of the Court of Appeal, the High Court in extradition appeal cases, the Crown Court and magistrates' courts in criminal cases, and in extradition cases before a District Judge (Magistrates' Courts). The Rule Committee published an invitation to comment on the rules in draft and subsequently published a report on the outcome of that consultation: see the announcement in November 2019 at: www.justice.gov.uk/courts/procedure-rules/criminal.

Notification hearings

In the case of *R v Ali* [2019] EWCA Crim 1527¹ the Court of Appeal considered a practice under which, in exceptional circumstances, a prosecutor might notify the court, but not the defendant, of the existence of material which neither assisted nor undermined the prosecution case, and which did not assist the defence, but of which it was thought necessary to make the court aware “in the interests of justice to avoid the risk of inadvertent mismanagement of the trial occasioning unfairness to the defendant”.

The court invited the Rule Committee to make rules to govern the procedure. Rule 4 of the Amendment Rules adds a new rule 3.29 to the Criminal Procedure Rules for that purpose. The Committee has asked the Lord Chief Justice to consider giving guidance in the Criminal Practice Directions made by him on the circumstances in which it would be appropriate for the prosecutor to notify a court of this sort of sensitive material.

Information about cases for journalists

Rule 5.8 of the Criminal Procedure Rules lists the information about criminal cases that court staff must give to members of the public, including reporters, on request, without a court order, and specifies the information that must be published in lists of pending court cases. The Rule Committee heard from press representatives that requests by journalists for information about cases dealt with under sections 16A to 16D of the Magistrates’ Courts Act 1980 and rule 24.9 of the Criminal Procedure Rules, known as ‘single justice procedure’ cases, could not always be dealt with by the court as quickly as they would like, and that the information published about pending cases did not always give as many details as journalists legitimately required.

After consultation with HM Courts and Tribunals Service, by rule 5 of the Amendment Rules the Committee has made some changes to rule 5.8 that will allow and require court staff to provide more information to media representatives who are accredited by their organisations than must be given to members of the general public without a court order.

Adding new charges to a prosecution in a magistrates’ court

The rules in Part 7 of the Criminal Procedure Rules govern the procedures for starting prosecutions in magistrates’ courts. At present, no rule specifies the procedural requirements for adding a new charge to an existing prosecution. Those requirements appear only in case law.

In the case of *Director of Public Prosecutions v McFarlane* [2019] EWHC 1895 (Admin) the prosecutor had issued a notice of intention to substitute a new charge for an existing charge and the case concerned the effect of that notice. In the light of that judgment the Rule Committee decided to incorporate and codify the case law requirements in the Part 7 rules, and rule 6 of the Amendment Rules does that.

Sending medical reports to prisons

Where a defendant is ordered to be detained in hospital under a provision of the Mental Health Act 1983, or is made the subject of a guardianship order under that Act, rule 28.9 of the Criminal Procedure Rules requires the court to pass on to the hospital or the guardian any information that the court has received which seems likely to help in treating or otherwise dealing with the defendant. That information will include any medical, including psychiatric, report prepared for the court. At present, however, no rule requires such information to be passed to any prison or other custodial institution where a defendant is remanded in custody pending trial or is sentenced to imprisonment or detention.

In practice, that information already is passed by HM Courts and Tribunals Service to HM Prisons and Probation Service when a defendant is to be kept in custody, in the interests of the defendant’s welfare and in others’ interests. However, it was reported to the Rule

¹ See: www.bailii.org/ew/cases/EWCA/Crim/2019/1527.html.

Committee that on occasions this information did not come promptly to the attention of the appropriate prison staff; and it was suggested that to amend the rule about the content of warrants for imprisonment, and the rule about the transmission of medical reports, would help to ensure that vital information about the defendant's state of physical and mental health would come promptly to the attention of those prison staff who needed it. The Committee agreed and so rules 7 and 8 of the Amendment Rules amend rule 13.4 of the Criminal Procedure Rules, which lists the information to be included in a warrant for detention or imprisonment, and also rule 28.9 of the Criminal Procedure Rules, so that that rule applies to prisons, too.

Knife crime prevention orders

Part 31 of the Criminal Procedure Rules lays down standard procedures for dealing with 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 specific prohibitions and requirements on the defendant's conduct to deter future offending.

Section 19 of the Offensive Weapons Act 2019 provides for the making of a 'knife crime prevention order' where a defendant is convicted of an offence, the statutory purpose of such an order being to protect the public from the risk of harm involving a bladed article, to protect any particular member of the public (including the defendant) from such risk, or to prevent the defendant from committing an offence involving a bladed article. Rule 9 of the Amendment Rules amends Part 31 of the Criminal Procedure Rules to include references to this new type of 'behaviour order', and rules 10 and 11((a)(i), (iii) amend Parts 34 and 39 of the Criminal Procedure Rules to include in them references to the new rights of appeal to the Crown Court and to the Court of Appeal created by the 2019 Act.

Appeal to the Court of Appeal by a defendant found unfit to be tried

In *R v Roberts* [2019] EWCA Crim 1270² the Court of Appeal dealt with an application for permission to appeal by a defendant who had been found unfit to be tried and who was detained in hospital under the provisions of the Criminal Procedure (Insanity) Act 1964. The appellant was not represented by a lawyer for the purposes of that application and the court had to decide how to deal with a proposed appeal in such circumstances without being unfair. The court decided that such an application should not be dismissed summarily but should be assessed by a judge, who could give directions for the preparation of an appeal if there appeared to be reasonably arguable grounds of appeal or who could refuse to do so if there were none.

At present, the Criminal Procedure Rules contain no provision for such an application. At the suggestion of the Registrar of Criminal Appeals the Rule Committee decided to make rules to codify the procedure adopted by the court. Rule 11(a)(ii) and (b) of the Amendment Rules amends the rules in Part 39 of the Criminal Procedure Rules accordingly.

Criminal Procedure Rule Committee secretariat
16 January 2020

² See: www.bailii.org/ew/cases/EWCA/Crim/2019/1270.html.