

The Criminal Procedure Rules 2010
SI number 60 of 2010 (L.2)

Guide for Court Users, Staff and Practitioners

February 2010

Summary

On 5th April 2010, The Criminal Procedure Rules 2010 will come into force, affecting procedures used in magistrates' courts, the Crown Court and the Court of Appeal, Criminal Division. The 2010 Rules consolidate The Criminal Procedure Rules 2005 and the eight statutory instruments which subsequently amended them. This Guide explains the types of change and is intended for court users, staff and practitioners.

This historic re-statement of the rules includes the following additions and revisions:

New procedure rules about investigation anonymity orders; witness anonymity orders; and appeal against recognition of a foreign driving disqualification.

Amended rules about objecting to the reading of committal statements at trial in the Crown Court; about measures to assist a witness or defendant to give evidence; about introducing hearsay evidence and about introducing evidence of bad character; about final representations at trial in a magistrates' court; and about requests to the Court of Justice of the European Union for preliminary rulings.

The rules incorporate cross-references to relevant legislation recently, or likely soon to be, brought into force.

Background

Since 2005, the Criminal Procedure Rule Committee has made rules for the criminal courts in England and Wales. The rules govern the practice and procedure to be followed in the criminal courts - i.e. the criminal division of the Court of Appeal and (when dealing with any criminal cause or matter) the Crown Court and magistrates' courts. The Criminal Procedure Rules are usually only amended on two occasions in a year and the changes come into force in April or October.

The Criminal Procedure Rule Committee made a commitment to Parliament to consolidate the Criminal Procedure Rules in 2010 and at intervals after that. This is the first consolidation and these rules therefore replace The Criminal Procedure Rules 2005 (SI reference 384 of 2005) and the amendments made since (SI references 2006/353, 2006/2636, 2007/699,

2007/2317, 2007/3662, 2008/2076, 2008/3269 and 2009/2087). During 2009, the Committee consulted about frequency and has now settled on the preparation in future of a regular consolidating edition of The Criminal Procedure Rules.

1. Arrangement of Rules

The Criminal Procedure Rules 2010 are arranged in 11 divisions, to reflect the main stages of a criminal case. This maintains the structure used in the 2005 edition.

2. New Provisions in The Criminal Procedure Rules 2010

Part 2 When the Rules apply

Rule 2.1 is amended, to provide for the transition to these new rules.

Rule 2.1(3)(a) preserves any right or duty existing on 5 April 2010 under the 2005 rules.

Rule 2.1(3)(b) confirms that, to avoid any possible confusion or unfairness for those involved in a case in which, before 5th April 2010, an application or notice has been served under one of Parts 29, 34 or 35 (that are replaced by these Rules), the rules in the old Part concerned will continue to apply, unless the court otherwise directs.

Part 3 Case management

Rule 3.5 is amended, to include the expression 'justices' legal adviser' that is defined in Part 2.

Rules 3.9 and 3.10 are amended, to apply them to all appeals (not just appeal to the Crown Court).

Part 4 Service of documents

Rule 4.10 is amended, to remove the unnecessary duplication of the definition of 'business day'. The definition is contained in Part 2.

Part 6 Investigation orders

Rules 6.1 and 6.2 are amended. These rules deal with understanding and applying the rules about investigation orders.

A new Section 5, Orders under the Coroners and Justice Act 2009, provides the procedure for investigation anonymity orders under sections 74 to 85 of the Act.

The new rules, numbered 6.23 to 6.26, provide for an application for an investigation anonymity order; for any subsequent application to discharge the order; and for any associated appeal.

The provisions in the Act allow for the making of an order prohibiting the disclosure of information that identifies, or might identify, a person who assists the investigation of a murder or manslaughter committed in the circumstances specified in the Act.

The new rules supply the associated procedures, which for the most part involve only the investigator.

The rules allow the court to determine an application for an order, and an appeal from the refusal of an order, without a hearing, consistently with sections 77(4) and 79(5) of the Act. However, the rules do not allow the court to determine an application to discharge an order without a hearing. The court must have concluded, before making the order, that the person to whom it relates is at risk of intimidation or harm. To discharge the order, therefore, might put that person in peril. The Criminal Procedure Rule Committee concluded that any application for the order's discharge ought to be considered at a hearing.

The time limit for appeal to the Crown Court (21 days) is the same as that which applies to other appeals to that court, under Part 63 of the Rules.

Part 10 Committal for trial

Rule 10.4 is replaced. The revised rule, Objection to committal statements being read at trial, makes clear that the period to which that rule refers (14 days) is the time within which a party must exercise his or her right to object to the admission, at trial, of a written statement that has been admitted in evidence in committal proceedings.

Where a written statement is admitted in evidence in committal proceedings in a magistrates' court, that written statement can be read in evidence at trial in the Crown Court, without calling the witness, if certain statutory conditions are met: section 68 and Schedule 2, Criminal Procedure and Investigations Act 1996. One such condition is that no party objects within a time prescribed by Criminal Procedure Rules.

Prior to an earlier revision of Part 27 (Witness statements), Parts 10 and 27 each contained rules to supplement Schedule 2 to the 1996 Act. Since that revision, the only relevant rule has been rule 10.4. Although the Committee had taken the view that that rule clearly imposed the relevant time limit, it was reported that the removal from Part 27 of its counterpart had caused some confusion. This revision is to dispel that confusion.

Part 29 Measures to assist a witness or defendant to give evidence

The Part is replaced. The new Part contains:

- (a) revised and simplified rules about applications for special measures directions for witnesses under the Youth Justice and Criminal Evidence Act 1999, including rules that accommodate amendments to the 1999 Act made by the Coroners and Justice Act 2009;
- (b) similar rules about applications for directions for the benefit of vulnerable defendants giving evidence; and
- (c) rules about applications for, and for the variation or discharge of, witness anonymity orders under the 2009 Act.

It was reported to the Committee that the rules in Part 29 required revision, in order to clarify, simplify and bring them up to date; and in order to introduce greater flexibility in the preparation and presentation of applications for such measures, the better to suit the circumstances of the individual case, or witness.

The time limits under the new rules now are contingent on the entry of a 'not guilty' plea by the defendant, because the measures with which the rules are concerned are not needed if the defendant pleads guilty.

Procedural requirements about applications for witness anonymity orders up to now have been contained in the Consolidated Criminal Practice Direction. The new rules adopt substantially the same requirements, adapted in the light of experience of operation of the Criminal Evidence (Witness Anonymity) Act 2008 that the 2009 Act replaces. To make it easier for users of the rules to understand the context, they are supplemented with a short summary of the relevant provisions of the 1999 and 2009 Acts.

Part 34 Hearsay evidence

Part 35 Evidence of bad character

Parts 34 and 35 have been replaced. The new Parts are substituted for the old rules in those two Parts.

Experience of the operation of the law on hearsay and bad character that is contained in the Criminal Justice Act 2003 persuaded the Committee to refine the procedures for introducing such evidence, and for objecting to its introduction.

The new rules require that those who wish to introduce such evidence must identify the grounds on which they rely, and the facts that they assert, in any case in which that will not be obvious from the context (as it would be where business records were introduced, for example).

A single, simple procedure for objection is prescribed.

As with the new Part 29, because the procedures for which the rules provide are not needed if the defendant pleads 'guilty', the time limits under these new rules, too, now are dependent upon the entry of a 'not guilty' plea by the defendant.

Part 37 Trial and sentence in a magistrates' court

Rule 37.3 (Procedure on plea of not guilty) is revised, to deal with final representations at trials in magistrates' courts.

In its Thematic review of the quality of prosecution advocacy and case presentation published in July, 2009, HM Crown Prosecution Service Inspectorate commented on what it considered to be prosecutors' too frequent failure to make a closing speech at trial in a youth or magistrates' court where that would have assisted the court, especially in what had been a complex case.

The Inspectorate asked that the clarity of the relevant rule should be reviewed. In response to that request, the Criminal Procedure Rule Committee reviewed the rule concerned and concluded that it did not adequately reflect the position at common law, as amended by statute in the 19th century and followed in the Crown Court. Though in most cases what a magistrates' court would require of a prosecutor would be brief by comparison with the usual requirements of the Crown Court, the Committee concluded that it would be helpful to revise the rule. These changes ensure that the rule better corresponds with the provisions of section 2 of the Criminal Procedure Act 1865 and of section 3 of the Criminal Evidence Act 1898.

The new rule at 37.3(g) and (h) provides for parties' final representations at trial.

Part 55 – Road traffic penalties

Rule 55.3 deals with applications to review a course provider's refusal to issue a certificate of satisfactory completion of a driving course. The rule is

updated, to take account of amendments to section 34 of the Road Traffic Offenders Act 1988.

A new Rule 55.5, Appeal against recognition of a foreign driving disqualification, is added, to provide for appeals under section 59 of the Crime (International Co-operation) Act 2003.

A new rule 55.5 (Appeal against recognition of foreign driving disqualification) is added to accommodate sections 56 to 60 of the Crime (International Co-operation) Act 2003.

Part 3 of the Crime (International Co-operation) Act 2003, which contains, among others, sections 56 to 60, implements the Convention on Driving Disqualification of 17th June 1998, drawn up on the basis of Article K.3 of the Treaty on European Union. It provides for the recognition and enforcement in the United Kingdom of a driving disqualification imposed in another state party to the Convention. Section 59 confers on the person concerned a right of appeal against recognition, to a magistrates' court.

The new rule supplies the procedure on such an appeal. It is modelled on the rules in Part 63 (Appeal to the Crown Court) and Part 68 (Appeal to the Court of Appeal about conviction or sentence).

Part 75 – Request to the European Court for a preliminary ruling

The Part is replaced and is re-named consistently with the language of the European treaties.

The Treaty of Lisbon amended the Treaty on European Union; and the Treaty on the Functioning of the European Union, which among other things relocated and amended the provisions for inviting a preliminary ruling of the Court of Justice of the European Union on a question of EU law.

The new Part brings up to date the treaty citations contained in the rules. They incorporate an up to date list of what a request should contain.

3. Amendments of The Criminal Procedure Rules 2005

Some current rules have been revised in The Criminal Procedure Rules 2010. The following **amendments** are made:

Part 15 – Preparator y h earings in cases of serious fraud and other complex, serious or lengthy cases in the Crown Court

Rule 15.5(2) is amended, to cross-refer to Part 33. Part 33 incorporates the rules about service of expert evidence.

Part 52 – Enforcement of fines

Rules 52.6 to 52.14 are renumbered 52.5 to 52.13, to accommodate an earlier revocation of a rule that had become superfluous.

Part 56 – Confiscation proceedings under the Criminal Justice Act 1988 and the Drug Trafficking Act 1994

Rule 56.4 is amended to omit provision about production orders under the Proceeds of Crime Act 2002. By a previous amendment, that rule now is contained in Part 6 (Investigation orders).

Part 60 – Proceedings of Crime Act 2002: rules applicable only to receivership proceedings

Rule 60.6(4) is amended, to cross-refer to rules 76.11 to 76.14.

Part 63 – Appeal to the Crown Court

Rule 63.1 is amended to include references to section 10 of the Violent Crime Reduction Act 2006 and section 42 of the Counter Terrorism Act 2008.

Section 10 of the Violent Crime Reduction Act 2006 provides for appeals against a drink banning order made on conviction under section 6 of the Act.

Section 42 of the Counter Terrorism Act 2008 provides for an appeal against a decision, under section 30 of the Act, that an offence has a terrorist connection.

Part 64 – Appeal to the High Court by way of case stated

Rules 64.6 and 64.7 are renumbered 64.5 and 64.6. This simple re-numbering takes account of the earlier revocation of a rule that was no longer needed.

Part 68 – Appeal to the Court of Appeal about conviction or sentence

Rule 68.1 is amended to include a reference to section 42 of the Counter Terrorism Act 2008. Under section 30 of that Act, a defendant may appeal against a decision that an offence has a terrorist connection.

Part 71 – Appeal to the Court of Appeal under the Proceeds of Crime Act 2002: general rules

Rule 71.6(1) is amended, to cross-refer to rule 65.6(5).

4. Rule names, Notes and Footnotes

To correct discrepancies, changes have been made to the lists of rule names in the Contents tables of Parts 10, 13, 16, 19, 20, 31, 32, 40, 41, 52, 54, 55, 56, 57, 59, 64, 65 and 73.

The Notes to various rules have been amended, to cross-refer to relevant statutes and other rules. The amended notes are at rules 3.5, 3.11, 4.4, 14.1, 16.11, 19.11, 30.1, 32.9, 37.3, 37.15, 40.4, 40.5, 40.7, 47.1, 47.2, 50.1, 52.12, 54.1, 63.1, 63.7 and 68.1.

All footnotes have been reviewed and, where necessary, revised.

5. The Glossary

The Glossary has been revised to correspond with the rules. Obsolete terms have been removed.

6. Useful Web Addresses

The **Ministry of Justice website** area containing the complete **Criminal Procedure Rules, the Consolidated Criminal Practice Direction and Forms** is:-

http://www.justice.gov.uk/criminal/procrules_fin/index.htm

Please note that the Criminal Procedure Rules pages are not updated with amendments until they have actually come into force. This means that The Criminal Procedure Rules 2010 will not appear on the website until 5th April, 2010.

- This website also contains the current forms for use in the criminal courts. They are available in Acrobat format at:-

http://www.justice.gov.uk/criminal/procrules_fin/contents/formssection/formspage.htm

- The **Statutory Instrument** can be viewed on the OPSI website

- In HTML format at:-

http://opsi.gov.uk/si/si2010/uksi_20100060_en_1

- In PDF (Acrobat) format at:-

http://opsi.gov.uk/si/si2010/pdf/uksi_20100060_en.pdf

- When new Criminal Procedure Rules are made and the Statutory Instrument (SI) has been laid before Parliament, we post information on the Ministry of Justice website on the '**Changes to the Rules**' page. This provides advance notice of changes, to give the public information as soon as possible. The news page address for this SI is:-
<http://www.justice.gov.uk/news/announcement020210a.htm>
- The home page for the Criminal Procedure Rule Committee is:-
<http://www.justice.gov.uk/about/criminal-proc-rule-committee.htm>
 - The Committee's statutory duty is to make Criminal Procedure Rules that are simple and simply expressed – wherever possible, having consulted beforehand. Sections 69-74 of the Courts Act 2003 refer. This link provides access to Part 7 of the Courts Act 2003:
http://www.opsi.gov.uk/acts/acts2003/ukpga_20030039_en_9
- The **Ministry of Justice home-page for the Criminal Procedure Rules**, which provides access to current news such as information about proposals to amend the rules, is:-
<http://www.justice.gov.uk/whatwedo/criminal-procedure-rules.htm>
- The HM Courts Service (HMCS) website address for Criminal Practice Directions is:-
<http://www.hmcourts-service.gov.uk/cms/13442.htm>
 - The path to the related forms in Word format is from the HMCS Forms and Guidance page:-
<http://www.hmcourts-service.gov.uk/HMCSCourtFinder/FormFinder.do>
Select the 'Work-type' field in the centre of the screen and from the drop-down menu, choose 'Criminal Procedure Rules'. A list of forms will then appear, from which you can make your selection.
Note that some case management forms are available as 'e-docs' on this site, enabling users to complete them electronically. We are continuing to develop ways to improve electronic access to these Word forms.