

A GUIDE TO THE CRIMINAL PROCEDURE RULES 2013 (S.I. 2013/1554)

What the new Rules are for

The Criminal Procedure Rules 2013 replace the Criminal Procedure Rules 2012 and the Criminal Procedure (Amendment) Rules 2012.

The new Rules:

- (a) include rules about applications for search warrants, in Part 6 of the Criminal Procedure Rules
- (b) include rules about applications and appeals under new legislation governing the retention of fingerprints and DNA samples and profiles, also in Part 6
- (c) replace the existing rules about the dismissal of charges sent for trial with a new rule in Part 9
- (d) revoke the old rules in Parts 10, 11 and 13 which dealt with committal and transfer for trial and with the dismissal of charges sent or transferred for trial
- (e) move to Part 10 the rules about initial details of the prosecution case, formerly in Part 21
- (f) replace the existing rules in Part 17 about procedure in extradition cases
- (g) make changes to the rules about—
 - preparation for Crown Court trial (Part 3)
 - access to information held by the court (Part 5)
 - bail (Part 19)
 - sentence review (Part 42)
 - sexual offences prevention orders (Part 50)
- (h) clarify the type of obligations imposed by various rules, by substituting the word 'must' for the word 'will'
- (i) 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 7th October, 2013. To make the transition from the Criminal Procedure Rules 2012, new rule 2.1(3) preserves any right or duty which exists under those rules at that date and new rule 2.1(4) saves the old extradition rules for old cases.

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.

Crown Court trial preparation

In Part 3 (Case management), rule 3.8(3) (Case preparation and progression) is amended to require the defendant in a Crown Court case to give notice of the identity of the intended defence trial advocate, and to give notice of any change of advocate.

This information is already collected by the questionnaire (known as 'the plea and case management hearing form') prescribed for use in pre-trial Crown Court case management. The effect of the rule amendment is to reinforce the long-standing expectation that the court must be told as soon as possible who is to be the trial advocate, to facilitate the listing of the trial and for all the other purposes of case management and trial preparation.

The Rule Committee expects the rule also to assist the defendant's representatives by ensuring that the court office has an accurate and up to date record of the identity of the trial advocate for use in the administration of claims for, and payment of, fees.

Investigation orders

In Part 6 (Investigation orders), rule 6.1 (When this Part applies) and the notes to that rule are amended to extend the scope of Part 6 to (i) an application to a justice of the peace for a search warrant, under sections 8, 15 and 16 of the Police and Criminal Evidence Act 1984 or under section 2 of the Criminal Justice Act 1987; and (ii) an application or appeal concerning the retention by the police of fingerprints, samples and DNA profiles, under new provisions created by sections 3, 14 and 19 of the Protection of Freedoms Act 2012. Rule 6.2(c) (definitions) and rule 6.5 (which requires court staff to be given, and to keep, certain documents) are amended in consequence. Rules 6.29 to 6.33 are added to govern the procedure on an application for a search warrant. Rules 6.34 to 6.36 are added to govern the procedure on fingerprint, etc. retention applications and appeals.

Until now, the Criminal Procedure Rules have not governed applications for search warrants. In the case of *R (Rawlinson and Hunter Trustees and others) v Central Criminal Court and Director of the Serious Fraud Office (Vincent Tchenguiz, interested party)* and *R (Robert Tchenguiz and R20 Ltd.) v Director of the Serious Fraud Office, Commissioner of the City of London Police and Central Criminal Court* [2012] EWHC 2254 (Admin), the High Court recommended that the Criminal Procedure Rule Committee should review the procedures followed on such applications. The Rule Committee has added rules 6.29 to 6.33 to supply a procedure which is intended to help make sure that applications meet fully all the relevant statutory requirements, as interpreted by the courts.

While considering those rules, the Rule Committee heard from magistrates and their legal advisers that it would help magistrates' courts to have a prescribed procedure for dealing with applications for access to the material on the basis of which a search warrant had been issued. The Committee has amended rule 5.7 (Supply to a party of information or documents from records or case materials) to help courts strike the right balance between, on the one hand, the confidentiality which must attach to the investigation of an alleged crime and, on the other, a person's right to know why a search warrant was issued against him or her.

Rules 6.34 to 6.36 supply procedures to supplement the new legislation about the retention of fingerprints etc., consistent with the requirements of that legislation.

Committal, transfer and sending for trial

In Part 9 (Allocation and sending for trial), rule 9.16 is added to govern the procedure on an application to dismiss a charge sent to the Crown Court for trial, in substitution for the rules that were formerly in Part 13. The rules that were in Parts 10, 11 and 13 of the Criminal Procedure Rules 2012 all are revoked.

On 28th May, 2013, the processes of committal for trial to the Crown Court and of transfer for trial there were abolished. Now, more serious cases are instead sent for trial by a magistrates' court, under the statutory provisions that are listed in the notes to the rules in

Part 9. Where a case has been sent to the Crown Court for trial, provisions of the Crime and Disorder Act 1998 allow the defendant to apply to the court to dismiss a charge on the grounds that the prosecution evidence would not be sufficient for the defendant to be properly convicted. Until now, the procedure rules governing such applications have been contained in Part 13 of the Criminal Procedure Rules. The Rule Committee has taken this opportunity to revise, simplify and consolidate those rules in one new rule, and to place that new rule with the other rules about sending for trial. The Committee's intention is not to change the current practice and procedure of the Crown Court, merely to reformulate the rules compatibly with the expression of other, more recently drafted, Criminal Procedure Rules.

Initial details of the prosecution case

The rules about initial details of the prosecution case have been moved to Part 10 of the new Rules. They have not been changed. The rules were formerly in Part 21. Now Part 10 is available, the Rule Committee thinks that is a more appropriate place for those rules.

Extradition

A new Part 17 is substituted for the old rules in that Part. Until now, Part 17 of the Criminal Procedure Rules has supplied the procedure where either the Backing of Warrants (Republic of Ireland) Act 1965 or the Extradition Act 1989 applied. Those Acts were replaced by the Extradition Act 2003. Those Acts, and the old rules, still are not wholly redundant, because they continue to apply to an extradition request presented to the Secretary of State under either of the old Acts before the end of 2003; and, in some cases, the fugitive in question remains at large. However, the overwhelming majority of extradition requests that now come before the court are made under the Extradition Act 2003, which comprehensively superseded the previous extradition regimes.

The Committee decided to bring the rules up to date, expressing them in the manner of other, more recently drafted, Criminal Procedure Rules. The Committee's intention is that the new rules should set out in simple steps the procedure required by the provisions of the Extradition Act 2003.

Rule 2.1(4) preserves the old rules for old extradition cases.

Bail

In Part 19 (Bail and custody time limits), rule 19.4(4) is added to include in the list of information that the magistrates' court officer must give the defendant, where bail is withheld, a certificate that the court heard full argument (if it did). Rule 19.8(3) is amended to require the defendant to pass that certificate to the Crown Court officer if the defendant then applies to the Crown Court under that rule. Rule 19.9(6) is amended to remove the requirement for the Crown Court officer to send information to the High Court on a prosecutor's appeal to that court against a grant of bail by the Crown Court.

In some circumstances, a defendant who has been refused bail by a magistrates' court can renew the application to the Crown Court. Under the Bail Act 1976 and the Senior Courts Act 1981, one of the pre-conditions for being able to do so is that the magistrates' court heard 'full argument' in support of the application for bail before refusing and has issued a certificate to that effect. Although the rules in Part 19 already contain provisions meant to ensure that the 'certificate of full argument' is passed to the Crown Court, enquiries by the Rule Committee established that this was not always done, and that applications to the Crown Court might be delayed or rejected unnecessarily in consequence. The Committee decided that rules 19.4 and 19.8 should be amended to make it clear that, in such a case, the magistrates' court staff must give the certificate to the defendant, and the defendant in turn must give it to the Crown Court.

In some circumstances, where a defendant is granted bail by the Crown Court, the prosecutor can appeal against that decision to the High Court. The procedure in the High

Court is governed by the Civil Procedure Rules. Those rules have been amended to require the prosecutor to give the High Court documents which, under the current Criminal Procedure Rules, the Crown Court staff must send to the High Court. The Criminal Procedure Rule Committee has changed rule 19.9 to remove that duplication. In future, it will be the responsibility of the prosecutor, only, to deliver those documents to the High Court.

Sentence review

In Part 42 (Sentencing procedures in special cases), rule 42.11 is amended to clarify the prosecutor's obligations on applying for a sentence review. Under section 74 of the Serious Organised Crime and Police Act 2005, where the Crown Court has sentenced a defendant the prosecutor can ask the court to reduce that sentence if the defendant subsequently agrees to assist in the investigation or prosecution of an offence. Or, where the defendant has received a lesser sentence than the court otherwise would have passed because the defendant has agreed to give such assistance, the prosecutor can ask the court to increase that sentence if the defendant subsequently fails to assist.

The current rule requires the prosecutor, on making such an application, to specify for the court the reduction or increase proposed. The Crown Prosecution Service reported to the Rule Committee that the wording of the current rule was being read by some to mean that the prosecutor should make more explicit sentencing proposals than is usually considered appropriate. The Committee agreed to amend the rule to clarify its intention.

Sexual offences prevention orders

In Part 50 (Civil behaviour orders after verdict or finding), rule 50.3 is amended to require that a draft of any proposed sexual offences prevention order must be served not less than 2 business days before the hearing at which the order may be made.

Under the Sexual Offences Act 2003, in some circumstances the court which convicts a defendant may make an order imposing prohibitions that the court considers 'necessary for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant'. The penalty for breach of such an order is a maximum of 5 years' imprisonment. On several occasions in recent years, the Court of Appeal has expressed concern at the wide or ambiguous terms in which a sexual offences prevention order had been imposed, finding that insufficient attention had been given to the drafting of the order. In the case of *R v Smith, Clarke, Hall and Dodd* [2012] 1 WLR 1316, the Court of Appeal recommended that at least 2 days' written notice should be given of the proposed terms of an order. Although Part 50 of the Criminal Procedure Rules already requires that a defendant should have an opportunity to consider any order proposed, the Rule Committee decided that it would be appropriate to codify in the Rules the specific requirement recommended by the Court of Appeal.

Other changes made by the new Rules

In reports on the Criminal Procedure Rules 2011 and 2012 by the House of Lords and House of Commons Joint Committee on Statutory Instruments, that Committee decided that the use of the word 'will' in some places in the Rules was unclear, and should be replaced with the word 'must'. The Rule Committee has substituted the word 'must' for the word 'will' in rules 4.2(2), 5.1, 5.7(5), 5.8(5) and (7), 6.3(1)(a), 6.12(4)(a), 6.21(4)(a), 6.23(1)(a) and (2)(a), 15.4(4)(a) and (5)(a), 16.6(6)(a) and (7)(a), 22.3(6)(a) and (7)(a), 22.6(6)(a) and (7)(a), 29.12(4)(a), 29.18(1)(a), 29.19(3)(a), 32.10(2)(a), 34.4(2), 37.10(5)(c), 37.11(3), 52.4(3), 52.6(4)(a), 52.10(4)(a), 55.5(7), 60.7(6), 61.15(1), 61.19(3), 62.8(3), 62.10(3), 75.3(2), 76.2(6), 76.4(5), 76.5(3), 76.9(7) and 76.10(7). In response to the same reports, rule 75.4 has been omitted.

The notes about case management provisions at the end of Part 3, and the notes about the general entitlement to bail and the exceptions to that general entitlement at the end of Part 19, are brought up to date; as are the notes to rules 5.4, 5.8, 5.9, 6.1, 9.1, 9.3, 9.5, 9.6, 9.7, 14.1, 16.1, 19.6, 19.7, 19.9, 19.16, 50.3, 55.2 and 68.11. The entries in the Glossary for

'committal proceedings', 'estreatment', 'examining justices' and 'notice of transfer' all are removed because, consequent among other things on the abolition of committal and transfer for trial, those expressions no longer appear in the Rules.

Criminal Procedure Rule Committee secretariat
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