

# CRIMINAL PROCEDURE RULE COMMITTEE

## CRIMINAL PROCEDURE RULES PART 2

### PROPOSAL TO MAKE NEW RULES TO PROVIDE FOR THE EXERCISE OF JUDICIAL FUNCTIONS BY AUTHORISED COURT OFFICERS

#### OUTCOME OF INVITATION TO COMMENT ON DRAFT RULES

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# CRIMINAL PROCEDURE RULE COMMITTEE

## PART 2 UNDERSTANDING AND APPLYING THE RULES; POWERS OF AUTHORISED COURT OFFICERS

### OUTCOME OF INVITATION TO COMMENT ON DRAFT RULES

#### The Rule Committee's invitation to comment

1. Between April and July 2019 the Criminal Procedure Rule Committee invited comments on a proposal to make rules under the power to be conferred by section 67B(1), (2) of the Courts Act 2003.<sup>1</sup> In that invitation the Committee described its proposal as one that would maintain substantially the same provision as now for the exercise of judicial functions by court staff in the courts in which the Criminal Procedure Rules apply, with some adjustments (i) to implement one of the recommendations of the President of the Queen's Bench Division's 2015 *Review of Efficiency in Criminal Proceedings*<sup>2</sup> and (ii) to remove some anomalies in the powers now exercisable by staff in magistrates' courts, but using terminology consistent with other Criminal Procedure Rules and with other contemporary legislation.

#### Replies received

2. The Committee received 22 replies, for each of which Committee members are grateful and each of which has contributed significantly to the settling of the final draft rules described beneath. Of those replies eight were from bodies representing judges and magistrates (the Council of HM Circuit Judges, the Council of HM District Judges (Magistrates' Courts), the Magistrates' Association, the Magistrates' Leadership Executive and the Magistrates' Engagement Group) and from individual judges, including the Chief Magistrate; nine were from legal advisers and their representative bodies, including the Justices' Clerks' Society and the Public and Commercial Services Union; three were from professional bodies (the Bar Council, the Law Society and Lawyers in Local Government); one was from HM Courts and Tribunals Service; and one was from the Crown Prosecution Service.

3. Most respondents agreed in most respects with what the Committee proposed, but subject in some instances to significant reservations and concerns. The following features of the proposal provoked particular controversy:

(a) the exercise of any judicial function by an authorised court officer who lacked a legal qualification. The Committee's proposals were opposed by some respondents notwithstanding that those proposals maintain the status quo in magistrates' courts.

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<sup>1</sup> Inserted by section 3 of, and paragraph 32 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018. The section provides, '(1) Rules of court may provide for the exercise of relevant judicial functions by persons who (a) are appointed under section 2(1) of this Act or section 40(1) of the Tribunals, Courts and Enforcement Act 2007, and (b) satisfy any requirements specified in the rules as to qualifications or experience. (2) A person may exercise functions by virtue of subsection (1) only if authorised to do so by the Lord Chief Justice.'

<sup>2</sup> The Review appears at: <http://www.judiciary.gov.uk/publications/review-of-efficiency-in-criminal-proceedings-final-report/>.

(b) in the Crown Court, the exercise by authorised court officers of any judicial function at all.

(c) in magistrates' courts, the omission of an additional right to the reconsideration of a decision by an authorised court officer, notwithstanding the rights of reconsideration exercisable under the current law.

### **Product of the consultation: revised draft rules**

4. The amendments to the consultation draft rules made in response to the observations received, and the Committee's reasons for declining to adopt some suggestions made, are described in detail beneath. In summary, the Committee has made a number of changes to the draft rules; in the outcome, it has maintained the status quo, legal and practical, and has removed current anomalies; and where provision is new, notably in relation to the Crown Court, the powers conferred are modest and formalise common informal arrangements. Appended to this paper is the text of the consultation draft rules showing the amendments adopted by the Rule Committee.<sup>3</sup> Rules in those terms will be made when the Committee meets in December, 2019. The Lord Chancellor then will be asked to allow those rules and to direct that they come into force on Monday 6<sup>th</sup> April, 2020.<sup>4</sup>

### **Amendments to the consultation draft rules adopted by the Committee**

#### *Rule 2.4 Exercise of court's functions by authorised court officers: general rules*

5. The Committee has decided to adopt the consultation draft rule subject to:

- (a) addition to the list of general prohibitions in rule 2.4(3) of a reference to the grant or withholding of bail, in response to observations made by the Bar Council and by the Council of HM Circuit Judges; and
- (b) in rule 2.4(4), the adoption in paragraph (4)(a) of the formulation suggested by the Bar Council and in paragraph (4)(b) the adoption of provision for representations suggested by the Justices' Clerks' Society.

#### *Rule 2.5 Exercise of functions of the Court of Appeal*

6. The Committee has decided to adopt the consultation draft rule unchanged.

#### *Rule 2.6 Exercise of functions of the High Court*

7. The Committee has decided to adopt the consultation draft rule, subject to the amendment of rule 2.6(6) (time limit for application to reconsider a court officer's decision) for consistency of expression with the amendment to the corresponding Crown Court rule 2.7(5): see paragraph 10 beneath. The Committee saw no illogicality in adopting different time limits for such applications in the High Court and in the Crown Court, given the different circumstances of litigation in those two courts. As to extension of the time limit, see paragraph 16 beneath and new rule 2.10.

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<sup>3</sup> The amendments to current rules 2.2 and 2.3 were included in the consultation draft rules and remain unchanged.

<sup>4</sup> Subject to the enabling statutory amendments made by the 2018 Act being brought into force on that day, as is presently anticipated.

*Rule 2.7 Exercise of functions of the Crown Court*

8. The Committee has decided to adopt the consultation draft rule, subject to:

- (a) amalgamation of the provision made by rule 2.7(2)(d) with that of paragraph (2)(a), in response to observations made by the Council of HM Circuit Judges;
- (b) substitution in rule 2.7(2)(c) of the word ‘select’ for the word ‘appoint’, in response to observations made by the Council of HM Circuit Judges;
- (c) in rule 2.7(3), amendment of the expression of the rule to correspond with rule 2.8(12) for magistrates’ courts;
- (d) enlargement of the time limit in rule 2.7(5) for an application to reconsider a court officer’s decision, in response to observations made by the Bar Council; and
- (e) the inclusion of explicit provision for extension of that time limit, in new rule 2.10.

9. The Committee decided that the use of the word ‘select’, instead of ‘appoint’, would appropriately describe the extent of the function that a court officer should be able to exercise in the Crown Court where CrimPR 23.2 (appointment of a cross-examination advocate) applies. The rule now contrasts, therefore, with rule 2.8(7)(c), which describes the corresponding function exercisable in magistrates’ courts by an authorised court officer who is legally qualified.

10. The Committee decided that 10 business days (the equivalent of 2 weeks) would be an appropriate time limit for an application to reconsider a court officer’s decision, in substitution for the consultation draft rule time limit of 5 business days (the equivalent of 1 week); but subject to a requirement that an application to reconsider must be made at the next hearing in the case before a judge, if that occurs earlier. As to extension of the time limit, see paragraph 16 beneath and new rule 2.10.

11. In relation to the powers of magistrates’ courts, the Committee decided that rule 2.8(12) (prohibition of exercise by a court officer of a specified function in an individual case) need not, and should not, list the constitution or constitutions of magistrates’ courts to which the exercise of a function was to be reserved: see paragraph 14 beneath. The amendment to Crown Court rule 2.7(3) adopted by the Committee is for consistency of expression with that other rule. Given that nobody but a judge can exercise any judicial function of the Crown Court not exercisable by an authorised court officer, the amendment makes no practical difference to the consultation draft rule; but avoids the use of different expressions in adjacent rules to mean the same thing.

*Rule 2.8 Exercise of functions of a magistrates’ court*

12. The preponderant view of respondents was that Version B of the consultation draft list of judicial functions exercisable by an authorised court officer who is legally qualified (the inclusionary, or permitted functions, list) was preferable to Version A (the exclusionary, or ‘all but specified functions’, list). The Committee has decided to adopt Version B. Otherwise, the Committee has decided to adopt the consultation draft rule subject to:

- (a) the omission from rule 2.8(2)(r) of the reference to CrimPR Part 33 (Confiscation and related proceedings), in response to observations made by the Crown Prosecution Service;
- (b) the omission from rule 2.8(8) of the functions listed in sub-paragraphs (d) and (e) (where the parties agree, accepting the withdrawal of a guilty plea or setting aside a conviction or order), in response to observations made by the Council of HM District Judges (Magistrates' Courts) and the Chief Magistrate;
- (c) the amendment of rule 2.8(10)(c), in response to observations made by the Crown Prosecution Service; and
- (d) the amendment of rule 2.8(12), in response to observations made by the Chief Magistrate.

13. CrimPR Part 30 (Enforcement of fines and other orders for payment) applies to the enforcement of confiscation orders, insofar as magistrates' courts have power to extend time for payment of such orders and to vary an order for payment by instalments. Therefore the Committee concluded that the reference to Part 33 in paragraph (2)(r), and thus by implication in paragraph (2)(s), was superfluous and apt to suggest that more functions than intended could be exercised by an authorised court officer.

14. As well as deciding to remove the exception for emergencies in consultation draft rule 2.8(12), the Committee decided that the rule need not, and should not, list the constitution or constitutions of magistrates' courts to which the exercise of a specified function in an individual case was to be reserved. However expressed, such a provision might encourage reservation to a named individual who might not be available when an exercise of that function was required urgently. The amendment adopted allows the court simply to prohibit the exercise of a specified function in an individual case by an authorised court officer.

*Rule 2.9 Exercise of functions of a District Judge (Magistrates' Courts) in extradition cases*

15. The Committee has decided to adopt the consultation draft rule subject to:

- (a) the amendment of rule 2.9(2) to require that a court officer who deals with an extradition case must be legally qualified, in response to observations made by the Bar Council and by the Council of HM District Judges (Magistrates' Courts); and
- (b) the amendment of rule 2.9(3) in response to observations made by the Chief Magistrate (see paragraphs 12(d) and 14 above).

*Rule 2.10 Court's power to vary requirements under this Part*

16. In response to observations made by the Bar Council the Committee has decided to include explicit provision for a judge to extend the time limit for an application to reconsider a court officer's decision under rule 2.6(6), in the High Court, or under rule 2.7(5), in the Crown Court. That provision appears now in new rule 2.10. The rule is modelled on comparable provisions in other Parts of the Criminal Procedure Rules.

## **Amendments suggested by respondents but not adopted by the Committee**

### *Introduction*

17. In addition to those amendments described in the preceding paragraphs, respondents made a number of other suggestions for amendments to the consultation draft rules each of which the Committee considered carefully. In some cases the suggestion was for the inclusion, or exclusion, of a function that already was included, or excluded, by the rules. In other cases the Committee decided not to adopt a suggestion for the reasons explained beneath.

18. It appeared to the Committee that in some instances some respondents may not have appreciated the extent of judicial control over the decision-making of authorised court officers under the new legislative regime. Under that regime no member of court staff, including a staff member by whom a judicial function has been exercisable under current arrangements, may exercise such a function unless three conditions are satisfied:

- (i) the function is one that the relevant rules of court permit to be exercised by such a person;
- (ii) the person concerned possesses such qualifications or experience as the relevant rules of court require for the exercise of the function in question by such a person; and
- (iii) the person concerned possesses in his or her individual capacity an authorisation for the exercise of the function in question, given by or under the authority of the Lord Chief Justice, which authorisation may confine the circumstances in which that individual may exercise that function.

19. Moreover:

- (a) for what is thought to be the first time ever, by section 67D of the Courts Act 2003 those nominated for the purpose by the Lord Chief Justice are empowered, under the authority of that statutory provision, to give directions to a member of staff who is exercising a judicial function.
- (b) in each court in which the Criminal Procedure Rules apply the decision of an authorised court officer will become, or will remain (see paragraphs 36 – 44 beneath), susceptible to judicial reconsideration.
- (c) in the Crown Court, in magistrates' courts and in extradition cases before District Judges (Magistrates' Courts), a judge or magistrate will be able to prohibit the exercise by an authorised court officer in an individual case of a specified function which such an officer otherwise could exercise.
- (d) CrimPR 3.5(2)(a) (court's power to nominate a judge, magistrate or justices' legal adviser to manage a case) will continue to apply.
- (e) CrimPR 3.6 (Application to vary a direction) will continue to apply.

### *General objections and concerns*

20. The Bar Council's view was that only those staff with legal qualifications should exercise judicial functions. The Council of HM Circuit Judges opposed the delegation of any judicial function to any court officer in the Crown Court. These objections are important and reflect objections raised during the passage of the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 which were accommodated, to an extent,

by amendments to the Bill before it passed. But while it is true that the Committee now has a discretion to legislate – ‘Rules of court may provide for the exercise of relevant judicial functions ...’ – to fail to do so in any significant respect in the Committee’s view would run counter to the Parliamentary intention to be inferred from the Act as passed; and in any event the Committee’s proposal is, overwhelmingly, to maintain the status quo, both legal and practical.

21. The Magistrates’ Association expressed concern that the exercise of judicial functions might be undertaken by authorised court officers even when magistrates were available to exercise those functions, for example during a trial. The Committee has concluded that the distribution of judicial business in magistrates’ courts between lay justices, District Judges (Magistrates’ Courts) and (at present) justices’ clerks and assistant clerks (in future, authorised court officers) is best left, as now, to Criminal Practice Directions and to non-legislative guidance and arrangements. Moreover, current rule 3.5(2)(a) already allows for the management of a case to be reserved to a nominated judge, magistrate or justices’ legal adviser, and proposed new rule 2.8(12) will allow a court to prohibit the exercise by an authorised court officer in an individual case of a specified function which such an officer otherwise could exercise. For these reasons, the Committee has decided not to make additional provision in these rules.

22. The Chief Magistrate and members of the Magistrates’ (Crime) Engagement Group observed that to maintain the provision made by the Justices’ Clerks Rules 2005 and by the Assistants to Justices’ Clerks Regulations 2006 might facilitate an inappropriate and counterproductive reduction in the incidence of case management at a hearing. Their concerns are with the potential future use of powers to be exercisable by authorised court officers, as distinct from the existence of those powers. The Committee shares those concerns but has concluded that it more appropriately engages the formulation of other rules than those now under consideration, in particular the rules about trial preparation in magistrates’ courts.<sup>5</sup> Here again, therefore, the Committee has decided not to make additional provision in these rules.

*Rule 2.4 Exercise of court’s functions by authorised court officers: general rules*

23. Some respondents questioned the suitability of the legal qualifications required by rule 2.4(2) and their incorporation by reference to other legislation. In the Committee’s view the professional qualifications to be required for a legal adviser under section 28(3), Courts Act 2003 will be appropriate and their incorporation by reference to secondary legislation made by the Lord Chancellor with the agreement of the Lord Chief Justice is clear, and demonstrates the consistency of qualification required for advising magistrates and for exercising some judicial functions in magistrates’ courts and other criminal courts.

24. Some respondents questioned the compatibility with the power conferred by section 67B of the Courts Act 2003 of prohibitions of the exercise of functions, and observed that in aggregate the lists in the rules of prohibited and permitted functions failed to account for every function of a criminal court. In the Committee’s view it is

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<sup>5</sup> As to which, see CrimPR 3.27 and CrimPD I 3A.2, 3, 5, 7 and 14.

not confusing, inappropriate or unlawful for the rules to specify general prohibitions, comparably with the primary legislation itself, in one of several rules which, read together as those rules must be, supply a scheme within the scope of the statutory provision that ‘rules of court may provide for the exercise of relevant judicial functions’ by authorised court officers (section 67B(1), Courts Act 2003). It was not the Committee’s intention, and in the Committee’s view it is not necessary, for the rules to list every judicial function of each court in which the Criminal Procedure Rules apply, even those functions which authorised court officers will not exercise.

*Rule 2.5 Exercise of functions of the Court of Appeal*

25. The Bar Council expressed opposition to the exercise of any judicial function by an authorised court officer without legal qualifications. However, the functions of the Court of Appeal which the rule renders exercisable are not extensive; neither the Registrar of Criminal Appeals nor the judges of the Court of Appeal have expressed concern; and given the ready access of Criminal Appeal Office staff to, and supervision by, the senior judicial members of that court, in the Committee’s view the distribution of functions among legally qualified and other staff can be established satisfactorily by the terms of the Lord Chief Justice’s authorisations.

*Rule 2.6 Exercise of functions of the High Court*

26. Here, too, the Bar Council opposed the exercise of any judicial function by an authorised court officer without legal qualifications. In the Committee’s view, the same considerations apply to Administrative Court Office staff as apply to staff of the Criminal Appeal Office.

*Rule 2.7 Exercise of functions of the Crown Court*

27. Again the Bar Council objected to the exercise of any judicial function by an authorised court officer without legal qualifications; and thought it unsatisfactory that the time limit for an application to reconsider the decision of a court officer in the Crown Court should be only 5 business days, as in the High Court, on grounds that advocates can be expected to be pre-occupied with other business pre-trial. The Council counter-proposed a time limit of 28 days. The Committee agreed that more than 5 business days would be appropriate but concluded that 28 days, the time limit that applies to the bringing of an appeal to the Court of Appeal against conviction or sentence in the Crown Court, was too long. The Committee decided that 10 business days, the equivalent of 2 weeks, would be an appropriate default time limit, subject to a discretion to extend time for which new rule 2.10 now provides.

28. One group of judicial respondents favoured the enlargement in due course of the powers to be exercisable by authorised court officers, but not for the time being: “There are only four such functions specified. It seems to us that they represent only a very limited extension of the powers of court staff, and that consideration ought to be given to whether a much wider list of functions can properly be delegated under the rules, granted that there exists the safeguard of judicial reconsideration under rule 2.7. However, we consider that this should be approached cautiously, so that the risk of delegating what should remain judicial functions is guarded against. Additionally, regard must be had to the workload court staff are already required to discharge.” The Committee respectfully agrees.

29. In addition to their general concern about the exercise of judicial functions by court staff the Council of HM Circuit Judges expressed reservations about the exercise by authorised court officers of the functions listed in rule 2.7(2)(a) (extending a time limit) and in rule 2.7(2)(b) (giving a live link direction). As to the first of those, the Committee observes that this is a function already exercisable by a justices' clerk or assistant clerk in a magistrates' court; the function would not be exercised by an authorised court officer otherwise than under overall judicial supervision; the court could prohibit the exercise by an authorised court officer in an individual case of a specified function which such an officer otherwise could exercise, under rule 2.7(3); and the exercise of the function would be subject to judicial reconsideration under rule 2.7(4). As to the second, here, too, the function is exercisable now by a justices' clerk or assistant clerk in a magistrates' court; for reasons of practicality such a decision must be taken before the hearing date but it can be, and should be, changed on that date by the presiding judge (or, in a magistrates' court, by a lay justice) if any of the counter-indications identified in CrimPD I 3N.4 – 7 on that date are present; again, the function would not be exercised by an authorised court officer otherwise than under overall judicial supervision; and, again, the exercise of the function would be subject to prohibition under rule 2.7(3) and judicial reconsideration under rule 2.7(4). For these reasons the Committee has decided to maintain the consultation draft rule in these two respects.

*Rule 2.8 Exercise of functions of a magistrates' court*

30. Again the Bar Council and, in addition, in relation to this rule, the Council of HM District Judges (Magistrates' Courts) and Lawyers in Local Government opposed the exercise of a judicial function by an authorised court officer without legal qualifications. In magistrates' courts, however, that is the status quo and has been so for many years: see paragraph 42 of the Committee's invitation to comment. In the Committee's view nothing has occurred to prompt the abandonment now of that arrangement, despite those reservations.

31. The Justices' Clerks' Society suggested that authorised court officers who are legally qualified should be allowed to determine some applications relating to the admissibility of evidence. That is not a function presently exercisable by justices' clerks or assistant clerks. The Committee considers that determining the admissibility of evidence is a core judicial function and consulted on the basis that it would not be exercisable by a court officer: it is not a function for which any paragraph of rule 2.8 would provide, and it would be prohibited by rule 2.4(3)(e). The Society is the only respondent to propose its exercise by such an officer. Without doubting the competence of legally qualified authorised court officers to determine such applications, and recognising that in their capacity as justices' legal advisers many such officers will advise lay justices when the latter are reaching such determinations, nevertheless the Committee has concluded that it would not be appropriate for the rule to permit the exercise of that function by court officers.

32. An individual legal adviser suggested that an authorised court officer should be permitted to commit for sentence in some circumstances; and that such a court officer should be able to order a defendant to pay the prosecutor's costs irrespective of that

defendant's agreement. As to the first of those, committal for sentence is not a function presently exercisable by justices' clerks or assistant clerks; it is a function closely associated with sentencing, which the Committee regards as a core judicial function; and the Committee consulted on the basis that it would not be exercisable by a court officer – it is not a function for which any paragraph of rule 2.8 would provide, and it would be prohibited by rule 2.4(3)(g). This respondent was the only one to propose its exercise by such an officer. Once again without doubting the competence of legally qualified authorised court officers, and once again recognising the advisory role of some, nevertheless the Committee again has concluded that it would not be appropriate for the rule to permit the exercise by court officers of that function. As to the second, the imposition of a prosecution costs order presupposes both the conviction and the sentencing of the defendant. Sentence is a core judicial function and not one that will be exercisable by an authorised court officer. Therefore the case will require consideration by a justice of the peace in any event, and in the Committee's view rarely would there be any advantage in the making of a costs order by a court officer even if the defendant had pleaded guilty and had indicated agreement to the making of such an order. By extension of reasoning, therefore, there would be no advantage in allowing such a court officer to deal with an application for a prosecution costs order that was not agreed.

33. The Council of HM District Judges (Magistrates' Courts) expressed reservations about the exercise by authorised court officers of the functions of (i) issuing a summons for a witness to attend or to produce a document pursuant to section 97 of the Magistrates Courts Act 1980; (ii) convicting a defendant who has pleaded guilty; (iii) requesting a pre-sentence report where a defendant pleads guilty; and (iv) directing the commissioning of a medical report. Each is a function already exercisable by a justices' clerk or assistant clerk and would be exercisable only by an authorised court officer who is legally qualified. None would, or could, be exercised in a case in which a District Judge (Magistrates' Courts) or a lay justice was presiding. Under rule 2.8(12) the court could prohibit the exercise by an authorised court officer in an individual case of a specified function which such an officer otherwise could exercise. In relation to these four functions the Committee has decided that it is appropriate to maintain the status quo.

34. The Magistrates' Association expressed reservations about the exercise by authorised court officers of the functions of (i) giving, varying or revoking a live link direction; (ii) giving, varying or revoking directions for the conduct of proceedings; (iii) asking a court security officer to remove a person from a courtroom; (iv) granting bail where the defendant is present, the prosecutor agrees to the grant of bail, and the conditions, if any, to which that bail will be subject will remain the same as before, or will be varied or imposed with the parties' agreement; (v) convicting a defendant who has pleaded guilty; (vi) requesting a pre-sentence report where a defendant pleads guilty; and (vii) directing the commissioning of a medical report. As to (i), the Committee's observations and conclusions are described at paragraph 29 above in connection with the Crown Court. As to (iii), the Committee was satisfied that there might arise an urgent need to exercise that function in the absence of a District Judge (Magistrates' Courts) or a lay justice. As to the others, none would, or could, be exercised in a case in which a District Judge (Magistrates' Courts) or a lay justice was

presiding. Current rule 3.5(2)(a) already allows for the management of a case to be reserved to a nominated judge, magistrate or justices' legal adviser, and rule 2.8(12) will allow the court to prohibit the exercise by an authorised court officer in an individual case of a specified function which such an officer otherwise could exercise. In relation to all these functions the Committee has decided that it is appropriate to maintain the status quo.

35. The Chief Magistrate, too, expressed reservations about the giving, variation or rescission of a live link direction by an authorised court officer. Once again, the Committee's observations and conclusions are described at paragraph 29 above in connection with the Crown Court. The Chief Magistrate also observed that, "It is essential that reasons are given for the making of decisions and that these are adequately recorded in written form so that there is transparency and accountability." The Committee respectfully, and firmly, agrees. Where a judicial function is exercised then the giving and recording of reasons is required by the common law and under current rule 5.4. In the Committee's view, those requirements will apply as much to the exercise of such a function by an authorised court officer as they apply to a judge or magistrate, and for the avoidance of doubt rule 2.4(4)(a) so declares.

*Judicial reconsideration of a court officer's decision in a magistrates' court*

36. Paragraph 103 of the Committee's invitation to comment read (the footnotes are those that appeared in the invitation):

"No new provision is proposed for the judicial reconsideration of a decision of an authorised court officer in a magistrates' court for these reasons:

- (a) CrimPR 3.6 already allows a party to apply to vary a direction which the court gave without a hearing, or gave at a hearing in that party's absence, or where circumstances have changed, which rule in the overwhelming majority of instances will apply to a decision by an authorised court officer in a magistrates' court;
- (b) to the extent, if any in practice, that an authorised court officer had determined under section 8A of the Magistrates' Courts Act 1980 a question of law within the meaning of section 8A(4),<sup>6</sup> that decision could be discharged or varied under section 8B(3) if circumstances had changed; and
- (c) those provisions would apply to the exercise of functions by an authorised court officer by reason of rule 2.4(4).<sup>7</sup>"

37. A significant minority of respondents disagreed. Given their identity,<sup>8</sup> and given the observations of the Chief Magistrate on the subject,<sup>9</sup> the Committee gave anxious

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<sup>6</sup> Section 8A applies to a pre-trial ruling on 'any question as to the admissibility of evidence' and 'any other question of law relating to the case'; but by reason of rule 2.4(3)(e) an authorised court officer will not be able to determine the admissibility of evidence.

<sup>7</sup> And by reason of the fact that relevant judicial functions exercised by an authorised court officer are, *a fortiori*, functions of the court concerned; to the exercise of which all the usual governing provisions apply.

<sup>8</sup> The Bar Council, the Council of HM District Judges (Magistrates' Courts), the Magistrates' Association and the Law Society.

<sup>9</sup> "... I would invite the committee to consider whether all decisions made by authorised court officers should be subject to reconsideration by the court as they are in the Crown Court but appreciate that the number of cases are far higher and it may be impractical for that to happen. An application for such a reconsideration should be submitted to the court within say five or seven days of the parties being notified."

and extended consideration to this decision. While paragraph 103 of the Committee's invitation was not incorrect, the summary of the law which that paragraph contained could have been elaborated; and it might have assisted respondents had that been done. Nevertheless, and despite the opposition to the Committee's proposal, paragraph 103 of the invitation remains persuasive, in the Committee's view; to fail to maintain the status quo is likely to have a significant impact upon the conduct of magistrates' court business; and for the reasons given in the following paragraphs no addition of an explicit new right of reconsideration is proposed. For procedural purposes, CrimPR 3.6 suffices.

38. There is no question but that one constitution of a magistrates' court has jurisdiction to alter the decision of another, including in circumstances in which the former decision was taken by a justices' clerk or assistant clerk in the exercise of judicial powers, therefore.

39. Absent explicit statutory provision, specific or general, some constraints apply. Archbold Magistrates' Courts Criminal Practice 2019 at paragraph 11-39 describes those constraints as follows:

"It is a general rule that one bench of magistrates should not act as an appeal over another. It is not in the interests of justice for the same court to feel free to annul or discharge its own earlier ruling without there being some compelling reason, such as changed circumstances or fresh evidence to do so: *R. (CPS) v Gloucester Justices & Loveridge*, 172 J.P. 506. In this case a deputy district judge purported to set aside a previous bench's ruling because, on the same material, he would have reached a different conclusion."

40. Stone's Justices' Manual 2019 at paragraph 1.210 offers a more elaborate explanation (the footnotes are those of the publication):

"Although statute provides for the making of pre-trial binding rulings where certain conditions are met,<sup>10</sup> for some decisions the common law remains e.g. an application for an adjournment to vacate a trial date. At common law, a lower court has limited power to re-visit and to revoke a previously made order, although it can do so in the interests of justice, in particular in changed circumstances. "Change of circumstances" encompasses not only a change of objective circumstances but also the situation where, although the objective circumstances have not changed, they are now brought to the attention of the court for the first time. Further, the parameters of the interests of justice test are now measured not simply by changed circumstances but by reference to the overriding objective. Each case will be fact sensitive.<sup>11</sup> A magistrates' court does have the power to revisit a decision to vacate a trial if the court has been materially misled. Accordingly, where a court has been misled or given incorrect information about the basis for an application to vacate a trial (namely, whether or not a witness is required to attend) and grants the application, the court is entitled to revisit that decision (and hear renewed submissions) when the correct information is provided.<sup>12</sup>"

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<sup>10</sup> Magistrates' Courts Act 1980, ss 8A and 8B.

<sup>11</sup> *Jones v South East Surrey Local Justice Area* [2010] EWHC 916 (Admin), 174 JP 342.

<sup>12</sup> *DPP v Woods* [2017] EWHC 1070 (Admin), 181 JP 395.

41. The three sources of general jurisdiction<sup>13</sup> to reconsider a previous decision thus appear to be:

- (a) as referenced in paragraph 103 of the Committee's invitation to comment, section 8B(3) of the Magistrates' Courts Act 1980;
- (b) again as there referenced, the common law power the exercise of which is codified by CrimPR 3.6 (Application to vary a direction); and
- (c) a residual common law power to act in the interests of justice, as codified in CrimPR Part 1 (The overriding objective).

42. In *DPP v Woods*, cited by Stone, a reasoned written decision of a legal adviser to postpone a trial that had been due to take place the next day, made on application by the prosecutor, was overturned that next day by a District Judge (Magistrates' Courts) on application by the defendant. The judge found that the prosecutor's application for a postponement had materially misled the legal adviser, thus rendering the latter's decision susceptible to reversal. The High Court upheld that conclusion, holding that the District Judge had had jurisdiction to revisit the legal adviser's decision and that it had not been unreasonable for him to reverse it despite the prosecutor having in the meantime told the prosecution witnesses not to attend. In addition, and even though the rule had not been the asserted basis for the defence application to the District Judge, the High Court held that that application 'fell squarely within' CrimPR 3.6, the prosecutor's application having been determined without a hearing.

43. The Committee thought it of interest and significance that the Magistrates' Association, who argued for the provision of a discrete right of reconsideration, explained, "We would only see reconsideration occurring at the first court hearing following the decision being made by court officers." The Committee agrees, and has found it difficult to conceive of any such decision that would not be susceptible to just such a reconsideration under the current law as described above. Moreover, given that many pre-trial determinations which prove controversial are likely to concern the vacation or maintenance of a trial date the detailed provisions of the recently promulgated Criminal Practice Directions VI 24C are likely to assist in any event (see, in particular, paragraphs VI 24C.5 and 31): a point that was made by the Magistrates' Leadership Executive.<sup>14</sup>

44. Although the extradition jurisdiction exercised by a District Judge (Magistrates' Courts) is exercisable only by a nominated such judge, not by a magistrates' court, and although no directly relevant case law has been found, there is no reason to suppose that the jurisdiction of one extradition judge to revisit, for a good reason, the decision of another such judge is not substantially the same as the corresponding jurisdiction of a magistrates' court described above. It follows, in the Committee's view, that the conclusions about judicial reconsideration of a court officer's decision that are reached above in relation to magistrates' courts would apply in extradition

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<sup>13</sup> Sources of specific statutory jurisdiction include section 125, Magistrates' Courts Act 1980 (withdrawal of arrest warrant) and sections 57B, 57E and 57F, Crime and Disorder Act 1998 (rescission of direction for a defendant's attendance by live link).

<sup>14</sup> The Executive's comment read, "We believe that the current review provision is sufficient, particularly given the proposals to give more detailed lists of functions and prohibitions within the Criminal Procedure Rules. The current Criminal Practice Direction 24.4 would appear to provide an adequate review process and should be maintained (and possibly referred to within the relevant sections)."

cases, too; and for that reason no explicit new right of reconsideration of such decisions is proposed.

Criminal Procedure Rule Committee  
November, 2019

**Appendix**  
**Amendments to consultation draft rules**

**PART 2**

**UNDERSTANDING AND APPLYING THE RULES;**  
**POWERS OF AUTHORISED COURT OFFICERS**

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**UNDERSTANDING AND APPLYING THE RULES**

**When the Rules apply**

**2.1.**—(1) In general, Criminal Procedure Rules apply—

- (a) in all criminal cases in magistrates' courts and in the Crown Court;
- (b) in extradition cases in the High Court; and
- (c) in all cases in the criminal division of the Court of Appeal.

(2) If a rule applies only in one or some of those courts, the rule makes that clear.

(3) These Rules apply on and after 5<sup>th</sup> October, 2015, but—

- (a) unless the court otherwise directs, they do not affect a right or duty existing under the Criminal Procedure Rules 2014<sup>(a)</sup>; and
- (b) unless the High Court otherwise directs, Section 3 of Part 50 (Extradition – appeal to the High Court) does not apply to a case in which notice of an appeal was given before 6<sup>th</sup> October, 2014.

(4) In a case in which a request for extradition was received by a relevant authority in the United Kingdom on or before 31<sup>st</sup> December, 2003—

- (a) the rules in Part 50 (Extradition) do not apply; and
- (b) the rules in Part 17 of the Criminal Procedure Rules 2012<sup>(b)</sup> (Extradition) continue to apply as if those rules had not been revoked.

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<sup>(a)</sup> S.I. 2014/1610; amended by S.I. 2015/13, 2015/646.

<sup>(b)</sup> S.I. 2012/1726; amended by S.I. 2012/3089.

*[Note. The rules replaced by the first Criminal Procedure Rules (the Criminal Procedure Rules 2005(a)) were revoked when those Rules came into force by provisions of the Courts Act 2003, the Courts Act 2003 (Consequential Amendments) Order 2004(b) and the Courts Act 2003 (Commencement No. 6 and Savings) Order 2004(c). The first Criminal Procedure Rules reproduced the substance of all the rules they replaced.]*

*The rules in Part 17 of the Criminal Procedure Rules 2012 applied to extradition proceedings under the Backing of Warrants (Republic of Ireland) Act 1965(d) or under the Extradition Act 1989(e). By section 218 of the Extradition Act 2003, the 1965 and 1989 Acts ceased to have effect when the 2003 Act came into force. By article 2 of the Extradition Act 2003 (Commencement and Savings) Order 2003(f), the 2003 Act came into force on 1<sup>st</sup> January, 2004. However, article 3 of that Order(g) provided that the coming into force of the Act did not apply for the purposes of any request for extradition, whether made under any of the provisions of the Extradition Act 1989 or of the Backing of Warrants (Republic of Ireland) Act 1965 or otherwise, which was received by the relevant authority in the United Kingdom on or before 31<sup>st</sup> December, 2003.]*

## **Definitions**

**2.2.**—(1) In these Rules, unless the context makes it clear that something different is meant:

‘advocate’ means a person who is entitled to exercise a right of audience in the court under section 13 of the Legal Services Act 2007(h);

‘authorised court officer’ has the meaning given by rule 2.4;

‘business day’ means any day except Saturday, Sunday, Christmas Day, Boxing Day, Good Friday, Easter Monday or a bank holiday;

‘court’ means a tribunal with jurisdiction over criminal cases. It includes a judge, recorder, District Judge (Magistrates’ Courts), lay justice and, when exercising their judicial powers, the Registrar of Criminal Appeals ~~a justices’ clerk or assistant clerk~~ and an authorised court officer;

‘court officer’ means the appropriate member of the staff of a court;

‘justices’ legal adviser’ means ~~a justices’ clerk or an assistant to a justices’ clerk~~ a person authorised under section 28 of the Courts Act 2003(i) to give advice about law to justices of the peace;

‘legal representative’ means:

- (i) the person for the time being named as a party’s representative in any legal aid representation order made under section 16 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(j), or
- (ii) subject to that, the person named as a party’s representative in any notice for the time being given under rule 46.2 (Notice of appointment, etc. of legal representative: general rules), provided that person is entitled to conduct litigation in the court under section 13 of the Legal Services Act 2007;

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(a) S.I. 2005/384; amended by S.I. 2006/353, 2006/2636, 2007/699, 2007/2317, 2007/3662, 2008/2076, 2008/3269 and 2009/2087.

(b) S.I. 2004/2035.

(c) S.I. 2004/2066.

(d) 1965 c. 45; the Act was repealed by section 218(a) of, and Schedule 4 to, the Extradition Act 2003 (c. 41).

(e) 1989 c. 33; the Act was repealed by section 218(b) of, and Schedule 4 to, the Extradition Act 2003 (c. 41) with savings and territorial exceptions.

(f) S.I. 2003/3103.

(g) S.I. 2003/3103; article 3 was substituted by article 2 of S.I. 2003/3312.

(h) 2007 c. 29.

(i) 2003 c. 39; section 28 was substituted by section 3 of, and paragraph 26 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).

(j) 2012 c. 10.

‘live link’ means an arrangement by which a person can see and hear, and be seen and heard by, the court when that person is not in the courtroom;

‘Practice Direction’ means the Lord Chief Justice’s Criminal Practice Directions, as amended, and ‘Criminal Costs Practice Direction’ means the Lord Chief Justice’s Practice Direction (Costs in Criminal Proceedings), as amended;

‘public interest ruling’ means a ruling about whether it is in the public interest to disclose prosecution material under sections 3(6), 7A(8) or 8(5) of the Criminal Procedure and Investigations Act 1996(a); and

‘Registrar’ means the Registrar of Criminal Appeals or a court officer ~~acting with the Registrar’s authority~~ exercising a function of the Registrar.

(2) Definitions of some other expressions are in the rules in which they apply.

*[Note. The glossary at the end of the Rules is a guide to the meaning of certain legal expressions used in them.]*

### **References to legislation, including these Rules**

**2.3.**—(1) In these Rules, where a rule refers to an Act of Parliament or to subordinate legislation by title and year, subsequent references to that Act or to that legislation in the rule are shortened: so, for example, after a reference to the Criminal Procedure and Investigations Act 1996(b) that Act is called ‘the 1996 Act’; and after a reference to the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 2011(c) those Regulations are called ‘the 2011 Regulations’.

(2) In the courts ~~to~~ in which these Rules apply—

- (a) unless the context makes it clear that something different is meant, a reference to the Criminal Procedure Rules, without reference to a year, is a reference to the Criminal Procedure Rules in force at the date on which the event concerned occurs or occurred;
- (b) a reference to the Criminal Procedure Rules may be abbreviated to ‘CrimPR’; and
- (c) a reference to a Part or rule in the Criminal Procedure Rules may be abbreviated to, for example, ‘CrimPR Part 3’ or ‘CrimPR 3.5’.

### POWERS OF AUTHORISED COURT OFFICERS

#### **Exercise of court’s functions by authorised court officers: general rules**

**2.4.**—(1) This rule and rules 2.5, 2.6, 2.7, 2.8 and 2.9 provide for the exercise of relevant judicial functions within the meaning of section 67A of the Courts Act 2003(d)—

- (a) in a court to which these Rules apply;
- (b) by a person authorised for the purpose by the Lord Chief Justice under section 67B of that Act(e).

(2) In this rule and in rules 2.5, 2.6, 2.7, 2.8 and 2.9—

- (a) ‘authorised court officer’ means any such person;

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(a) 1996 c. 25; section 7A was inserted by section 37 of the Criminal Justice Act 2003 (c. 44).

(b) 1996 c. 25.

(c) S.I. 2011/209.

(d) 2003 c. 39; section 67A is inserted by section 3 of, and paragraph 32 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33) with effect from a date to be appointed.

(e) 2003 c. 39; section 67B is inserted by section 3 of, and paragraph 32 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33) with effect from a date to be appointed.

(b) a reference to an authorised court officer who is legally qualified is a reference to one who has such qualifications as are for the time being prescribed by regulations made under section 28(3) of the Courts Act 2003<sup>(a)</sup>.

(3) No court officer may—

- (a) authorise a person's committal to prison;
- (b) authorise a person's arrest (but that exclusion does not apply to the issue of a warrant of arrest, whether or not endorsed for bail, to secure that a person attends court proceedings relating to an offence of which the person has been accused or convicted in a case in which no objection is made by or on behalf of that person to the issue of the warrant);
- (c) grant or withhold bail, except to the extent that rule 2.6 or rule 2.8 allows;
- (d) adjudicate on guilt, or on the act or omission with which a defendant is charged, except to the extent of—
  - (i) acquitting a defendant against whom the prosecutor offers no evidence,
  - (ii) convicting a defendant who pleads guilty, or
  - (iii) giving a prosecutor permission to withdraw a case;
- (e) determine the admissibility of evidence;
- (f) set ground rules for the conduct of questioning where rule 3.9(6), (7) applies;
- (g) make findings of fact for the purpose of sentence, defer or pass sentence, impose a penalty or commit a defendant to the Crown Court for sentence;
- (h) make an order for a party or other person to pay costs, unless that party or person agrees;
- (i) make any other order consequent upon acquittal, conviction or a finding that the accused did the act or made the omission charged, except to the extent that rule 2.8 allows;
- (j) vary, discharge, remit, remove, revoke, review or suspend a sentence, penalty or other order consequent on acquittal or conviction, except to the extent that rule 2.8 allows;
- (k) order the search, confiscation, restraint, detention or seizure of property except to the extent that rule 2.8 allows;
- (l) determine an appeal or reference to an appeal court, or an application for permission to appeal or refer, except to the extent that rule 2.6 allows; or
- (m) determine an allegation of contempt of court.

(4) An authorised court officer may exercise a relevant judicial function for which rule 2.5, 2.6, 2.7, 2.8 or 2.9 provides—

- ~~(a) only if—~~
  - ~~(i) the court or person whose function it is could have exercised that function in corresponding circumstances; and~~
  - ~~(ii) each party affected has had the same opportunity to make representations as that party would have had to make representations to that court or person in corresponding circumstances; and~~
- ~~(b) only subject to—~~
  - ~~(i) such legislation as applies to the exercise of that function, including these Rules; and~~
  - ~~(ii) such of the Lord Chief Justice's Criminal Practice Directions as apply to its exercise.~~
- (a) only subject to the same conditions as apply to its exercise by the court or person whose function it is; and

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<sup>(a)</sup> 2003 c. 39; section 28 is substituted by section 3 of, and paragraph 26 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33) with effect from a date to be appointed.

(b) where a party affected by the exercise of that function is entitled to make representations before its exercise, only if each such party has had a reasonable opportunity to make such representations—

(i) in writing, or

(ii) at a hearing (whether or not that party in fact attends).

(5) Unless the context makes it clear that something different is meant, provision in rule 2.5, 2.6, 2.7, 2.8 or 2.9 permitting the exercise of a relevant judicial function by an authorised court officer includes a power to decline to exercise that function.

*[Note. Under section 67A of the Courts Act 2003, ‘relevant judicial function’ means a function of a court to which the general duty of the Lord Chancellor under section 1 of that Act applies and a judicial function of a person holding an office that entitles the person to exercise functions of such a court, but does not include in a court to which Criminal Procedure Rules apply—*

*(a) any function so far as its exercise involves authorising a person’s committal to prison; or*

*(b) any function so far as its exercise involves authorising a person’s arrest, except the issue of a warrant of arrest (whether or not endorsed for bail) to secure that a person attends court proceedings relating to an offence of which the person has been accused or convicted in a case in which no objection is made by or on behalf of that person to the issue of the warrant.*

*Under section 67B of the 2003 Act, in a court to which Criminal Procedure Rules apply the Rules may provide for the exercise of relevant judicial functions by persons who are appointed under section 2(1) of that Act and who satisfy any requirements specified in the Rules as to qualifications or experience. Such a person may exercise such a function only if authorised to do so by the Lord Chief Justice.*

*Section 28 of the 2003 Act provides for persons authorised by the Lord Chief Justice to give advice to justices of the peace about matters of law. Such a person may be authorised for that purpose only if appointed under section 2(1) of that Act and possessed of such qualifications as may be prescribed by regulations made under section 28. See also rule 2.2 (Definitions).]*

## **Exercise of functions of the Court of Appeal**

**2.5.**—(1) This rule provides for the exercise by an authorised court officer of relevant judicial functions of—

(a) the criminal division of the Court of Appeal; and

(b) the Registrar of Criminal Appeals.

(2) Subject to rule 2.4, an authorised court officer may exercise—

(a) any function of the criminal division of the Court of Appeal that may be exercised by the Registrar of Criminal Appeals; and

(b) any other judicial function of the Registrar.

(3) Where an authorised court officer exercises a function of the court—

(a) the same provision as that made by section 31A(4) or section 31C(3), as the case may be, of the Criminal Appeal Act 1968(a) applies as if that function had been exercised by the Registrar; and

(b) rule 36.5 (Renewing an application refused by a judge or the Registrar) applies.

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<sup>(a)</sup> 1968 c. 19; section 31A was inserted by section 6 of the Criminal Appeal Act 1995 (c. 35) and amended by sections 87 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39) and paragraphs 86 and 88 of Schedule 36 to the Criminal Justice Act 2003 (c. 44). Section 31C was inserted by section 87 of the Courts Act 2003 (c. 39) and amended by sections 47 and 149 of, and paragraphs 1 and 12 of Schedule 8 and part 3 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4).

*[Note. See also rule 2.4, which makes general rules about the exercise of judicial functions by authorised court officers.]*

*For the functions of the criminal division of the Court of Appeal that may be exercised by the Registrar of Criminal Appeals, see sections 31A and 31B of the Criminal Appeal Act 1968(a). For other functions of the Registrar, see section 21 of that Act(b).*

*Sections 31A(4) and 31C(3) of the 1968 Act provide for the reconsideration by a judge of a decision by the Registrar to which those provisions apply.]*

## **Exercise of functions of the High Court**

**2.6.**—(1) This rule provides for the exercise by an authorised court officer of relevant judicial functions of the High Court in relation to its jurisdiction under the Extradition Act 2003(c).

(2) An authorised court officer may exercise any such function of the High Court to which the rules in Section 3 of Part 50 apply (Extradition; Appeal to the High Court), subject to—

- (a) rule 2.4; and
- (b) paragraph (3) of this rule.

(3) No court officer may—

- (a) grant or withhold bail;
- (b) impose or vary a condition of bail; or
- (c) reopen a decision which determines an appeal or an application for permission to appeal,

unless paragraph (4) applies

(4) If making a decision to which the parties have agreed in writing, an authorised court officer may—

- (a) give or refuse permission to appeal;
- (b) determine an appeal;
- (c) grant or withhold bail; or
- (d) impose or vary a condition of bail.

(5) Paragraph (6) of this rule—

- (a) applies where a party wants a judge to reconsider a decision made by an authorised court officer;
- (b) does not apply where such an officer agrees to postpone the date on which the required period for extradition begins under section 36(3) of the Extradition Act 2003(d).

(6) Such a party must—

- (a) apply for such a reconsideration as soon as reasonably practicable, and in any event no later than the earlier of fifth business day after the date on which notice of the decision is served on the applicant—
  - (i) the next hearing before a judge, or
  - (ii) the fifth business day after the date on which notice of the decision is served on the applicant;
- (b) unless the application is made at a hearing, serve the application on—
  - (i) the court officer, and

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<sup>(a)</sup> 1968 c. 19; section 31B was inserted by section 87 of the Courts Act 2003 (c. 39).

<sup>(b)</sup> 1968 c. 19.

<sup>(c)</sup> 2003 c. 41.

<sup>(d)</sup> 2003 c. 41; section 36 was amended by section 40 of, and paragraph 81 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

- (ii) each other party (if any) affected by the decision; and
- (c) in the application—
  - (i) specify the decision in issue,
  - (ii) explain why it is appropriate for the decision to be reconsidered and what decision the applicant thinks would be appropriate, and
  - (iii) ask for a hearing, if one is wanted, and explain why it is needed.
- (7) The judge may determine the application—
  - (a) at a hearing (which may be in public or private), or without a hearing;
  - (b) in the absence of—
    - (i) the applicant,
    - (ii) each other party (if any) affected by the decision.
- (8) But the judge must not determine the application in the absence of an affected party unless that party has had—
  - (a) such notice as the nature and urgency of the application permits; and
  - (b) a reasonable opportunity to make written representations.

*[Note. See also—*

- (a) rule 2.4, which makes general rules about the exercise of judicial functions by authorised court officers;*
- (b) rule 2.10, which provides for extension of the time limit under this rule;*
- (c) rule 3.6 (Application to vary a direction); and*
- (d) rule 50.18 (Case management in the High Court).*

*For the functions of the High Court for which this rule provides, see the introductory note to Section 3 of Part 50. See also rule 50.30 for the constitution of the High Court when exercising the powers to which that Section of that Part applies.*

*Under section 36 of the Extradition Act 2003, where an extradition order has been made under Part 1 of the Act and the outcome of an appeal by the defendant is that he or she is to be extradited then (a) the defendant must be removed to the requesting territory within 10 days starting with the day on which the decision of the relevant court on the appeal becomes final or proceedings on the appeal are discontinued, unless (b) the requesting authority and the High Court agree to postpone that starting date.]*

## **Exercise of functions of the Crown Court**

**2.7.—**(1) This rule provides for the exercise by an authorised court officer of relevant judicial functions of the Crown Court in a criminal cause or matter.

- (2) Subject to rule 2.4 and to paragraph (3) of this rule, an authorised court officer may—
  - (a) determine an application to extend a time limit set by a rule or by a judge, including a time limit for the conduct of confiscation proceedings, unless the effect would be—
    - (i) to affect the date of any hearing that has been fixed, including a trial, or
    - (ii) significantly to affect the progress of the case in any other way;
  - (b) give a live link direction under section 57B, 57E or 57F of the Crime and Disorder Act 1998(a) (Use of live link at preliminary hearings where accused is in custody; Use of live link in sentencing hearings; Use of live link in certain enforcement hearings);

<sup>(a)</sup> 1998 c. 37; sections 57A to 57E were substituted for section 57 as originally enacted by section 45 of the Police and Justice Act 2006 (c. 48). Sections 57B and 57E were amended, and section 57F was inserted, by section 106 of the Coroners and Justice Act 2009 (c. 25).

- (c) exercise the court's functions listed in rule 23.2 (Appointment of advocate to cross-examine witness) and ~~appoint~~ select such an advocate as that rule describes (but a court officer may not decline to ~~appoint~~ select such an advocate where that rule applies);
- ~~(d) determine an application to extend a time limit set by a judge for the conduct of confiscation proceedings, unless the effect would be—~~
  - ~~(i) to affect the date of any confiscation hearing that has been fixed, or~~
  - ~~(ii) significantly to affect the progress of the case in any other way.~~
- (3) An authorised court officer may not exercise a function of the court in a case in which a judge reserves the exercise of that function to a judge so directs.
- (4) Paragraph (5) of this rule applies where a party or an advocate appointed under rule 23.2 (Appointment of advocate to cross-examine witness) wants a judge to reconsider a decision made by an authorised court officer.
- (5) Such a party or advocate must—
  - (a) apply for such a reconsideration as soon as reasonably practicable, and in any event no later than ~~the earlier of fifth business day after the date on which notice of the decision is served on the applicant—~~
    - (i) the next hearing before a judge, or
    - (ii) the tenth business day after the date on which notice of the decision is served on the applicant;
  - (b) unless the application is made at a hearing, serve the application on—
    - (i) the court officer, and
    - (ii) each other party (if any) affected by the decision; and
  - (c) in the application—
    - (i) specify the decision in issue,
    - (ii) explain why it is appropriate for the decision to be reconsidered and what decision the applicant thinks would be appropriate, and
    - (iii) ask for a hearing, if one is wanted, and explain why it is needed.
- (6) The judge may determine the application—
  - (a) at a hearing (which may be in public or private), or without a hearing;
  - (b) in the absence of—
    - (i) the applicant,
    - (ii) each other party (if any) affected by the decision.
- (7) But the judge must not determine the application in the absence of an affected party unless that party has had—
  - (a) such notice as the nature and urgency of the application permits; and
  - (b) a reasonable opportunity to make representations.

*[Note. See also—*

- (a) rule 2.4, which makes general rules about the exercise of judicial functions by authorised court officers; ~~and~~*
- (b) rule 2.10, which provides for extension of the time limit under this rule; and*
- (c) rule 3.6 (Application to vary a direction).*

*For the constitution and powers of the Crown Court, see the note to rule 25.1 (Trial and sentence in the Crown Court; When this Part applies).]*

## Exercise of functions of a magistrates' court

**2.8.**—(1) This rule provides for the exercise by an authorised court officer of relevant judicial functions of a magistrates' court in a criminal cause or matter.

(2) Subject to rule 2.4 and to paragraph (12) of this rule, an authorised court officer may—

- (a) fix, cancel or vary the date, time or place for a hearing, including a trial, or adjourn a hearing;
- (b) adjourn, remit or transfer proceedings from one local justice area to another;
- (c) determine an application to extend a time limit set by a rule or by the court, unless the effect would be—
  - (i) to affect the date of any hearing that has been fixed, including a trial, or
  - (ii) significantly to affect the progress of the case in any other way;
- (d) issue a summons at the request of a public prosecutor, or under section 16B of the Magistrates' Courts Act 1980<sup>(a)</sup> (Cases not tried in accordance with section 16A) or section 83 of that Act<sup>(b)</sup> (Process for securing attendance of offender);
- (e) give a prosecutor permission to withdraw a case;
- (f) grant bail where the defendant already is on bail and—
  - (i) the conditions, if any, to which that bail is subject will remain the same, or
  - (ii) bail conditions will be varied or imposed with both parties' agreement;
- (g) give consent for another magistrates' court to deal with a defendant for an offence in respect of which the defendant, when an adult, was discharged conditionally;
- (h) order a convicted defendant to produce his or her driving licence;
- (i) require a statement of the defendant's assets and other financial circumstances;
- (j) amend an attendance centre order to—
  - (i) vary the day or hour specified in that order for the defendant's first attendance, or
  - (ii) substitute an alternative centre;
- (k) amend the local justice area or responsible officer named in an order of the court;
- (l) amend a sentence or order by requiring it to be completed in Northern Ireland or Scotland;
- (m) extend the time for service of a statutory declaration to which applies—
  - (i) rule 24.17 (Statutory declaration of ignorance of proceedings), or
  - (ii) rule 29.4 (Statutory declaration to avoid fine after fixed penalty notice);
- (n) fix a later time at which a defendant must attend court for the purposes of an enquiry or hearing under section 82 of the Magistrates' Courts Act 1980<sup>(c)</sup> (Restriction on power to impose imprisonment for default);
- (o) conduct a means enquiry;

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<sup>(a)</sup> 1980 c. 43; section 16B was inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2).

<sup>(b)</sup> 1980 c. 43; section 83 was amended by articles 46 and 47 of S.I. 2006/1737 and sections 97(2) and 106 of, and Part V (table 8) of Schedule 15 to, the Access to Justice Act 1999 (c. 22).

<sup>(c)</sup> 1980 c. 43; section 82 was amended by section 77 of, and paragraph 52 of Schedule 14 to, the Criminal Justice Act 1982 (c. 48), sections 61 and 123 of, and paragraphs 1 and 2 of Schedule 8 to, the Criminal Justice Act 1988 (c. 33), section 55 of and paragraph 10 of Schedule 4 to the Crime (Sentences) Act 1997 (c. 43), paragraph 220 of Schedule 8 to the Courts Act 2003 (c. 39), section 62 of, and paragraphs 45 and 51 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15) and section 179 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12) and section 54 of, and paragraphs 2 and 3 of Schedule 12 to, the Criminal Justice and Courts Act 2015 (c. 2). It is further amended by paragraphs 58 and 63 of Part II of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43) and Part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from dates to be appointed.

- (p) make a collection order;
- (q) issue a warrant of control;
- (r) extend the time for payment of a fine or sum to which Part 30 (Enforcement of fines and other orders for payment) or ~~Part 33 (Confiscation and related proceedings)~~ applies;
- (s) vary an order for the payment by instalments of such a fine or sum;
- (t) make a transfer of fine order;
- (u) make a disclosure order under section 125CA Magistrates' Courts Act 1980<sup>(a)</sup> (Power to make disclosure order) for the purposes of securing the execution of a warrant;
- (v) make an attachment of earnings order;
- (w) make or withdraw an application for deductions to be made from a defendant's benefit payments;
- (x) take any step listed in paragraph 38 of Schedule 5 to the Courts Act 2003<sup>(b)</sup> (range of further steps available against defaulters).

(3) In addition to the functions listed in paragraph (2), subject to rule 2.4 and to paragraph (12) of this rule an authorised court officer who is legally qualified may exercise the other functions of a magistrates' court listed in paragraphs (4) to (11).

(4) In connection with the rules about general matters (Parts 1 to 6)—

- (a) exercising the powers to which section 50 of the Crime and Disorder Act 1998<sup>(c)</sup> (Early administrative hearings) refers, where that section applies and subject to the restrictions that it contains;
- (b) giving, varying or revoking a live link direction under Part IIIA of the Crime and Disorder Act 1998<sup>(d)</sup> (Live links for accused's attendance at certain preliminary, sentencing and other hearings);
- (c) determining an application to extend a time limit set by a rule or by the court;
- (d) giving, varying or revoking an order for separate or joint trials in respect of two or more defendants or two or more offences, if all parties agree;
- (e) giving, varying or revoking directions for the conduct of proceedings, including—
  - (i) the timetable for the case,
  - (ii) the attendance of the parties,
  - (iii) the service of documents (including summaries of any legal arguments relied on by the parties),
  - (iv) the manner in which evidence is to be given, insofar as this rule makes no other provision and except the making, varying or revocation of a witness anonymity order;

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<sup>(a)</sup> 1980 c. 43; section 125CA was inserted by section 28 of the Domestic Violence, Crime and Victims Act 2004 (c. 28) and amended by section 62 of, and paragraphs 45 and 60 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

<sup>(b)</sup> 2003 c. 39; paragraph 38 of Schedule 5 was amended by articles 2, 4 and 26 of S.I. 2006/1737, section 62 of, and paragraphs 148 and 149 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15), section 80 of the Criminal Justice and Immigration Act 2008 (c. 4) and section 88 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

<sup>(c)</sup> 1998 c. 37; section 50 was amended by section 106 of, and Schedule 15 to, the Access to Justice Act 1999 (c. 22), sections 41 and 332 of, and paragraphs 15 and 16 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), regulation 8 of S.I. 2006/2493 and section 39 of, and paragraphs 46 and 47 of Schedule 5 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 3 of, and paragraphs 20 and 22 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33) with effect from a date to be appointed.

<sup>(d)</sup> 1998 c. 37; Part IIIA was substituted by section 45 of the Police and Justice Act 2006 (c. 48).

- (f) determining an application under rule 5.7(5) (supply to a party of information or documents from records or case materials; information to which paragraph (4) of that rule does not apply) where—
    - (i) rule 5.7(6) applies (information about the grounds on which an order was made, or a warrant was issued, in the absence of the party or person applying for that information), and
    - (ii) no notice of objection under that paragraph is given within the time for which that paragraph provides;
  - (g) imposing a reporting restriction under section 45 of the Youth Justice and Criminal Evidence Act 1999<sup>(a)</sup> (identity of a person under 18) where there is no objection to the order;
  - (h) giving permission for proceedings to be recorded;
  - (i) asking a court security officer to remove a person from a courtroom.
- (5) In connection with the rules about preliminary proceedings (Parts 7 to 12)—
- (a) issuing a summons and giving directions for service;
  - (b) under section 4 of the Summary Jurisdiction (Process) Act 1881<sup>(b)</sup>, endorsing a summons or warrant issued by a court in Scotland;
  - (c) giving a prosecutor permission to withdraw a charge;
  - (d) dismissing a prosecution where the prosecutor offers no evidence;
  - (e) amending a charge;
  - (f) sending a defendant to the Crown Court for trial where the only condition for sending is—
    - (i) that prescribed by section 51(2)(a), of the Crime and Disorder Act 1998<sup>(c)</sup> (offence triable only on indictment other than one in respect of which notice is given under section 51B or 51C of that Act), or
    - (ii) the service of a notice under section 51B or 51C of that Act<sup>(d)</sup> (prosecutor’s notice requiring sending for trial in a case of serious or complex fraud or a case in which a child is to be called as a witness).
- (6) In connection with the rules about custody and bail (Parts 13 and 14)—
- (a) issuing or withdrawing a warrant for a person’s arrest to secure that the person attends court proceedings relating to an offence of which the person has been accused or convicted in a case in which no objection is made by or on behalf of that person to the issue of the warrant;
  - (b) granting bail where—
    - (i) the defendant is present,
    - (ii) the prosecutor agrees to the grant of bail, and
    - (iii) the conditions, if any, to which that bail will be subject will remain the same as before, or will be varied or imposed with the parties’ agreement.

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<sup>(a)</sup> 1999 c. 23.

<sup>(b)</sup> 1881 c. 24.

<sup>(c)</sup> 1998 c. 37; section 51 was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 52 of the Criminal Justice and Courts Act 2015 (c. 2).

<sup>(d)</sup> 1998 c. 37; sections 51B and 51C were inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44). Section 51B was amended by section 50 of, and paragraph 69 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11), paragraphs 46 and 48 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and article 3 of, and paragraphs 14 and 15 of Schedule 2 to, S.I. 2014/834. Section 51C was modified by section 63 of, and paragraph 36 of Schedule 6 to, the Serious Crime Act 2007 (c. 27) and amended by regulations 8 and 9 of S.I. 2016/244.

- (7) In connection with the rules about evidence (Parts 16 to 23)—
- (a) requiring a person who has made a written statement to attend before the court to give evidence;
  - (b) issuing a witness summons and giving directions for its service.
  - (c) exercising the court’s functions listed in rule 23.2 (Appointment of advocate to cross-examine witness) and appointing such an advocate as that rule describes (but a court officer may not decline to appoint such an advocate where that rule applies);
- (8) In connection with the rules about trial (Parts 24 to 27)—
- (a) convicting a defendant who has pleaded guilty;
  - (b) requesting a pre-sentence report where a defendant pleads guilty;
  - (c) directing the commissioning of a medical report.
  - ~~(d) accepting the withdrawal of a guilty plea prior to sentence, if the prosecutor agrees;~~
  - ~~(e) setting aside a conviction, or varying or rescinding an order, under section 142 of the Magistrates’ Courts Act 1980(a), if both parties agree.~~
- (9) In connection with the rules about appeal (Parts 34 to 44)—
- (a) stating a case for the opinion of the High Court where the decision under appeal was made by an authorised court officer;
  - (b) requiring the appellant to enter into a recognizance under section 114 of the Magistrates’ Courts Act 1980(b) on an application to state a case for the opinion of the High Court.
- (10) In connection with the rules about costs (Part 45)—
- (a) making or varying an order for a party to pay costs, if both parties agree;
  - (b) making or varying an order for another person to pay costs, if that person agrees;
  - (c) making ~~any other~~ a costs order to which rule 45.4 (Costs out of central funds) applies.
- (11) In connection with the rules about other proceedings (Parts 46 to 50)—
- (a) making a legal aid representation order on an appeal against a refusal of legal aid (but a court officer may not decline to make such an order);
  - (b) determining an application for a change of legal representative.
- (12) ~~Except in an emergency, a~~ An authorised court officer who is not a justices’ legal adviser may not exercise a function of the court in a case in which a District Judge (Magistrates’ Courts), a lay justice or a justices’ legal adviser ~~reserves the exercise of that function to such a judge, justice or adviser so directs.~~

[Note. See also—

- (a) rule 2.4, which makes general rules about the exercise of judicial functions by authorised court officers; and
- (b) rule 3.6 (Application to vary a direction).

*Under section 148 of the Magistrates’ Courts Act 1980(c), the expression ‘magistrates’ court’ means any justice or justices of the peace acting under any enactment or by virtue of their commission or under the common law. For a court’s power to try an allegation of an offence, see the note to rule 24.1 (Trial and sentence in a magistrates’ court; When this Part applies).*

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(a) 1980 c. 43; section 142 was amended by sections 26 and 29 of, and Schedule 3 to, the Criminal Appeal Act 1995 (c. 35).

(b) 1980 c. 43; section 114 was amended by section 90 of, and paragraphs 95 and 113 of Schedule 13 to, the Access to Justice Act 1999 (c. 22) and section 109 of, and paragraph 235 of Schedule 8 to, the Courts Act 2003 (c. 39). It is further amended by section 3 of, and paragraphs 5 and 7 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c 33), with effect from a date to be appointed.

(c) 1980 c. 43; section 148 was amended by section 109 of, and paragraph 248 of Schedule 8 to, the Courts Act 2003 (c. 39).

*Under section 50 of the Crime and Disorder Act 1998(a), where a defendant has been charged with an offence at a police station the magistrates' court before whom he or she appears or is brought for the first time in relation to the charge may consist of a single justice; and where on such an occasion the powers of a single justice are exercised by an authorised court officer that court officer may not remand the defendant in custody or, without the consent of the prosecutor and the defendant, remand the defendant on bail on conditions other than those (if any) previously imposed.*

*Under section 8B(3) of the Magistrates' Courts Act 1980(b), a magistrates' court may discharge or vary (or further vary) a pre-trial ruling within the meaning of section 8A of that Act if the court has given the parties an opportunity to be heard and if, among other things, there has been a material change of circumstances since the ruling was made or, if a previous application has been made, since the application (or last application) was made.*

*Under section 53(4) of the Courts Act 2003(c), a court security officer acting in the execution of that officer's duty may remove any person from a courtroom at the request of a judge or a justice of the peace.]*

### **Exercise of functions of a District Judge (Magistrates' Courts) in extradition cases**

**2.9.**—(1) This rule provides for the exercise by an authorised court officer of relevant judicial functions of a District Judge (Magistrates' Courts) in a case to which Part 50 (Extradition) applies.

(2) Subject to rule 2.4, an authorised court officer who is legally qualified may—

- (a) fix, cancel or vary the date, time or place for a hearing, including an extradition hearing;
- (b) determine an application to extend a time limit set by a rule or by the court, unless the effect would be—
  - (i) to affect the date of any hearing that has been fixed, including an extradition hearing, or
  - (ii) significantly to affect the progress of the case in any other way.

(3) ~~Except in an emergency, a~~ An authorised court officer who is not a justices' legal adviser may not exercise a function of the court in a case in which a District Judge (Magistrates' Courts) or a justices' legal adviser ~~reserves the exercise of that function to such a judge or adviser so~~ directs.

[*Note. See also—*

- (a) *rule 2.4, which makes general rules about the exercise of judicial functions by authorised court officers;*
- (b) *rule 3.6 (Application to vary a direction); and*
- (c) *rule 50.4 (Case management in the magistrates' court and duty of court officer).]*

### **Court's power to extend time under rule 2.6 or rule 2.7**

**2.10.**—(1) The court may extend (even after it has expired) a time limit under rule 2.6 (Exercise of functions of the High Court) or rule 2.7 (Exercise of functions of the Crown Court).

- (a) 1998 c. 37; section 50 was amended by section 106 of, and Schedule 15 to, the Access to Justice Act 1999 (c. 22), sections 41 and 332 of, and paragraphs 15 and 16 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), regulation 8 of S.I. 2006/2493 and section 39 of, and paragraphs 46 and 47 of Schedule 5 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 3 of, and paragraphs 20 and 22 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33) with effect from a date to be appointed.
- (b) 1980 c. 43; section 8B was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by paragraph 51 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).
- (c) 2003 c. 39.

- (2) A party who wants an extension of time must—
- (a) apply when serving the application for which it is needed; and
  - (b) explain the delay.