

A GUIDE TO THE CRIMINAL PROCEDURE (AMENDMENT NO. 2) RULES 2018 (S.I. 2018/847)

Where to find the new Rules

The Criminal Procedure (Amendment No. 2) Rules 2018 are at this address:

<http://www.legislation.gov.uk/ukSI/2018/847/contents/made>

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

<http://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu-2015>

What the new Rules are for

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

(a) include new rules about—

- commissioning medical reports where a defendant's mental health is in question, in Part 3 of the Criminal Procedure Rules (Case management) and in Part 28 (Sentencing procedures in special cases)
- preparation for the hearing in the Crown Court on an appeal from a magistrates' court, in Part 34 of the Criminal Procedure Rules (Appeal to the Crown Court)
- changing grounds of appeal from the Crown Court to the Court of Appeal, in Part 36 of the Criminal Procedure Rules (Appeal to the Court of Appeal: general rules)

(b) make changes to the rule about where to give notice of appeal from the Crown Court to the Court of Appeal, in Part 39 of the Criminal Procedure Rules (Appeal to the Court of Appeal about conviction or sentence)

(c) make a few other miscellaneous additions and alterations to keep the Criminal Procedure Rules up to date.

When the new rules come into force

The rules come into force on Monday 1 October 2018.

What is in the new Rules

Commissioning medical reports

In June 2017, following an inquest into a defendant's suicide, a coroner recommended that psychiatric reports should be obtained more quickly when they are needed to help the court assess a defendant's fitness to participate at the trial. At the request of senior judges, the Rule Committee agreed to make rules about (i) how a medical report must be commissioned, (ii) the procedure that must be followed to make sure that the report is obtained as quickly as possible, and (iii) supervision of the timetable for production of the report. The new rules include specific requirements for letting the psychiatrist or other medical practitioner know exactly what is required, and why; and specific requirements for the court to set and monitor a timetable for producing the report, culminating in the next court hearing. Rule 3 of the Amendment Rules adds a new rule to Part 3 of the Criminal Procedure Rules (the rules about case management), and rule 7 of the Amendment Rules makes changes to Part 28 of the Criminal Procedure Rules (the rules about sentencing procedures in special cases).

The Committee has asked the Lord Chief Justice to give courts detailed guidance in the Criminal Practice Directions on what the timetable for obtaining a report ought to be, and on what courts must do to ensure that progress is being made.

Improving procedure in appeals from magistrates' courts to the Crown Court

Under section 79 of the Senior Courts Act 1981 an appeal to the Crown Court from a magistrates' court is by way of rehearing. The Rule Committee received reports that, in the experience of Crown Court judges and magistrates who adjudicate on appeals, cases often now were too complicated for an effective appeal hearing to be arranged without obtaining more information than the present rules require, and without giving the parties more pre-appeal directions than the present rules anticipate. The Committee agreed to add to the present rules (i) requirements for the parties to give more information about what is in issue in the appeal; (ii) requirements for the parties to let each other and the court know whether they intend to rely on the same evidence and other material as they relied on in the magistrates' court, or intend to rely on other evidence or material; (iii) requirements for court staff to supply other information about the case from the magistrates' court's records; and (iv) provision for the court to arrange a preparation for appeal hearing if one is needed.

Under sections 73 and 74 of the Senior Courts Act 1981 and under rule 34.11 of the Criminal Procedure Rules, at an appeal hearing in the Crown Court the appeal is heard by a judge and two magistrates but the judge has power without the magistrates to give directions for the preparation of the appeal before the hearing. After an appeal to the Crown Court a party can appeal further to the High Court on a point of law under section 28 of the Senior Courts Act 1981, by first asking the Crown Court to approve a formal statement of what took place at the appeal hearing and of the point of law involved (a 'case stated'). For many years it has been the practice for the judge to approve that formal statement, or to refuse to do so, without recalling the magistrates who also heard the appeal. In the case of *R (Arthur) v Blackfriars Crown Court* [2017] EWHC 3416 (Admin) the High Court questioned whether that practice was permitted by the rules. The Rule Committee decided that the practice is long established and efficient, and decided to change the rule to make it clear that it is indeed permitted.

Rule 8 of the Amendment Rules makes all these changes to the rules in Part 34 of the Criminal Procedure Rules.

Changing the grounds of an appeal to the Court of Appeal

In the case of *R v James and Others* [2018] EWCA Crim 285 the Court of Appeal gave guidance on the procedure that should be followed when a defendant who is appealing from the Crown Court to the Court of Appeal wants the court's permission to rely on a fresh ground, or grounds, of appeal. The court asked the Rule Committee to make the Criminal Procedure Rules more detailed than they are now. The Committee agreed to do so, and rule 10 of the Amendment Rules amends rule 36.14 of the Criminal Procedure Rules accordingly.

Service on the Registrar of Criminal Appeals of notice of an appeal to the Court of Appeal

Where a defendant wants to appeal to the criminal division of the Court of Appeal against his or her conviction or sentence in the Crown Court, for many years it has been the rule that the appeal notice must be delivered ('served') at the office for the Crown Court where the defendant was convicted. The reason was to allow Crown Court staff to send relevant documents to the Registrar of Criminal Appeals at the Court of Appeal in London. Now, however, electronic ways of working have made that unnecessary and it is easier and quicker for the appellant to send the appeal notice direct to the Registrar (which itself can be done electronically, by email). The Registrar has arranged to receive notices that before now have been received in Crown Court offices. He asked the Rule Committee to change the current rule accordingly. The Committee agreed, and rule 11 of these Amendment Rules replaces rule 39.2 of the Criminal Procedure Rules for that reason.

Rules to supplement the Criminal Finances Act 2017: types of investigation

Rule 13 of the Amendment Rules makes changes to rule 47.32 of the Criminal Procedure Rules (Application for warrant under section 352 of the Proceeds of Crime Act 2002) so as to provide for amendments made by the Criminal Finances Act 2017 to the Proceeds of Crime Act 2002. The amendments incorporate references to new types of investigation for which

the 2002 Act now provides. However, the procedure on an application for a search warrant under section 352 of that Act will remain the same as now.

Other amendments

The Amendment Rules correct cross-references in rules 3.1, 5.8 (in the note to the rule), 5.9 (in the note to the rule), 24.17, 25.16, 28.3 (in the note to the rule), 35.2 (in the note to the rule), 36.8, 39.3, 46.1, 50.3 and 50.10 of the Criminal Procedure Rules, either because of other changes made by the Amendment Rules or because the Rule Committee has noticed an earlier uncorrected error.

Criminal Procedure Rule Committee secretariat
26 July 2018