

The Criminal Procedure (Amendment No. 2) Rules 2007
SI number 2317 of 2007 (L. 23)

Guide for Court Users, Staff and Practitioners

August 2007

Summary

On 1 October, 2007, the fourth amendment of the Criminal Procedure Rules 2005 will come into force, affecting procedures used in all criminal courts. The following information explains the types of change and is intended for court users, staff and practitioners.

Background

The Criminal Procedure Rule Committee makes rules for the criminal courts in England and Wales. These rules amend the Criminal Procedure Rules 2005 (SI reference 384 of 2005), which govern the practice and procedure to be followed in the criminal courts - i.e. the criminal division of the Court of Appeal and (when dealing with any criminal cause or matter) the Crown Court and magistrates' courts.

The elements of change are the introduction of some new provisions; the amendment of the current rules; and some housekeeping amendments to the tables of contents about service. Some existing rules about appeals to the Court of Appeal are replaced with rules that are consolidated, revised and simplified. New rules about the procedure on changing a plea of guilty, in the Crown Court or in magistrates' courts, are introduced. Finally, some other changes have been made, to accommodate the new rules and to accommodate new primary legislation about football banning orders.

1. New Provisions

The Rules add the following **new provisions** to the Criminal Procedure Rules 2005:

Part 2 – when the Rules apply

The new definitions of “business day” and “live link” and “public interest ruling” apply from 1 October 2007.

These definitions are all relevant to the new appeal rules, but are amended in this part because they have a useful general effect.

The new rules about appeals (Parts 65, 66, 67, 68, 69 and 70) will apply in all cases where an appeal, application or reference to the Court of Appeal is made on or after 1 October 2007. This is to prevent

confusion and to be fair to those who will already be involved in an appeal, application or reference on that date, so that they will not need to revise what they would have already done, or been required to do, in compliance with the rules as they stood before 1 October 2007.

Part 37 – Summary Trial

Changing a plea of guilty in the magistrates' court: a new rule inserted at 37.6 sets out the procedure for making an application to change a plea of guilty in summary proceedings - that is, a case that is going to be tried without a jury.

The new rule is introduced by rule 9 of these Amendment Rules.

Part 39 – Trial on Indictment

Changing a plea of guilty in the Crown Court: a new rule inserted at 39.3 sets out the procedure for making an application to change a plea of guilty in a trial on indictment. These are cases dealing with more grave crimes and \ or involving more complex issues. A judge and jury will try them. People found guilty in these cases can receive a sentence including a lengthy term of imprisonment.

The new rule is introduced by rule 10 of these Amendment Rules.

Background to the above changes in Parts 37 and 39

The Criminal Procedure Rules 2005 contained no rules governing the procedure by which a defendant who has entered a guilty plea may apply to the court for permission to withdraw that plea (for example, where it emerges that she or he had misunderstood the prosecution case). That procedure was set out only in case law.

The Criminal Procedure Rule Committee (CrimPRC) received reports that the absence of clear procedure rules contributed to confusion over the circumstances in which a court might consider an application to withdraw a guilty plea and so decided to make some suitable rules.

Parts 65 to 70 – Appeals

The new rules about appeals to the Court of Appeal deal first with general matters. In each of Parts 66 to 70, the same procedural framework has then been used to underpin the unique requirements of each type of appeal. This is in effect to standardise the appeal procedures, to make it more straightforward for everyone to understand what must be done, or taken into consideration, as they go about preparing their appeal.

Part 65 sets out the general rules that apply to all appeals and references to the Court of Appeal (to which Parts 66, 67, 68, 69 and 70 apply) and makes reference to the rules about active case management. This is a particularly important new measure.

Part 66 sets out the rules for appeals to the Court of Appeal against a ruling at a preparatory hearing.

Part 67 sets out rules to be followed when a prosecutor wants to make an appeal against a ruling that was not in their favour. These are called, 'Appeals to the Court of Appeal against ruling adverse to prosecution'.

Part 68 sets out the rules for appeals about conviction or sentence (these are the overwhelming majority of appeals).

Part 69 sets out the procedure to be followed for appeals against reporting or access restrictions.

Part 70 sets out the rules to be followed where the Attorney General wants to refer points of law, or refer a case where the Crown Court has imposed an unduly lenient sentence, to the Court of Appeal.

Background to the changes in Parts 65 to 70

At the request of the Registrar of Criminal Appeals, the Criminal Procedure Rule Committee carried out a full review of the rules about appeals from the Crown Court to the criminal division of the Court of Appeal, contained in Parts 65 to 70 of the Criminal Procedure Rules 2005. Some of those rules no longer suited the preferred modern practice of the court and some were hard to understand.

The new rules are shorter and clearer than those that they replace, but mostly maintain the existing procedures of the Court of Appeal because they work well. They have been re-written in the style of the Criminal Procedure Rules and, like those, they include cross-reference notes to other relevant legislation.

The new rules incorporate procedures presently set out in case law (variation of the outcome of a sentence appeal heard in a party's absence - new rule 68.12) and others established by the practice of the Registrar (notification of potential respondents - new rule 68.6).

The new rules accommodate new legislation that gives the prosecutor an opportunity to appeal against a failure by the Crown Court to make a football banning order, under section 14A(5A) of the Football Spectators Act 1989.

- Background: The Committee has taken the opportunity to accommodate a recently implemented piece of criminal justice legislation that gives a prosecutor an opportunity to appeal against a failure to make a football banning order (section 14A(5A) of the Football Spectators Act 1989, inserted by section 52 of, and Schedule 3 to, the Violent Crime Reduction Act 2006).

2. Amendments of the Criminal Procedure Rules 2005

The following **amendments** to the current Rules are made:

Part 63 – Appeal to the Crown Court

The rules about appeals from a magistrates' court to the Crown Court in Part 63 of the Criminal Procedure Rules 2005 are amended by rules 15 to 25 of these Amendment Rules for two purposes:

- First, to accommodate a prosecutor's appeal under section 14A(5A) of the Football Spectators Act 1989 against a failure to make a football banning order.
- Second, to make clear that any appeal to the Crown Court can be heard with only one magistrate as well as a Crown Court judge, instead of the usual two magistrates, if to wait for a second magistrate would cause unreasonable delay. The amendment reinstates a former Crown Court rule that, by oversight, was adopted in the Criminal Procedure Rules 2005 in terms that applied ostensibly only where the appeal was from a youth court.

Part 74 – Appeal to the House of Lords

The rules about appeal to the House of Lords in Part 74 of the Criminal Procedure Rules 2005 are amended to extend the scope of that Part to all appeals to the House of Lords from the criminal division of the Court of Appeal. These consequential amendments complete the revision and consolidation of the rules in Parts 65 to 70.

Note that provisions that now are in Part 74 formerly were contained in rule 66.16 (concerning prosecution appeals) and in rule 69.5 (concerning sentencing references by the Attorney General).

These changes are introduced by rules 34 to 36 of these Amendment Rules.

Minor house-keeping amendments

Note that there are also some minor amendments to other Criminal Procedure Rules, in consequence of the changes to Part 4 – Service of documents that took effect in April 2007. These amendments affect only the Tables of Contents for Parts 13, 15, 34, 35, 41, 52, 55, 64 and 71.

3. Other News

The Consolidated Criminal Practice Direction

There is to be a further amendment of the Consolidated Criminal Practice Direction – number 16. This amendment will introduce the new forms for use in appeals to the Court of Appeal.

5. Useful Web Addresses

- The Committee's statutory duty is to make Criminal Procedure Rules that are simple and simply expressed – wherever possible, having consulted beforehand. (Sections 69-74 of the Courts Act 2003 refer.) **The Criminal Procedure Rule Committee's page** can be viewed at :- <http://www.justice.gov.uk/about/criminal-proc-rule-committee.htm>

- When new Criminal Procedure Rules are made and the Statutory Instrument has been laid before Parliament, we post information on the Ministry of Justice website on the **Further Background to the Rules** page at :- <http://www.justice.gov.uk/whatwedo/criminal-procedure-rules.htm>

This provides advance notice of changes, to give the public information as soon as possible.

- Note that information about the rule changes introduced during the period April 2006 to March 2007 is available on the former Department for Constitutional Affairs' website, at :- http://www.dca.gov.uk/procedurerules/criminalpr_background.htm

- **The Statutory Instrument can be found on the OPSI website, at :-** <http://www.opsi.gov.uk/si/si2007/20072317.htm>

- The PDF (Acrobat) version of the Statutory Instrument can be viewed via :- http://www.opsi.gov.uk/si/si2007/uksi_20072317_en.pdf

- The **Ministry of Justice website** area containing the complete **Criminal Procedure Rules, the Consolidated Criminal Practice Direction and Forms** is :- http://www.justice.gov.uk/criminal/procrules_fin/index.htm

Please note that the Criminal Procedure Rules website is not updated with amendments until they have actually come into force. This means that the effects of the fourth amendment will not appear there until 1 October, 2007.

- This website also contains the forms for use in the criminal courts in Acrobat format, at :- http://www.justice.gov.uk/criminal/procrules_fin/contents/formssection/formspage.htm

- The HMCS website address for Practice Directions generally is :-
<http://www.hmcourts-service.gov.uk/cms/pds.htm>
- The address for the **Consolidated Criminal Practice Direction** is :-
http://www.hmcourts-service.gov.uk/cms/files/ccpd_260407.pdf
- The HM Courts Service (HMCS) website route for the related forms in Word format is :-

From the HMCS Home Page at <http://www.hmcourts-service.gov.uk/cms/index.htm>, choose "Forms and Guidance". Then select the "Form Finder" menu as it appears on the left hand side of the screen. Go to the "Work-type" field in the centre of the screen and from the drop-down menu, choose "Criminal Procedure Rules". A list of forms will then appear, from which you can make your selection. We are continuing to develop ways to improve electronic access to these Word forms.