

A GUIDE TO THE CRIMINAL PROCEDURE (AMENDMENT) RULES 2019 (S.I. 2019/143)

Where to find the new Rules

The Criminal Procedure (Amendment) Rules 2019 are at this address:

www.legislation.gov.uk/uksi/2019/143/contents/made

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

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) make changes to the rules about—

- delivering documents to court offices, in Part 4 of the Criminal Procedure Rules (Service of documents)
- the supply to the public of information about cases and court hearings, in Part 5 of the Criminal Procedure Rules (Forms and court records)
- applying for the issue of a summons, in Part 7 of the Criminal Procedure Rules (Starting a prosecution in a magistrates' court)
- the information that an expert witness must give the court, in Part 19 of the Criminal Procedure Rules (Expert evidence)

(b) include new rules about—

- withholding confidential information that an expert witness otherwise might be required to give the court, in Part 19 of the Criminal Procedure Rules
- presenting the allegation against the defendant in some types of extradition case, in Part 50 of the Criminal Procedure Rules (Extradition)

(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 April 2019.

What is in the new Rules

Finding the right court office for the service of documents

In the Criminal Procedure Rules, 'service' of documents (which may be documents in paper or electronic form) means their transmission to the intended recipient by a means for which the Rules provide (e.g. by personal delivery, or by post, or by email or uploading). The current rules require service on a court officer to be at 'the office at which that court's business is administered by court staff'. Rule 3 of the Amendment Rules makes changes to rule 4.3 (service by handing over a document) and rule 4.4 (service by leaving or posting a document) of the Criminal Procedure Rules. The amended rules will identify the court office for the service of documents as 'the office at the address advertised by the Lord Chancellor as the place at which that court's business is administered'.

When the Criminal Procedure Rules about service first were made the assumption was that no court would sit at a place at which there was not also a court office. Since then, however, in many places the administrative offices for more than one court have been amalgamated, so as to take advantage of new technology and in the interests of more efficient court administration. Sometimes the location of the office at which a particular court's business is administered may not be obvious. Notices in or near courtrooms will explain how to contact the relevant administrative office, and contact and other information is published online by HM Courts and Tribunals Service at: courtribunalfinder.service.gov.uk/search/.

Prompted by the judgment of the High Court in the case of *Begum v Luton Borough Council* [2018] EWHC 1044 (Admin),¹ which concerned the delivery of an important document to a security officer at a court building where there was no court office, the Criminal Procedure Rule Committee decided to change the rules so as to correspond better with the new circumstances.

Information from court records and information about pending cases

Rule 5.8 of the Criminal Procedure Rules is the rule about the supply to the public, including journalists, of information about criminal cases. The current rule (a) allows for specified information from court records to be supplied only by word of mouth, and (b) requires the publication of hearing dates and other specified details only in relation to cases due to be heard in public in a courtroom, not in relation to cases due to be dealt with without a hearing under sections 16A to 16D of the Magistrates' Courts Act 1980 and rule 24.9 of the Criminal Procedure Rules (a procedure by which a magistrate can try some types of case in the defendant's absence and without a court hearing, unless the defendant objects).

Rule 4 of the Amendment Rules changes that rule. The amended rule will allow for specified information from court records to be supplied in writing, including in the form of a written certificate or written extract, if the request for that information is in writing. It will require specified details of all pending cases to be published, not only those due to be heard in a courtroom.

The Rule Committee heard that members of the public who apply for information which can be supplied by word of mouth under rule 5.8 often confuse that rule with another one, rule 5.9, which provides for the supply of written certificates of the results of cases for use in other legal proceedings and in some other special circumstances. If the conditions for supplying information under rule 5.8 are satisfied then usually there will be no reasonable objection to court staff supplying that information in writing, if that is what the enquirer wants. Therefore the Committee agreed to amend rule 5.8 to make that possible, to help minimise any confusion that otherwise might arise and to allow court staff to meet reasonable requests from members of the public.

As well as publishing information about cases due to be heard in a courtroom, HM Courts and Tribunals Service soon will be able to publish online information about cases waiting to be decided without a hearing under the Magistrates' Courts Act 1980 and rule 24.9. The Rule Committee agreed to extend the scope of rule 5.8 to acknowledge and authorise what now is possible.

Information in an application for a summons

A prosecution brought by a private individual or corporation begins with an application to a magistrates' court to issue a summons. Rule 7.2 of the Criminal Procedure Rules governs the making of such an application. The current rule requires a prosecutor who is not a public authority to give certain information in the application. That information includes their grounds for accusing the defendant of the alleged offence, details of any other relevant prosecution, or proposed prosecution, of the defendant, and a declaration about the accuracy of that information. The current rule exempts from those requirements a private prosecutor who is represented by a lawyer. Rule 5 of the Amendment Rules changes the rule to remove that exemption.

The Rule Committee made the current rule in order to codify requirements previously set out in case law. It came into force in 2018. Shortly after the new rule came into force the High Court gave judgment in the case of *R (Kay) and Another v Leeds Magistrates' Court* [2018] EWHC 1233 (Admin),² in which a private prosecutor was found to have withheld relevant information from his application for a summons even though he was represented by a solicitor. After consulting with the Law Society's Criminal Law Committee and with the

¹ See: www.bailii.org/ew/cases/EWHC/Admin/2018/1044.html.

² See: www.bailii.org/ew/cases/EWHC/Admin/2018/1233.html.

recently formed Private Prosecutors' Association, the Rule Committee decided that it would impose no significant burden on private prosecutors, and would help to enforce the duty of candour which the High Court had held to apply, to remove the exemption in the rule.

Information about an expert witness

Rule 19.2 (Expert's duty to the court) and rule 19.3 (Introduction of expert evidence) of the Criminal Procedure Rules require the disclosure of anything 'which might reasonably be thought capable of detracting substantially from the credibility of' an expert witness. Rule 6 of the Amendment Rules changes those rules to require the disclosure of anything 'which might reasonably be thought capable of (i) undermining the reliability of the expert's opinion, or (ii) detracting from the credibility or impartiality of the expert'.

The Rule Committee made rules 19.2 and 19.3 in their current terms in 2014, in response to recommendations by the Law Commission in its report on 'Expert Evidence in Criminal Proceedings in England and Wales', Commission report 325.³ In 2018 the Forensic Science Regulator wrote to the Committee raising concerns that some expert witnesses on occasion have failed to provide those who commission them, or the courts, with fair and accurate accounts of their qualifications and expertise. She asked the Committee to review how the rules are expressed. Having done so, the Committee concluded that the current rules allow for uncertainty about what should be disclosed, and by whom. It received reports from its members of, on the one hand, experts who recognised no obligation to disclose serious criticism by the Court of Appeal and, on the other, experts who thought that they were required to disclose, in one case, fixed penalty notices for parking infractions and, in another, details of matrimonial proceedings, where neither was in any way material to the evidence that they were due to give. The Committee decided to amend the rules accordingly. It has asked the Lord Chief Justice by means of the Criminal Practice Directions made by him to give examples of matters that ought to be disclosed.

Withholding in the public interest information that an expert witness could give

Rule 6 of the Amendment Rules also adds a new rule 19.9 to the Criminal Procedure Rules to supply a procedure where the court is asked for permission to withhold in the public interest information that expert evidence otherwise might include, for example information about criminal investigative techniques.

The judgment of the Court of Appeal in *R v Kelly* [2018] EWCA Crim 1893⁴ was about the extraction of messages from an electronic device despite the encryption used. The prosecution did not want their expert witness to give details of how that had been done, and argued that in that particular case the technique was irrelevant to what was in dispute. The Court of Appeal held that courts have a power to allow a party who introduces expert evidence to withhold some of the information that otherwise might be revealed, if it is in the public interest to do so and, where that party is the prosecutor, as long as that is not unfair to the defendant. At present there is no prescribed procedure for making such an application to a trial court. The Rule Committee decided that a procedure should be supplied.

Charges in extradition cases

Rule 9 of the Amendment Rules makes changes to rule 50.4 of the Criminal Procedure Rules, the rule about case management in extradition cases, so as to require the representative of the requesting state to take reasonable steps to ensure that the requested defendant can understand what is alleged and, in particular, to identify the equivalent offence under English and Welsh law where the alleged conduct abroad has to correspond with an offence under the law of England and Wales.

The judgment of the High Court in the case of *Tamas Biri* [2018] EWHC 50 (Admin)⁵ concerned a defendant who had been convicted of various offences in Hungary, some of

³ See: www.lawcom.gov.uk/project/expert-evidence-in-criminal-proceedings/

⁴ See: www.bailii.org/ew/cases/EWCA/Crim/2018/1893.html.

⁵ See: www.bailii.org/ew/cases/EWHC/Admin/2018/50.html.

which fell within the definition of an 'extradition offence' in the Extradition Act 2003 because of how they were described while others did not. Those others would constitute extradition offences only if the conduct alleged would have amounted to an offence under English and Welsh law if it had occurred in this jurisdiction. The High Court recommended that in such a case a charge should be drafted to specify the alleged conduct and to demonstrate what is said to be the equivalent English and Welsh offence, so as to avoid the confusion which the court found had occurred. The Rule Committee accepted that recommendation and has added that requirement to the current rule.

Other amendments

The Amendment Rules correct cross-references in rules 5.4 (in the note to the rule), 5.9 (in the heading and in the note to the rule), 24.9 and 34.7 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
14 February 2019