

PART 46

REPRESENTATIVES

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Functions of representatives and supporters

46.1.—(1) Under these Rules, anything that a party may or must do may be done—

- (a) by a legal representative on that party's behalf;
- (b) by a person with the corporation's written authority, where that corporation is a defendant;
- (c) with the help of a parent, guardian or other suitable supporting adult where that party is a defendant—
 - (i) who is under 18, or
 - (ii) whose understanding of what the case involves is limited

unless other legislation (including a rule) otherwise requires.

(2) A member, officer or employee of a prosecutor may, on the prosecutor's behalf—

- (a) serve on the magistrates' court officer, or present to a magistrates' court, an information under section 1 of the Magistrates' Courts Act 1980(a); or
- (b) issue a written charge and requisition, or single justice procedure notice, under section 29 of the Criminal Justice Act 2003(b).

[Note. See also section 122 of the Magistrates' Courts Act 1980(c). A party's legal representative must be entitled to act as such under section 13 of the Legal Services Act 2007(d).

Section 33(6) of the Criminal Justice Act 1925(e), section 46 of the Magistrates' Courts Act 1980(f) and Schedule 3 to that Act(g) provide for the representation of a corporation.

Sections 3 and 6 of the Prosecution of Offences Act 1985(h) make provision about the institution of prosecutions.

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- (a) 1980 c. 43; section 1 was amended by section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), sections 43 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39), section 31 of, and paragraph 12 of Schedule 7 to, the Criminal Justice Act 2003 (c. 44) and section 153 of the Police Reform and Social Responsibility Act 2011. It is further amended by paragraphs 7 and 8 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.
 - (b) 2003 c. 44; section 29 has been brought into force for certain purposes only (see S.I. 2007/1999, S.I. 2008/1424 and S.I. 2009/2879). It was amended by section 50 of, and paragraph 130 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11) and section 59 of, and paragraph 196 of Schedule 4 to, the Serious Organised Crime and Police Act 2005 (c. 15).
 - (c) 1980 c. 43; section 122 was amended by section 125(3) of, and paragraph 25 of Schedule 18 to, the Courts and Legal Services Act 1990 (c. 41).
 - (d) 2007 c. 29.
 - (e) 1925 c. 86.
 - (f) 1980 c. 43.
 - (g) 1980 c. 43; Schedule 3 was amended by sections 25(2) and 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), section 47 of, and paragraph 13 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25) (in relation to proceedings begun on or after 1 April 1997) and paragraph 51 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44).
 - (h) 1985 c. 23; section 3 was amended by section 15 of, and paragraph 13 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), paragraph 39 of Schedule 7 to the Police Act 1996 (c. 16), section 134 of, and paragraph 48 of Schedule 9 to, the Police

Section 223 of the Local Government Act 1972(a) allows a member or officer of a local authority on that authority's behalf to prosecute or defend a case before a magistrates' court, and to appear in and to conduct any proceedings before a magistrates' court.

Part 7 contains rules about starting a prosecution.]

Notice of appointment, etc. of legal representative: general rules

46.2.—(1) This rule applies—

- (a) in relation to a party who does not have legal aid for the purposes of a case;
- (b) where such a party—
 - (i) appoints a legal representative for the purposes of the case, or
 - (ii) dismisses such a representative, with or without appointing another;
- (c) where a legal representative for such a party withdraws from the case.

(2) Where paragraph (1)(b) applies, that party must give notice of the appointment or dismissal to—

- (a) the court officer;
- (b) each other party; and
- (c) where applicable, the legal representative who has been dismissed,

as soon as practicable and in any event within 5 business days.

(3) Where paragraph (1)(c) applies, that legal representative must, as soon as practicable, give notice to—

- (a) the court officer;
- (b) the party whom he or she has represented; and
- (c) each other party.

(4) Any such notice—

- (a) may be given orally, but only if—
 - (i) it is given at a hearing, and
 - (ii) it specifies no restriction under paragraph (5)(b) (restricted scope of appointment);
- (b) otherwise, must be in writing.

(5) A notice of the appointment of a legal representative—

- (a) must identify—
 - (i) the legal representative who has been appointed, with details of how to contact that representative, and

Act 1997 (c. 50), section 164 of the Immigration and Asylum Act 1999 (c. 33), paragraph 10 of Schedule 7 to the Police Reform Act 2002 (c. 30), sections 86 and 92 of, and Schedule 3 to, the Anti-social Behaviour Act 2003 (c. 38), section 190 of the Extradition Act 2003 (c. 41), section 7 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19), section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), sections 59, 140 and 174 of, and paragraph 47 of Schedule 4 and Part 2 of Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c. 15), sections 7, 8 and 52 of, and paragraph 15 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38), section 74 of, and paragraph 149 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), paragraph 171 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13), section 15 of, and paragraph 30 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22) and article 3 of, and paragraphs 1 and 2 of the Schedule to, S.I. 2014/834.

- (a) 1972 c. 70; section 223 was amended by paragraph 9 of Schedule 3 to the Solicitors Act 1974 (c. 47), section 134 of, and Schedule 10 to, the Police Act 1977 (c. 50), section 84 of, and paragraph 21 of Schedule 14 to, the Local Government Act 1985 (c. 51), section 237 of, and Schedule 13 to, the Education Reform Act 1988 (c. 40), section 120 of, and paragraph 17 of Schedule 22 and Schedule 24 to, the Environment Act 1995 (c. 25), paragraph 1 of Schedule 7 to the Police Act 1996 (c. 16), paragraphs 1 and 13 of Schedule 13 to the Local Government and Public Involvement in Health Act 2007 (c. 28), section 208 of, and paragraph 28 of Schedule 21 to, the Legal Services Act 2007 (c. 29), paragraphs 10 and 24 of Schedule 6 to the Local Democracy, Economic Development and Construction Act 2009 (c. 20), paragraphs 100 and 109 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13) and article 2 of, and paragraphs 1 and 2 of the Schedule to, S.I. 2001/3719.

- (ii) all those to whom the notice is given;
- (b) may specify a restriction, or restrictions, on the purpose or duration of the appointment; and
- (c) if it specifies any such restriction, may nonetheless provide that documents may continue to be served on the represented party at the representative's address until—
 - (i) further notice is given under this rule, or
 - (ii) that party obtains legal aid for the purposes of the case.

(6) A legal representative who is dismissed by a party or who withdraws from representing a party must, as soon as practicable, make available to that party such documents in the representative's possession as have been served on that party.

Application to change legal representative: legal aid

46.3.—(1) This rule applies—

- (a) in relation to a party who has legal aid for the purposes of a case;
- (b) where such a party wants to select a legal representative in place of the representative named in the legal aid representation order.

(2) Such a party must—

- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so; and
- (b) serve the application on—
 - (i) the court officer, and
 - (ii) the legal representative named in the legal aid representation order.

(3) The application must—

- (a) explain what the case is about, including what offences are alleged, what stage it has reached and what is likely to be in issue at trial;
- (b) explain how and why the applicant chose the legal representative named in the legal aid representation order;
- (c) if an advocate other than that representative has been instructed for the applicant, explain whether the applicant wishes to replace that advocate;
- (d) explain, giving relevant facts and dates—
 - (i) in what way, in the applicant's opinion, there has been a breakdown in the relationship between the applicant and the current representative such that neither the individual representing the applicant nor any colleague of his or hers any longer can provide effective representation, or
 - (ii) what other compelling reason, in the applicant's opinion, means that neither the individual representing the applicant nor any colleague of his or hers any longer can provide effective representation;
- (e) give details of any previous application by the applicant to replace the legal representative named in the legal aid representation order;
- (f) state whether the applicant—
 - (i) waives the legal professional privilege attaching to the applicant's communications with the current representative, to the extent required to allow that representative to respond to the matters set out in the application, or
 - (ii) declines to waive that privilege and acknowledges that the court may draw such inferences as it thinks fit in consequence;
- (g) explain how and why the applicant has chosen the proposed new representative;
- (h) include or attach a statement by the proposed new representative which—

- (i) confirms that that representative is eligible and willing to conduct the case for the applicant,
 - (ii) confirms that that representative can and will meet the current timetable for the case, including any hearing date or dates that have been set, if the application succeeds,
 - (iii) explains what, if any, dealings that representative has had with the applicant before the present case; and
- (i) ask for a hearing, if the applicant wants one, and explain why it is needed.
- (4) The legal representative named in the legal aid representation order must—
 - (a) respond in writing no more than 5 business days after service of the application; and
 - (b) serve the response on—
 - (i) the court officer,
 - (ii) the applicant, and
 - (iii) the proposed new representative.
- (5) The response must—
 - (a) explain which, if any, of the matters set out in the application the current representative disputes;
 - (b) explain, as appropriate, giving relevant facts and dates—
 - (i) whether, and if so in what way, in the current representative’s opinion, there has been a breakdown in the relationship with the applicant such that neither the individual representing the applicant nor any colleague of his or hers any longer can provide effective representation,
 - (ii) whether, in the current representative’s opinion, there is some other compelling reason why neither the individual representing the applicant nor any colleague of his or hers any longer can provide effective representation, and if so what reason,
 - (iii) whether the current representative considers there to be a duty to withdraw from the case in accordance with professional rules of conduct, and if so the nature of that duty, and
 - (iv) whether the current representative no longer is able to represent the applicant through circumstances outside the representative’s control, and if so the particular circumstances that render the representative unable to do so;
 - (c) explain what, if any, dealings the current representative had had with the applicant before the present case; and
 - (d) ask for a hearing, if the current representative wants one, and explain why it is needed.
- (6) The court may determine the application—
 - (a) without a hearing, as a general rule; or
 - (b) at a hearing, which must be in private unless the court otherwise directs.
- (7) Unless the court otherwise directs, any hearing must be in the absence of each other party and each other party’s representative and advocate (if any).
- (8) If the court allows the application, as soon as practicable—
 - (a) the current representative must make available to the new representative such documents in the current representative’s possession as have been served on the applicant party; and
 - (b) the new representative must serve notice of appointment on each other party.
- (9) Paragraph (10) applies where—
 - (a) the court refuses the application;
 - (b) in response to that decision—
 - (i) the applicant declines further representation by the current representative or asks for legal aid to be withdrawn, or

- (ii) the current representative declines further to represent the applicant; and
 - (c) the court in consequence withdraws the applicant's legal aid.
- (10) The court officer must serve notice of the withdrawal of legal aid on—
- (a) the applicant; and
 - (b) the current representative.

[Note. Under sections 16 and 19 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(a) and Part 2 of the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013(b), a court before which criminal proceedings take place may determine whether an individual qualifies for legal aid representation in accordance with the 2012 Act.

Under regulation 13 of the 2013 Regulations, in relation to any proceedings involving co-defendants a represented person must select a representative who is also instructed by a co-defendant unless there is, or there is likely to be, a conflict of interest between the two defendants.

Under regulation 14 of the 2013 Regulations, once a representative has been selected the person who is represented has no right to select another in the place of the first unless the court so decides, in the circumstances set out in the regulation.

Under regulation 9 of the 2013 Regulations, if a represented person declines to accept representation on the terms offered or requests that legal aid representation is withdrawn, or if the current representative declines to continue to represent that person, the court may withdraw legal aid.

See also regulation 11 of the 2013 Regulations, which requires that an application under regulation 14 (among others) must be made by the represented person, must be in writing and must specify the grounds.

The Practice Direction sets out forms of application and response for use in connection with this rule.]

(a) 2012 c. 10.
(b) S.I. 2013/614.