

2018 No. 132 (L. 2)

SENIOR COURTS OF ENGLAND AND WALES
MAGISTRATES' COURTS, ENGLAND AND WALES

The Criminal Procedure (Amendment) Rules 2018

<i>Made</i> - - - -	<i>31st January 2018</i>
<i>Laid before Parliament</i>	<i>1st February 2018</i>
<i>Coming into force</i> - -	<i>2nd April 2018</i>

The Criminal Procedure Rule Committee makes the following Rules under section 69 of the Courts Act 2003(a), after consulting in accordance with section 72(1)(a) of that Act.

Citation, commencement and interpretation

1. These Rules may be cited as the Criminal Procedure (Amendment) Rules 2018 and shall come into force on 2nd April 2018.

2. In these Rules, a reference to a Part or rule by number alone means the Part or rule so numbered in the Criminal Procedure Rules 2015(b).

Amendments to the Criminal Procedure Rules 2015

3. In Part 2 (Understanding and applying the Rules), in the definition of legal representative in rule 2.2 (Definitions) for “rule 46.2 (Notice of appointment or change of legal representative)” substitute “rule 46.2 (Notice of appointment, etc. of legal representative: general rules)”.

4. In Part 3 (Case management)—

(a) in rule 3.1 (When this Part applies), after paragraph (2) insert—

“(3) Rule 3.27 applies in a magistrates’ court unless—

(a) the court sends the defendant for trial in the Crown Court; or

(b) the case is one to which rule 24.8 or rule 24.9 applies (Written guilty plea: special rules; Single justice procedure: special rules).”;

(b) in rule 3.21 (Application for joint or separate trials, etc.), for paragraph (4) substitute—

“(4) Where the same indictment charges more than one offence, the court may exercise its power to order separate trials of those offences if of the opinion that—

(a) the defendant otherwise may be prejudiced or embarrassed in his or her defence (for example, where the offences to be tried together are neither founded on the

(a) 2003 c. 39; section 69 was amended by sections 15(1) and 146 of, and paragraphs 308 and 332 of Schedule 4 and Part 2 of Schedule 18 to, the Constitutional Reform Act 2005 (c. 4).

(b) S.I. 2015/1490; amended by S.I. 2016/120, 2016/705, 2017/144, 2017/282, 2017/755, 2017/915.

same facts nor form or are part of a series of offences of the same or a similar character); or

- (b) for any other reason it is desirable that the defendant should be tried separately for any one or more of those offences.”.

5. In Part 5 (Forms and court records)—

- (a) in rule 5.5 (Recording and transcription of proceedings in the Crown Court)—

- (i) for paragraph (2) substitute—

“(2) Unless the court otherwise directs, a person who transcribes a recording of proceedings under such arrangements—

- (a) may only supply a transcript of a recording of a hearing in private to—

- (i) the Registrar, or
 - (ii) an individual who was present at that hearing;

- (b) if the recording of a hearing in public contains information to which reporting restrictions apply, may only supply a transcript containing that information to—

- (i) the Registrar, or
 - (ii) a recipient to whom that supply will not contravene those reporting restrictions;

- (c) subject to paragraph (2)(a) and (b), must supply any person with any transcript for which that person asks—

- (i) in accordance with the transcription arrangements made by the court officer, and
 - (ii) on payment by that person of any fee prescribed.”, and

- (ii) at the end of the note to the rule insert—

“For the circumstances in which reporting restrictions may apply, see the provisions listed in the note to rule 6.1. In summary, reporting restrictions prohibit the publication of the information to which they apply where that publication is likely to lead members of the public to acquire the information concerned.”;

- (b) in rule 5.7 (Supply to a party of information or documents from records or case materials), for paragraph (1) substitute—

“(1) This rule—

- (a) applies where—

- (i) a party wants information, or a copy of a document, from records or case materials kept by the court officer (for example, in case of loss, or to establish what is retained), or
 - (ii) a person affected by an order made, or warrant issued, by the court wants such information or such a copy; but

- (b) does not apply to—

- (i) a recording arranged under rule 5.5 (Recording and transcription of proceedings in the Crown Court),
 - (ii) a copy of such a recording, or
 - (ii) a transcript of such a recording.”; and

- (c) in rule 5.8 (Supply to the public, including reporters, of information about cases), after paragraph (1)(b) insert—

“(c) does not apply to—

- (i) a recording arranged under rule 5.5 (Recording and transcription of proceedings in the Crown Court),
 - (ii) a copy of such a recording, or

(ii) a transcript of such a recording.”.

6. In Part 7 (Starting a prosecution in a magistrates’ court)—

(a) for rule 7.2 (Information and written charge) substitute—

“Application for summons, etc.

7.2.—(1) A prosecutor who wants the court to issue a summons must—

- (a) serve on the court officer a written application; or
- (b) unless other legislation prohibits this, present an application orally to the court, with a written statement of the allegation or allegations made by the prosecutor.

(2) A prosecutor who wants the court to issue a warrant must—

- (a) serve on the court officer—
 - (i) a written application, or
 - (ii) a copy of a written charge that has been issued; or
- (b) present to the court either of those documents.

(3) An application for the issue of a summons or warrant must—

- (a) set out the allegation or allegations made by the applicant in terms that comply with rule 7.3 (Allegation of offence in application or charge); and
- (b) demonstrate—
 - (i) that the application is made in time, if legislation imposes a time limit, and
 - (ii) that the applicant has the necessary consent, if legislation requires it.

(4) As well as complying with paragraph (3), an application for the issue of a warrant must—

- (a) demonstrate that the offence or offences alleged can be tried in the Crown Court;
- (b) demonstrate that the offence or offences alleged can be punished with imprisonment; or
- (c) concisely outline the applicant’s grounds for asserting that the defendant’s address is not sufficiently established for a summons to be served.

(5) Paragraph (6) applies unless the prosecutor is—

- (a) represented by a legal representative for the purposes of the application under this rule;
- (b) a public authority within the meaning of section 17 of the Prosecution of Offences Act 1985(a); or
- (c) a person acting—
 - (i) on behalf of such an authority, or
 - (ii) in that person’s capacity as an official appointed by such an authority.

(6) Where this paragraph applies, as well as complying with paragraph (3), and with paragraph (4) if applicable, an application for the issue of a summons or warrant must—

- (a) concisely outline the grounds for asserting that the defendant has committed the alleged offence or offences;
- (b) disclose—
 - (i) details of any previous such application by the same applicant in respect of any allegation now made, and

(a) 1985 c. 23; section 17 was amended by section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and paragraphs 1 and 4 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

- (ii) details of any current or previous proceedings brought by another prosecutor in respect of any allegation now made; and
- (c) include a statement that to the best of the applicant's knowledge, information and belief—
 - (i) the allegations contained in the application are substantially true,
 - (ii) the evidence on which the applicant relies will be available at the trial,
 - (iii) the details given by the applicant under paragraph (6)(b) are true, and
 - (iv) the application discloses all the information that is material to what the court must decide.
- (7) Where the statement required by paragraph (6)(c) is made orally—
 - (a) the statement must be on oath or affirmation, unless the court otherwise directs; and
 - (b) the court must arrange for a record of the making of the statement.
- (8) An authorised prosecutor who issues a written charge must notify the court officer immediately.
- (9) A single document may contain—
 - (a) more than one application; or
 - (b) more than one written charge.
- (10) Where an offence can be tried only in a magistrates' court, then unless other legislation otherwise provides—
 - (a) a prosecutor must serve an application for the issue of a summons or warrant on the court officer or present it to the court; or
 - (b) an authorised prosecutor must issue a written charge,
 not more than 6 months after the offence alleged.
- (11) Where an offence can be tried in the Crown Court then—
 - (a) a prosecutor must serve an application for the issue of a summons or warrant on the court officer or present it to the court; or
 - (b) an authorised prosecutor must issue a written charge,
 within any time limit that applies to that offence.
- (12) The court may determine an application to issue or withdraw a summons or warrant—
 - (a) without a hearing, as a general rule, or at a hearing (which must be in private unless the court otherwise directs);
 - (b) in the absence of—
 - (i) the prosecutor,
 - (ii) the defendant;
 - (c) with or without representations by the defendant.
- (13) If the court so directs, a party to an application to issue or withdraw a summons or warrant may attend a hearing by live link or telephone.

[Note. In some legislation, including the Magistrates' Courts Act 1980, an application for the issue of a summons or warrant is described as an 'information' and serving an application on the court officer or presenting it to the court is described as 'laying' that information.

The time limits for serving or presenting an application and for issuing a written charge are prescribed by section 127 of the Magistrates' Courts Act 1980(a) and section 30(5) of the Criminal Justice Act 2003(b).

In section 17 of the Prosecution of Offences Act 1985 'public authority' means (a) a police force as defined by that Act, (b) the Crown Prosecution Service or any other government department, (c) a local authority or other authority or body constituted for purposes of the public service or of local government, or carrying on under national ownership any industry or undertaking or part of an industry or undertaking, or (d) any other authority or body whose members are appointed by Her Majesty or by any Minister of the Crown or government department or whose revenues consist wholly or mainly of money provided by Parliament.

Part 46 (Representatives) contains rules allowing a member, officer or employee of a prosecutor, on the prosecutor's behalf, to—

- (a) serve on the court officer or present to the court an application for the issue of a summons or warrant; or*
- (b) issue a written charge and requisition.*

See Part 3 for the court's general powers of case management, including power to consider applications and give directions for (among other things) the amendment of an allegation or charge and for separate trials.

See also Part 32 (Breach, revocation and amendment of community and other orders). Rule 32.2(2) (Application by responsible officer) applies rules 7.2 to 7.4 to the procedure with which that rule deals.

The Practice Direction sets out a form of application for use in connection with rule 7.2(6).J”;

- (b) in rule 7.3 (Allegation of offence in information or charge)—*
 - (i) for the heading to the rule substitute “Allegation of offence in application for summons, etc. or charge”, and*
 - (ii) in paragraph (1), for “An allegation of an offence in an information or charge” substitute “An allegation of an offence in an application for the issue of a summons or warrant or in a charge”;*
- (c) in rule 7.4 (Summons, warrant and requisition)—*
 - (i) omit paragraph (1),*
 - (ii) renumber paragraphs (2) to (9) as paragraphs (1) to (8) respectively,*
 - (iii) in paragraph (3), as thus renumbered, for “information” substitute “application for the issue of that summons”, and*
 - (iv) in paragraph (7), as thus renumbered, for “information” substitute “application” and for “by leaving or posting it under rule 4.7 (documents that must be served only by handing them over, leaving or posting them)” substitute “under rule 4.4 (Service by leaving or posting a document)”;* and
- (d) amend the table of contents correspondingly.*

7. In Part 10 (The indictment), in the second paragraph of the note to rule 10.2 (The indictment: general rules) for “must” substitute “may”.

8. In Part 13 (Warrants for arrest, detention or imprisonment), in rule 13.3 (Terms of a warrant for detention or imprisonment) after paragraph (2) insert—

(a) 1980 c. 43.

(b) 2003 c. 44; section 30(5) was amended by section 47 of the Criminal Justice and Courts Act 2015 (c.2).

“(3) Where a magistrates’ court sentences a defendant to imprisonment or detention and section 11(3) of the Magistrates’ Courts Act 1980(a) applies (custodial sentence imposed in the defendant’s absence), the warrant it issues must—

- (a) require each person to whom the warrant is directed—
 - (i) to arrest the defendant and bring him or her to a court specified in the warrant, and
 - (ii) unless the court then otherwise directs, after that to act as required by paragraph (1)(a) of this rule; and
- (b) require the custodian to whom the defendant is delivered in accordance with that paragraph to act as required by paragraph (1)(b) of this rule.”.

9. In Part 19 (Expert evidence), in rule 19.4 (Content of expert’s report) for paragraph (e) substitute—

- “(e) where the expert has based an opinion or inference on a representation of fact or opinion made by another person for the purposes of criminal proceedings (for example, as to the outcome of an examination, measurement, test or experiment)—
 - (i) identify the person who made that representation to the expert,
 - (ii) give the qualifications, relevant experience and any accreditation of that person, and
 - (iii) certify that that person had personal knowledge of the matters stated in that representation;”.

10. For Part 22 (Evidence of a complainant’s previous sexual behaviour) substitute the Part set out in the Schedule to these Rules.

11. In Part 23 (Restriction on cross-examination by a defendant)—

- (a) in rule 23.2 (Appointment of advocate to cross-examine witness)—
 - (i) for paragraph (2)(b) substitute—
 - “(b) that if the defendant will not be represented by a lawyer with a right of audience in the court for the purposes of the case then the defendant is entitled to arrange for such a lawyer to cross-examine the witness on his or her behalf;”,
 - (ii) in paragraph (2)(d)(i), for “for the defendant” substitute “in the defendant’s interests”,
 - (iii) in paragraph (2)(d)(ii), after “a lawyer chosen by the court” insert “who will not be responsible to the defendant”, and
 - (iv) for paragraphs (4) to (6) substitute—
 - “(4) The court may give the explanations and ask the questions required by this rule—
 - (a) at a hearing, in public or in private; or
 - (b) without a hearing, by written notice to the defendant.
 - (5) The court may extend (even after it has expired) the time limit that it sets under paragraph (3)(a)—
 - (a) on application by the defendant; or
 - (b) on its own initiative.
 - (6) Paragraphs (7), (8), (9) and (10) apply where the court appoints an advocate.

(a) 1980 c. 43; section 11(3) was amended by section 123 of, and paragraph 1 of Schedule 8 to, the Criminal Justice Act 1988 (c. 33), section 168 of, and paragraph 39 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 39 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 304 of, and paragraphs 25 and 26 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44) and section 54 of the Criminal Justice and Immigration Act 2008 (c. 4).

(7) The directions that the court gives under paragraph (3)(b)(ii) must provide for the supply to the advocate of a copy of—

- (a) all material served by one party on the other, whether before or after the advocate's appointment, to which applies—
 - (i) Part 8 (Initial details of the prosecution case),
 - (ii) in the Crown Court, rule 9.15 (service of prosecution evidence in a case sent for trial),
 - (iii) Part 16 (Written witness statements),
 - (iv) Part 19 (Expert evidence),
 - (v) Part 20 (Hearsay evidence),
 - (vi) Part 21 (Evidence of bad character),
 - (vii) Part 22 (Evidence of a complainant's previous sexual behaviour);
- (b) any material disclosed, given or served, whether before or after the advocate's appointment, which is—
 - (i) prosecution material disclosed to the defendant under section 3 (Initial duty of prosecutor to disclose) or section 7A (Continuing duty of prosecutor to disclose) of the Criminal Procedure and Investigations Act 1996(a),
 - (ii) a defence statement given by the defendant under section 5 (Compulsory disclosure by accused) or section 6 (Voluntary disclosure by accused) of the 1996 Act(b),
 - (iii) a defence witness notice given by the defendant under section 6C of that Act(c) (Notification of intention to call defence witnesses), or
 - (iv) an application by the defendant under section 8 of that Act(d) (Application by accused for disclosure);
- (c) any case management questionnaire prepared for the purposes of the trial or, as the case may be, the appeal; and
- (d) all case management directions given by the court for the purposes of the trial or the appeal.

(8) Where the defendant has given a defence statement—

- (a) section 8(2) of the Criminal Procedure and Investigations Act 1996 is modified to allow the advocate, as well as the defendant, to apply for an order for prosecution disclosure under that subsection if the advocate has reasonable cause to believe that there is prosecution material concerning the witness which is required by section 7A of the Act to be disclosed to the defendant and has not been; and
- (b) rule 15.5 (Defendant's application for prosecution disclosure) applies to an application by the advocate as it does to an application by the defendant.

(9) Before receiving evidence the court must establish, with the active assistance of the parties and of the advocate, and in the absence of any jury in the Crown Court—

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- (a) 1996 c. 25; section 3 was amended by section 82 of, and paragraph 7 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23) and section 32 of, and paragraphs 20 and 21 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44). It is further amended by section 271 of, and paragraph 39 of Schedule 10 to, the Investigatory Powers Act 2016 (c. 25), with effect from a date to be appointed. Section 7A was inserted by section 37 of the Criminal Justice Act 2003 (c. 44). It, too, is amended by section 271 of, and paragraph 39 of Schedule 10 to, the Investigatory Powers Act 2016 (c. 25), with effect from a date to be appointed.
 - (b) 1996 c. 25; section 5 was amended by section 119 of, and paragraph 126 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), in respect of certain proceedings only, and by section 33 of, and paragraph 66 of Schedule 3, paragraphs 20 and 23 of Schedule 36 and Parts 3 and 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44). Section 6 was amended by paragraphs 20 and 24 of Schedule 36 and Part 3 of Schedule 37 to the Criminal Justice Act 2003 (c. 44). For transitional provisions and savings see paragraph (2) of Schedule 2 to S.I. 2005/950.
 - (c) 1996 c. 25; section 6C was inserted by section 34 of the Criminal Justice Act 2003 (c. 44).
 - (d) 1996 c. 25; section 8 was amended by section 82 of, and paragraph 7 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23) and section 38 of the Criminal Justice Act 2003 (c. 44). It is further amended by section 271 of, and paragraph 39 of Schedule 10 to, the Investigatory Powers Act 2016 (c. 25), with effect from a date to be appointed.

- (a) what issues will be the subject of the advocate’s cross-examination; and
- (b) whether the court’s permission is required for any proposed question, for example where Part 21 or Part 22 applies.

(10) The appointment terminates at the conclusion of the cross-examination of the witness.”, and

- (v) at the end of the note to the rule insert—

“Under section 38(7) of the 1999 Act(a), where the court appoints an advocate Criminal Procedure Rules may apply with modifications any of the provisions of Part I of the Criminal Procedure and Investigations Act 1996. A summary of the disclosure requirements of the 1996 Act is at the end of Part 15 (Disclosure). Under section 5 of that Act, in the Crown Court the defendant must give a defence statement. Under section 6, in a magistrates’ court the defendant may give such a statement but need not do so. Under section 6C, in the Crown Court and in magistrates’ courts the defendant must give a defence witness notice indicating whether he or she intends to call any witnesses (other than him or herself) and, if so, identifying them. Under section 8 a defendant may apply for prosecution disclosure only if the defendant has given a defence statement.”; and

- (b) in the note to rule 23.5 (Application to discharge prohibition imposed by the court), omit “The Practice Direction sets out a form of application for use in connection with this rule.”.

12. In Part 24 (Trial and sentence in a magistrates’ court)—

- (a) in rule 24.12 (Procedure where a party is absent), for paragraph (4) substitute—

“(4) Where the defendant is absent, the court—

- (a) must exercise its power to issue a warrant for the defendant’s arrest and detention in the terms required by rule 13.3(3) (Terms of a warrant for detention or imprisonment), if it passes a custodial sentence; and
- (b) may exercise its power to issue a warrant for the defendant’s arrest in any other case, if it does not apply the general rule in paragraph (3)(a) of this rule about proceeding in the defendant’s absence.”; and

- (b) in the note to rule 24.12, at the end of the fourth sentence after “that sentence” insert “: see also rule 13.3”.

13. In Part 25 (Trial and sentence in the Crown Court)—

- (a) in rule 25.14 (Directions to the jury and taking the verdict)—

- (i) for paragraph (3)(d), (e) and (f) substitute—

“(d) if necessary, recall the jury—

- (i) to answer jurors’ questions, or
- (ii) to give directions, or further directions, about considering and delivering its verdict or verdicts, including, if appropriate, directions about reaching a verdict by a majority;

- (e) in a case in which the jury is required to return a single verdict—

- (i) recall the jury (unless already recalled) when it informs the court that it has reached its verdict, and
- (ii) direct the delivery of that verdict there and then;

- (f) in a case in which the jury is required to return two or more verdicts—

- (i) recall the jury (unless already recalled) when it informs the court that it has reached a verdict or verdicts, and

(a) 1999 c. 23; section 38(7) was amended by section 109 of, and paragraph 384(f) of Schedule 8 to, the Courts Act 2003 (c. 39).

- (ii) ask the jury whether its members all agree on every verdict required;
- (g) if the answer to that question is ‘yes’, direct the delivery of each of those verdicts there and then; and
- (h) if the answer to that question is ‘no’—
 - (i) direct the delivery there and then of any unanimous verdict that has been reached, or
 - (ii) postpone the taking of any such verdict while the jury considers each other verdict required.”, and
- (ii) in paragraph (5), for “When the court recalls the jury to deliver its verdict” substitute “When the court directs the jury to deliver its verdict or verdicts”; and
- (b) in the note to rule 25.14, for “rule 25.14(5)” substitute “rule 25.14(6)”.

14. In Part 32 (Breach, revocation and amendment of community and other orders), in rule 32.2(2) (Application by responsible officer or supervisor) omit “by information and summons”.

15. In Part 36 (Appeal to the Court of Appeal: general rules)—

- (a) in the second paragraph of the note to rule 36.3 (Power to vary requirements) for “rule 41.2(2)” substitute “rule 41.2(4)”;
- (b) in rule 36.6 (Hearings)—
 - (i) renumber paragraph (5) as paragraph (6),
 - (ii) after paragraph (4) insert—

“(5) Where a party wants the court to reopen the determination of an appeal—

 - (a) the court—
 - (i) must decide the application without a hearing, as a general rule, but
 - (ii) may decide the application at a hearing; and
 - (b) need not announce its decision on such an application at a hearing in public.”, and
 - (iii) at the end of the note to the rule insert—

“For the procedure on an application to reopen the determination of an appeal, see rule 36.15.”;

- (c) after rule 36.14 (Grounds of appeal and opposition) insert—

“Reopening the determination of an appeal

36.15.—(1) This rule applies where—

- (a) a party wants the court to reopen a decision which determines an appeal or reference to which this Part applies (including a decision on an application for permission to appeal or refer);
 - (b) the Registrar refers such a decision to the court for the court to consider reopening it.
- (2) Such a party must—
- (a) apply in writing for permission to reopen that decision, as soon as practicable after becoming aware of the grounds for doing so; and
 - (b) serve the application on the Registrar.
- (3) The application must—
- (a) specify the decision which the applicant wants the court to reopen; and
 - (b) explain—
 - (i) why it is necessary for the court to reopen that decision in order to avoid real injustice,

- (ii) how the circumstances are exceptional and make it appropriate to reopen the decision notwithstanding the rights and interests of other participants and the importance of finality,
- (iii) why there is no alternative effective remedy among any potentially available, and
- (iv) any delay in making the application.

(4) The Registrar—

- (a) may invite a party's representations on—
 - (i) an application to reopen a decision, or
 - (ii) a decision that the Registrar has referred, or intends to refer, to the court; and
- (b) must do so if the court so directs.

(5) A party invited to make representations must serve them on the Registrar within such period as the Registrar directs.

(6) The court must not reopen a decision to which this rule applies unless each other party has had an opportunity to make representations.

[Note. The Court of Appeal has power only in exceptional circumstances to reopen a decision to which this rule applies.]; and

- (d) amend the table of contents correspondingly.

16. In Part 39 (Appeal to the Court of Appeal about conviction or sentence)—

- (a) in rule 39.3 (Form of appeal notice)—
 - (i) omit paragraph (1),
 - (ii) renumber paragraph (2) as paragraph (1),
 - (iii) in paragraph (1), as thus renumbered, at the beginning of the paragraph, for “The appeal notice” substitute “An appeal notice”,
 - (iv) for paragraph (1)(b), as thus renumbered, substitute—
 - “(b) identify each ground of appeal on which the appellant relies (and see paragraph (2));”,
 - (v) for paragraph (1)(e), (f), (g), (h), as thus renumbered, substitute—
 - “(e) include or attach any application for the following, with reasons—
 - (i) permission to appeal, if the appellant needs the court's permission,
 - (ii) an extension of time within which to serve the appeal notice,
 - (iii) bail pending appeal,
 - (iv) a direction to attend in person a hearing that the appellant could attend by live link, if the appellant is in custody,
 - (v) the introduction of evidence, including hearsay evidence and evidence of bad character,
 - (vi) an order requiring a witness to attend court,
 - (vii) a direction for special measures for a witness,
 - (viii) a direction for special measures for the giving of evidence by the appellant;
 - (f) identify any other document or thing that the appellant thinks the court will need to decide the appeal.”,
 - (vi) after paragraph (1), as thus renumbered, insert—
 - “(2) The grounds of appeal must—
 - (a) include in no more than the first two pages a summary of the grounds that makes what then follows easy to understand;

- (b) in each ground of appeal identify the event or decision to which that ground relates;
- (c) in each ground of appeal summarise the facts relevant to that ground, but only to the extent necessary to make clear what is in issue;
- (d) concisely outline each argument in support of each ground;
- (e) number each ground consecutively, if there is more than one;
- (f) identify any relevant authority and—
 - (i) state the proposition of law that the authority demonstrates, and
 - (ii) identify the parts of the authority that support that proposition; and
- (g) where the Criminal Cases Review Commission refers a case to the court, explain how each ground of appeal relates (if it does) to the reasons for the reference.”; and
- (vii) in the note to the rule, after “Note” insert “The Practice Direction sets out a form of appeal notice for use in connection with this rule.”; and
- (b) in the note to rule 39.7 (Introducing evidence) for “39.3(2)(h)(v), (vi)” substitute “39.3(1)(e)(v), (vi)”.

17. In Part 41 (Reference to the Court of Appeal of point of law or unduly lenient sentencing)—

- (a) for rule 41.2 (Service of notice of reference and application for permission) substitute—

“**41.2.**—(1) The Attorney General must serve any notice of reference and any application for permission to refer a sentencing case on—

 - (a) the Registrar; and
 - (b) the defendant.

(2) Where the Attorney General refers a point of law—

 - (a) the Attorney must give the Registrar details of—
 - (i) the defendant affected,
 - (ii) the date and place of the relevant Crown Court decision, and
 - (iii) the relevant verdict and sentencing; and
 - (b) the Attorney must give the defendant notice that—
 - (i) the outcome of the reference will not make any difference to the outcome of the trial, and
 - (ii) the defendant may serve a respondent’s notice.

(3) Where the Attorney General applies for permission to refer a sentencing case, the Attorney must give the defendant notice that—

 - (a) the outcome of the reference may make a difference to that sentencing, and in particular may result in a more severe sentence; and
 - (b) the defendant may serve a respondent’s notice.

(4) The Attorney General must serve an application for permission to refer a sentencing case on the Registrar not more than 28 days after the last of the sentences in that case.

[Note. The time limit for serving an application for permission to refer a sentencing case is prescribed by paragraph 1 of Schedule 3 to the Criminal Justice Act 1988(a). It may be neither extended nor shortened.]”;
- (b) in rule 41.3 (Form of notice of reference and application for permission) for paragraph (1) substitute—

“(1) A notice of reference and an application for permission to refer a sentencing case must give the year and number of that reference or that case.”;

(a) 1988 c. 33.

- (c) omit rule 41.4 (Registrar’s notice to defendant);
- (d) renumber rule 41.5 (Respondent’s notice), rule 41.6 (Variation or withdrawal of notice of reference or application for permission), rule 41.7 (Right to attend hearing) and rule 41.8 (Anonymity of defendant on reference of point of law) as rules 41.4 to 41.7 respectively;
- (e) in rule 41.4, as thus renumbered—
 - (i) in paragraph (1), for “A defendant on whom the Registrar serves a reference” substitute “A defendant on whom the Attorney General serves a notice of reference”,
 - (ii) in paragraph (3), for “Registrar” substitute “Attorney” in each place it occurs,
 - (iii) in paragraph (4), renumber sub-paragraphs (a) to (d) as (b) to (e) respectively,
 - (iv) in paragraph (4), before sub-paragraph (b), as thus renumbered, insert—
 - “(a) give the date on which the respondent was served with the notice of reference;”,
 - (v) in paragraph (5), renumber sub-paragraphs (a) and (b) as (b) and (c) respectively, and
 - (vi) in paragraph (5), before sub-paragraph (b), as thus renumbered, insert—
 - “(a) give the date on which the respondent was served with the application;”; and
- (f) amend the table of contents correspondingly.

18. In Part 42 (Appeal to the Court of Appeal in confiscation and related proceedings)—

- (a) in rule 42.6 (Hearing by single judge), for “36.6(5)” substitute “36.6(6)”; and
- (b) in rule 42.10 (Appeal to the Supreme Court), in paragraph (3) for “36.6(5)” substitute “36.6(6)”.

19. In Part 46 (Representatives)—

- (a) in rule 46.2 (Notice of appointment, etc. of legal representative: general rules)—
 - (i) for paragraph (1)(a) substitute—
 - “(a) in relation to—
 - (i) a party who does not have legal aid for the purposes of a case, and
 - (ii) a party to an extradition case in the High Court, whether that party has legal aid or not;”, and
 - (ii) for paragraph (3) substitute—
 - “(3) Where paragraph (1)(c) applies, that legal representative must—
 - (a) as soon as practicable give notice to—
 - (i) the court officer,
 - (ii) the party whom he or she has represented, and
 - (iii) each other party; and
 - (b) where that legal representative has represented the defendant in an extradition case in the High Court, include with the notice—
 - (i) confirmation that the defendant has notice of when and where the appeal hearing will take place and of the need to attend, if the defendant is on bail,
 - (ii) details sufficient to locate the defendant, including details of the custodian and of the defendant’s date of birth and custody reference, if the defendant is in custody, and
 - (iii) details of any arrangements likely to be required by the defendant to facilitate his or her participation in consequence of the representative’s withdrawal, including arrangements for interpretation.”; and
 - (b) in rule 46.3 (Application to change legal representative: legal aid), in paragraph (1) after “This rule applies” insert “in a magistrates’ court, the Crown Court and the Court of Appeal”.

20. In Part 47 (Investigation orders and warrants)—

- (a) in rule 47.4 (When this Section applies)—
- (i) after paragraph (e) insert—
- “(f) a magistrates’ court can make a further information order under section 22B of the Terrorism Act 2000(a) in connection with—
- (i) an investigation into whether a person is involved in the commission of an offence under any of sections 15 to 18 of the 2000 Act(b),
- (ii) determining whether such an investigation should be started, or
- (iii) identifying terrorist property or its movement or use;
- (g) a magistrates’ court can make a further information order under section 339ZH of the Proceeds of Crime Act 2002(c) in connection with—
- (i) an investigation into whether a person is engaged in money laundering,
- (ii) determining whether such an investigation should be started, or
- (iii) an investigation into money laundering by an authority in a country outside the United Kingdom.”, and
- (ii) in the first paragraph of the note to the rule, after sub-paragraph (e) insert—
- “(f) under the Terrorism Act 2000, a further information order requiring a person to provide information related to a matter arising from a disclosure under section 21A of that Act(d) (Failure to disclose: regulated sector) or under the law of a country outside the United Kingdom which corresponds with Part III of that Act (Terrorist property);
- (g) under the Proceeds of Crime Act 2002, a further information order requiring a person to provide information related to a matter arising from a disclosure under Part 7 of that Act (Money laundering) or under the law of a country outside the United Kingdom which corresponds with that Part of that Act.”;
- (b) in rule 47.9 (Application to punish for contempt of court), at the end of the note to the rule insert—
- “If a person fails to comply with a further information order under the Terrorism Act 2000 or under the Proceeds of Crime Act 2002 the magistrates’ court may order that person to pay an amount not exceeding £5,000, which order may be enforced as if the sum due had been adjudged to be paid by a conviction: see section 22B(8), (9) of the Terrorism Act 2000 and section 339ZH((8), (9) of the Proceeds of Crime Act 2002.”;*
- (c) in rule 47.13 (Content of application for a disclosure order under the Terrorism Act 2000)—
- (i) for the heading to the rule substitute “Content of application for a disclosure order or further information order under the Terrorism Act 2000”,
- (ii) the existing text becomes paragraph (1),
- (iii) after paragraph (1) insert—
- “(2) As well as complying with rule 47.6, an applicant who wants the court to make a further information order must—
- (a) identify the respondent from whom the information is sought and explain—

(a) 2000 c. 11; section 22B is inserted by section 37 of the Criminal Finances Act 2017 (c. 22), with effect from a date to be appointed.

(b) 2000 c. 11; section 17A was inserted by section 42 of the Counter-Terrorism and Security Act 2015 (c. 6).

(c) 2002 c. 29; section 339ZH is inserted by section 12 of the Criminal Finances Act 2017 (c. 22), with effect from a date to be appointed.

(d) 2000 c. 11; section 21A was inserted by section 3 of, and paragraph 5 of Schedule 2 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24) and amended by regulation 2 of, and paragraphs 1 and 3 of Schedule 1 to, S.I. 2007/3398, section 59 of, and paragraphs 125 and 128 of, the Serious Organised Crime and Police Act 2005 (c. 15) and section 15 of, and paragraphs 67 and 72 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22).

- (i) whether the respondent is the person who made the disclosure to which the information relates or is otherwise carrying on a business in the regulated sector within the meaning of Part 1 of Schedule 3A to the 2000 Act^(a), and
- (ii) why the applicant thinks that the information is in the possession, or under the control, of the respondent;
- (b) specify or describe the information that the applicant wants the respondent to provide;
- (c) where the information sought relates to a disclosure of information by someone under section 21A of the 2000 Act (Failure to disclose: regulated sector), explain—
 - (i) how the information sought relates to a matter arising from that disclosure,
 - (ii) how the information would assist in investigating whether a person is involved in the commission of an offence under any of sections 15 to 18 of that Act^(b), or in determining whether an investigation of that kind should be started, or in identifying terrorist property or its movement or use, and
 - (iii) why it is reasonable in all the circumstances for the information to be provided;
- (d) where the information sought relates to a disclosure made under a requirement of the law of a country outside the United Kingdom which corresponds with Part III of the 2000 Act (Terrorist property), and an authority in that country which investigates offences corresponding with sections 15 to 18 of that Act has asked the National Crime Agency for information in connection with that disclosure, explain—
 - (i) how the information sought relates to a matter arising from that disclosure,
 - (ii) why the information is likely to be of substantial value to the authority that made the request in determining any matter in connection with the disclosure, and
 - (iii) why it is reasonable in all the circumstances for the information to be provided;
- (e) confirm that none of the information is expected to be subject to legal privilege; and
- (f) propose the terms of the order, including—
 - (i) how the respondent must provide the information required, and
 - (ii) the date by which the information must be provided.

(3) Rule 47.8 (Application to vary or discharge an order) does not apply to a further information order.

(4) Paragraph (5) applies where a party to an application for a further information order wants to appeal to the Crown Court from the decision of the magistrates' court.

(5) The appellant must—

- (a) serve an appeal notice—
 - (i) on the Crown Court officer and on the other party,

(a) 2000 c. 11; Part 1 of Schedule 3A was inserted by section 3 of, and paragraph 5 of Schedule 2 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24), substituted by article 2 of S.I. 2007/3288 and amended by articles 3 and 6 of, and paragraph 25 of Schedule 1 to, S.I. 2008/948, sections 183 and 237 of, and paragraph 1 of Schedule 18 and Part 29 of Schedule 25 to, the Localism Act 2011 (c. 20), regulation 79 of, and paragraph 3 of Schedule 4 to, S.I. 2011/99, article 2 of S.I. 2011/2701, article 2 of S.I. 2012/2299, article 2 of S.I. 2012/1534, regulation 46 of, and paragraph 40 of Schedule 2 to, S.I. 2013/3115, section 151 of, and paragraph 73 of Schedule 4 to, the Co-operative and Community Benefit Societies Act 2014 (c. 14), regulation 59 of, and paragraph 21 of Schedule 1 to, S.I. 2015/575, regulation 12 of S.I. 2016/680, regulation 2 of, and paragraph 11 of the Schedule to, S.I. 2017/80, regulation 109 of, and paragraph 4 of Schedule 7 to, S.I. 2017/692 and regulation 50 of, and paragraph 6 of Schedule 4 to, S.I. 2017/701.

(b) 2000 c. 11; section 17A was inserted by section 42 of the Counter-Terrorism and Security Act 2015 (c. 6).

- (ii) not more than 21 days after the magistrates' court's decision; and
 - (b) in the appeal notice, explain, as appropriate, why the Crown Court should (as the case may be) make, discharge or vary a further information order.
- (6) Rule 34.11 (Constitution of the Crown Court) applies on such an appeal.”, and
- (iv) for the note to the rule substitute—

“[Note. See sections 22B, 22D and 22E of, and Schedule 5A to, the Terrorism Act 2000(a).

Under paragraph 9(6) of Schedule 5A to the 2000 Act the applicant for a disclosure order must be an ‘appropriate officer’, as defined by paragraph 5, who is, or who is authorised to apply by, a police officer of at least the rank of superintendent.

Under section 22B(12) of the 2000 Act the applicant for a further information order must be ‘a law enforcement officer’, as defined by section 22B(14), who is, or who is authorised to apply by, a ‘senior law enforcement officer’, defined by section 22B(14) as a police officer of at least the rank of superintendent, the Director General of the National Crime Agency or an officer of that Agency authorised by the Director General for that purpose.

Section 14 of the 2000 Act(b) defines terrorist property as money or other property which is likely to be used for the purposes of terrorism; proceeds of the commission of terrorism; and proceeds of acts carried out for the purposes of terrorism. Sections 15 to 18 of the Act create offences of fund raising for the purposes of terrorism; use or possession of property for the purposes of terrorism; funding terrorism; making an insurance payment in response to a terrorist demand; and facilitating the retention or control of terrorist property.

A disclosure order can require a lawyer to provide a client's name and address.

Under section 21A of the 2000 Act(c) a person engaged in a business in the regulated sector commits an offence where the conditions listed in that section are met and that person does not disclose, in the manner required by that section, knowledge or a suspicion that another person has committed or attempted to commit an offence under any of sections 15 to 18 in Part III of the Act. Part III of the Act also contains other disclosure provisions.

The Practice Direction sets out forms of application, notice and order for use in connection with this rule.]”;

- (d) in rule 47.20 (Content of application for a disclosure order under the Proceeds of Crime Act 2002)—
 - (i) for the heading to the rule substitute “Content of application for a disclosure order or further information order under the Proceeds of Crime Act 2002”,
 - (ii) the existing text becomes paragraph (1),
 - (iii) after paragraph (1) insert—

“(2) As well as complying with rule 47.6, an applicant who wants the court to make a further information order must—

 - (a) identify the respondent from whom the information is sought and explain—
 - (i) whether the respondent is the person who made the disclosure to which the information relates or is otherwise carrying on a business in the regulated

(a) 2000 c. 11; sections 22B, 22D and 22E are inserted by section 37 to the Criminal Finances Act 2017 (c. 22), with effect from dates to be appointed. Schedule 5A is inserted by Schedule 2 to the Criminal Finances Act 2017 (c. 22), with effect from a date to be appointed.

(b) 2000 c. 11.

(c) 2000 c. 11; section 21A was inserted by section 3 of, and paragraph 5 of Schedule 2 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24) and amended by regulation 2 of, and paragraphs 1 and 3 of Schedule 1 to, S.I. 2007/3398, section 59 of, and paragraphs 125 and 128 of, the Serious Organised Crime and Police Act 2005 (c. 15) and section 15 of, and paragraphs 67 and 72 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22).

sector within the meaning of Part 1 of Schedule 9 to the Proceeds of Crime Act 2002(a), and

- (ii) why the applicant thinks that the information is in the possession, or under the control, of the respondent;
- (b) specify or describe the information that the applicant wants the respondent to provide;
- (c) where the information sought relates to a disclosure of information under Part 7 of the Proceeds of Crime Act 2002 (Money laundering), explain—
 - (i) how the information sought relates to a matter arising from that disclosure,
 - (ii) how the information would assist in investigating whether a person is engaged in money laundering or in determining whether an investigation of that kind should be started, and
 - (iii) why it is reasonable in all the circumstances for the information to be provided;
- (d) where the information sought relates to a disclosure made under a requirement of the law of a country outside the United Kingdom which corresponds with Part 7 of the 2002 Act, and an authority in that country which investigates money laundering has asked the National Crime Agency for information in connection with that disclosure, explain—
 - (i) how the information sought relates to a matter arising from that disclosure,
 - (ii) why the information is likely to be of substantial value to the authority that made the request in determining any matter in connection with the disclosure, and
 - (iii) why it is reasonable in all the circumstances for the information to be provided;
- (e) confirm that none of the information is expected to be subject to legal privilege; and
- (f) propose the terms of the order, including—
 - (i) how the respondent must provide the information required, and
 - (ii) the date by which the information must be provided.

(3) Rule 47.8 (Application to vary or discharge an order) does not apply to a further information order.

(4) Paragraph (5) applies where a party to an application for a further information order wants to appeal to the Crown Court from the decision of the magistrates' court.

(5) The appellant must—

- (a) serve an appeal notice—
 - (i) on the Crown Court officer and on the other party,
 - (ii) not more than 21 days after the magistrates' court's decision; and
- (b) in the appeal notice, explain, as appropriate, why the Crown Court should (as the case may be) make, discharge or vary a further information order.

(6) Rule 34.11 (Constitution of the Crown Court) applies on such an appeal.”, and

(a) 2002 c. 29; Part 1 of Schedule 9 was substituted by articles 2 and 3 of S.I. 2007/3287 and amended by sections 183 and 237 of, and paragraph 2 of Schedule 18 and Part 29 of Schedule 25 to, the Localism Act 2011 (c. 20), regulation 79 of, and paragraph 3 of Schedule 4 to, S.I. 2011/99, article 3 of S.I. 2011/2701, article 3 of S.I. 2012/1534, article 3 of S.I. 2012/2299, regulation 46 of, and paragraph 41 of Schedule 2 to, S.I. 2013/3115, section 151 of, and paragraph 81 of Schedule 4 to, the Co-operative and Community Benefit Societies Act 2014 (c. 14), regulation 59 of, and paragraph 23 of Schedule 1 to, S.I. 2015/575, regulation 14 of S.I. 2016/680, regulation 2 of, and paragraph 13 of the Schedule to, S.I. 2017/80, regulation 109 of, and paragraph 6 of Schedule 7 to, S.I. 2017/692 and regulation 50 of, and paragraph 7 of Schedule 4 to, S.I. 2017/701.

(iv) for the note to the rule substitute—

“[Note. See sections 339ZH, 339ZJ, 339ZK, 357, 358 and 361 of the Proceeds of Crime Act 2002(a) and articles 16, 17 and 20 of the Proceeds of Crime Act 2002 (External Investigations) Order 2014(b).

Where the 2002 Act applies, a Crown Court judge may make a disclosure order for the purposes of a confiscation investigation or a money laundering investigation.

The applicant for a disclosure order must be a ‘relevant authority’ as defined by section 357(7) of the 2002 Act, or an ‘appropriate officer’ as defined by article 2(1) of the 2014 Order where the Order applies. Under section 362(6) of the Act(c), a relevant authority who under section 357(7) is an ‘appropriate officer’ (as defined by section 378(1), (4) and (5)(d)) may apply only if that person is, or is authorised to do so by, a ‘senior appropriate officer’ (as defined by section 378(2)).

Under section 339ZH(1), (12) the applicant for a further information order must be the Director General of the National Crime Agency or an officer of that Agency authorised by the Director General for that purpose.

A disclosure order can require a lawyer to provide a client’s name and address.

Under sections 330, 331 and 332 in Part 7 of the 2002 Act(e) a person engaged in a business in the regulated sector commits an offence where the conditions listed in any of those sections are met and that person does not disclose, in the manner required by the relevant section, knowledge or a suspicion that another person is engaged in money laundering.

The Practice Direction sets out forms of application, notice and order for use in connection with this rule.”;

- (e) in the note to rule 47.33 (Application for warrant under section 160 of the Extradition Act 2003), omit “The Practice Direction sets out forms of application and warrant for use in connection with this rule.”;

-
- (a) 2002 c. 29; sections 339ZH, 339ZJ and 339ZK are inserted by section 12 of the Criminal Finances Act 2017 (c. 22), with effect from dates to be appointed. Section 357 was amended by sections 74 and 77 of, and paragraphs 103 and 108 of Schedule 8 and paragraphs 1 and 10 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 13 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25), sections 15, 49 and 55 of, and paragraphs 108 and 139 of Schedule 8, paragraphs 1 and 8 of Schedule 19 and paragraphs 14 and 34 of Schedule 21 to, the Crime and Courts Act 2013 (c. 22) and article 3 of, and paragraphs 19 and 27 of Schedule 2 to, SI 2014/834. It is further amended by section 7(2) of, and paragraph 51 of Schedule 5 to, the Criminal Finances Act 2017 (c. 22), with effect from dates to be appointed. Section 358 was amended by section 169 of, and paragraphs 1 and 14 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 49(a) of, and paragraphs 1 and 9 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22). It is further amended by section 7(3) of the Criminal Finances Act 2017 (c. 22), with effect from a date to be appointed. Section 361 was amended by section 74 of, and paragraphs 103 and 109 of Schedule 8 to, the Serious Crime Act 2007 (c. 27).
- (b) S.I. 2014/1893.
- (c) 2002 c. 29; section 362 was amended by section 74 of, and paragraphs 103 and 110 of Schedule 8 to, the Serious Crime Act 2007 (c. 27), section 169 of, and paragraphs 1 and 15 of Schedule 19 to, the Coroners and Justice Act 2009 (c. 25) and section 15 of, and paragraphs 108 and 140 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22). It is further amended by section 7(4) of the Criminal Finances Act 2017 (c. 22), with effect from a date to be appointed.
- (d) 2002 c. 29; section 378 was amended by section 59 of, and paragraphs 168 and 175 of Schedule 4 to, the Serious Organised Crime and Police Act 2005 (c. 15), sections 74, 77 and 80 of, and paragraphs 103 and 116 of Schedule 8 and paragraphs 1 and 13 of Schedule 10 to, the Serious Crime Act 2007 (c. 27), sections 15, 49 and 55 of, and paragraphs 108 and 144 of Schedule 8 and paragraphs 1, 24, 27, 29 and 30 of Schedule 19 to, the Crime and Courts Act 2013 (c. 22) and section 224 of, and paragraphs 1 and 18 of Schedule 48 to, the Finance Act 2013 (c. 29). It is further amended by paragraph 25 of Schedule 1, and paragraph 59 of Schedule 5, to the Criminal Finances Act 2017 (c. 22), with effect from dates to be appointed.
- (e) 2002 c. 29; section 330 was amended by sections 102, 104, 105, 106 and 174 of, and Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c. 15), article 2 of S.I. 2006/308, regulation 3 of, and paragraphs 1 and 2 of Schedule 2 to, S.I. 2007/3398 and section 15 of, and paragraphs 108 and 129 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22). Section 331 was amended by sections 102 and 104 of the Serious Organised Crime and Police Act 2005 (c. 15) and section 15 of, and paragraphs 108 and 130 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22). Section 332 was amended by sections 102 and 104 of the Serious Organised Crime and Police Act 2005 (c. 15) and section 15 of, and paragraphs 108 and 131 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22).

- (f) in the note to rule 47.62 (When this Section applies) for “rule 47.61” substitute “rule 47.64”; and
- (g) amend the table of contents correspondingly.

21. In the preamble to the Criminal Procedure Rules 2015, in sub-paragraph (b)—

- (a) in the first column, headed ‘Rule’, before the entry for Part 8 insert “5.5” and in the second column, headed ‘Power’, in the corresponding position insert “Section 32 of the Criminal Appeal Act 1968(a)”; and
- (b) in the entry for Part 23, for “Sections 37 and 38 of the Youth Justice and Criminal Evidence Act 1999” substitute “Sections 37(5) and 38(6), (7) of the Youth Justice and Criminal Evidence Act 1999(b)”.

Burnett of Maldon, C.J.
Leveson, P.
William Davis, J.
Haddon-Cave, J.
Martin Picton
Martin Edmunds
Michael Snow
Louise Bryant
Nicola Hewer and Melissa Case
Siân Jones
Alison Saunders
Alison Pople
Nathaniel Rudolf
Paul Harris
Folashade Abiodun
David Kenyon
Jodie Blackstock

I allow these Rules, which shall come into force on 2nd April 2018.

31st January 2018

David Gauke
Lord Chancellor

(a) 1968 c. 19.

(b) 1999 c. 23; section 37(5) and section 38(6), (7) were amended by section 109 of, and paragraph 384 of Schedule 8 to, the Courts Act 2003 (c. 39).

“PART 22

EVIDENCE OF A COMPLAINANT’S PREVIOUS SEXUAL BEHAVIOUR

Contents of this Part

When this Part applies	rule 22.1
Exercise of court’s powers	rule 22.2
Decisions and reasons	rule 22.3
Application for permission to introduce evidence or cross-examine	rule 22.4
Application containing information withheld from another party	rule 22.5
Representations in response	rule 22.6
Special measures, etc. for a witness	rule 22.7
Court’s power to vary requirements under this Part	rule 22.8

When this Part applies**22.1.** This Part applies—

- (a) in a magistrates’ court and in the Crown Court;
- (b) where—
 - (i) section 41 of the Youth Justice and Criminal Evidence Act 1999^(a) prohibits the introduction of evidence or cross-examination about any sexual behaviour of the complainant of a sexual offence, and
 - (ii) despite that prohibition, a defendant wants to introduce such evidence or to cross-examine a witness about such behaviour.

[Note. Section 41 of the Youth Justice and Criminal Evidence Act 1999 prohibits evidence or cross-examination about the sexual behaviour of a complainant of a sexual offence, subject to exceptions.

See also—

- (a) section 42 of the 1999 Act^(b), which among other things defines ‘sexual behaviour’ and ‘sexual offence’;
- (b) section 34, which prohibits cross-examination by a defendant in person of the complainant of a sexual offence (Part 23 contains relevant rules).]

Exercise of court’s powers**22.2.** The court—

- (a) must determine an application under rule 22.4 (Application for permission to introduce evidence or cross-examine)—
 - (i) at a hearing in private, and
 - (ii) in the absence of the complainant;
- (b) must not determine the application unless—

^(a) 1999 c. 23.

^(b) 1999 c. 23; section 42 was amended by paragraph 73 of Schedule 3 and Schedule 37 to the Criminal Justice Act 2003 (c. 44).

- (i) each party other than the applicant is present, or has had at least 14 days in which to make representations, and
- (ii) the court is satisfied that it has been able to take adequate account of the complainant's rights;
- (c) may adjourn the application; and
- (d) may discharge or vary a determination where it can do so under—
 - (i) section 8B of the Magistrates' Courts Act 1980(a) (ruling at pre-trial hearing in a magistrates' court), or
 - (ii) section 9 of the Criminal Justice Act 1987(b), or section 31 or 40 of the Criminal Procedure and Investigations Act 1996(c) (ruling at preparatory or other pre-trial hearing in the Crown Court).

[Note. See also section 43 of the Youth Justice and Criminal Evidence Act 1999(d), which among other things requires an application under section 41 of the Act to be heard in private and in the absence of the complainant.

At a pre-trial hearing a court may make binding rulings about the admissibility of evidence and about questions of law under sections 31 and 40 of the Criminal Procedure and Investigations Act 1996(e) and section 8A of the Magistrates' Courts Act 1980(f).]

Decisions and reasons

22.3.—(1) A prosecutor who wants to introduce the evidence of a complainant in respect of whom the court allows the introduction of evidence or cross-examination about any sexual behaviour must—

- (a) inform the complainant of the court's decision as soon as reasonably practicable; and
 - (b) explain to the complainant any arrangements that as a result will be made for him or her to give evidence.
- (2) The court must—
- (a) promptly determine an application; and
 - (b) allow the prosecutor sufficient time to comply with the requirements of—
 - (i) paragraph (1), and
 - (ii) the code of practice issued under section 32 of the Domestic Violence, Crime and Victims Act 2004(g).
- (3) The court must announce at a hearing in public—
- (a) the reasons for a decision to allow or refuse an application under rule 22.4; and

(a) 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).

(b) 1987 c. 38; section 9 was amended by section 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 6 of the Criminal Justice Act 1993 (c. 36), sections 72, 74 and 80 of, and paragraph 3 of Schedule 3 and Schedule 5 to, Criminal Procedure and Investigations Act 1996 (c. 25), sections 45 and 310 of, and paragraphs 18, 52 and 54 of Schedule 36 and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), article 3 of, and paragraphs 21 and 23 of S.I. 2004/2035, section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9). The amendment made by section 45 of the Criminal Justice Act 2003 (c. 44) is in force for certain purposes; for remaining purposes it has effect from a date to be appointed.

(c) 1996 c. 25; section 31 was amended by sections 310, 331 and 332 of, and paragraphs 20, 36, 65 and 67 of Schedule 36 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

(d) 1999 c. 23; section 43(3) was amended by section 109(1) of, and paragraph 384(g) of Schedule 8 to, the Courts Act 2003 (c. 39).

(e) 1996 c. 25; section 31 was amended by sections 310, 331 and 332 of, and paragraphs 20, 36, 65 and 67 of Schedule 36 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

(f) 1980 c. 43; section 8A was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by SI 2006/2493 and paragraphs 12 and 14 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(g) 2004 c. 28; section 32 was amended by article 8 of, and paragraph 10 of the Schedule to, S.I. 2007/2128.

- (b) if it allows such an application, the extent to which evidence may be introduced or questions asked.

[Note. Under section 43 of the Youth Justice and Criminal Evidence Act 1999—

- (a) *the reasons for the court's decision on an application must be given in open court; and*
- (b) *the court must state in open court the extent to which evidence may be introduced or questions asked.]*

Application for permission to introduce evidence or cross-examine

22.4.—(1) A defendant who wants to introduce evidence or cross-examine a witness about any sexual behaviour of the complainant must—

- (a) serve an application for permission to do so on—
 - (i) the court officer, and
 - (ii) each other party;
- (b) serve the application—
 - (i) as soon as reasonably practicable after becoming aware of the grounds for doing so, and in any event
 - (ii) not more than 14 days after the prosecutor discloses material on which the application is based.

(2) The application must—

- (a) identify the issue to which the defendant says the complainant's sexual behaviour is relevant;
- (b) give particulars of—
 - (i) any evidence that the defendant wants to introduce, and
 - (ii) any questions that the defendant wants to ask;
- (c) identify the exception to the prohibition in section 41 of the Youth Justice and Criminal Evidence Act 1999 on which the defendant relies; and
- (d) give the name and date of birth of any witness whose evidence about the complainant's sexual behaviour the defendant wants to introduce.

Application containing information withheld from another party

22.5.—(1) This rule applies where—

- (a) an applicant serves an application under rule 22.4 (Application for permission to introduce evidence or cross-examine); and
- (b) the application includes information that the applicant thinks ought not be revealed to another party.

(2) The applicant must—

- (a) omit that information from the part of the application that is served on that other party;
- (b) mark the other part to show that, unless the court otherwise directs, it is only for the court; and
- (c) in that other part, explain why the applicant has withheld that information from that other party.

(3) If the court so directs, the hearing of an application to which this rule applies may be, wholly or in part, in the absence of a party from whom information has been withheld.

(4) At the hearing of an application to which this rule applies—

- (a) the general rule is that the court must consider, in the following sequence—

- (i) representations first by the applicant and then by each other party, in all the parties' presence, and then
- (ii) further representations by the applicant, in the absence of a party from whom information has been withheld; but
- (b) the court may direct other arrangements for the hearing.

[Note. See section 43(3)(c) of the Youth Justice and Criminal Evidence Act 1999.]

Representations in response

22.6.—(1) This rule applies where a party wants to make representations about—

- (a) an application under rule 22.4 (Application for permission to introduce evidence or cross-examine); or
- (b) a proposed variation or discharge of a decision allowing such an application.

(2) Such a party must—

- (a) serve the representations on—
 - (i) the court officer, and
 - (ii) each other party; and
- (b) do so not more than 14 days after, as applicable—
 - (i) service of the application, or
 - (ii) notice of the proposal to vary or discharge.

(3) Where representations include information that the person making them thinks ought not be revealed to another party, that person must—

- (a) omit that information from the representations served on that other party;
- (b) mark the information to show that, unless the court otherwise directs, it is only for the court; and
- (c) with that information include an explanation of why it has been withheld from that other party.

(4) Representations against an application under rule 22.4 must explain the grounds of objection.

(5) Representations against the variation or discharge of a decision must explain why it should not be varied or discharged.

Special measures, etc. for a witness

22.7.—(1) This rule applies where the court allows an application under rule 22.4 (Application for permission to introduce evidence or cross-examine).

(2) Despite the time limits in rule 18.3 (Making an application for a direction or order)—

- (a) a party may apply not more than 14 days after the court's decision for a special measures direction or for the variation of an existing special measures direction; and
- (b) the court may shorten the time for opposing that application.

(3) Where the court allows the cross-examination of a witness, the court must give directions for the appropriate treatment and questioning of that witness in accordance with rule 3.9(6) and (7) (setting ground rules for the conduct of questioning).

[Note. Special measures to improve the quality of evidence given by certain witnesses may be directed by the court under section 19 of the Youth Justice and Criminal Evidence Act

1999 and varied under section 20(a). An application for a special measures direction may be made by a party under Part 18 or the court may make a direction on its own initiative. Rule 18.13(2) sets the usual time limit (14 days) for opposing a special measures application.]

Court’s power to vary requirements under this Part

22.8. The court may shorten or extend (even after it has expired) a time limit under this Part.”

(a) 1999 c. 23; section 20 was amended by paragraph 384 of Schedule 8 to the Courts Act 2003 (c. 39).

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Criminal Procedure Rules 2015, S.I. 2015/1490, as follows:

<i>Rule</i>	<i>Amendment</i>
Part 3	Rule 3.1 is amended to include a reference to rule 3.27. Rule 3.21 is amended for consistency with section 5 of the Indictments Act 1915 (Orders for amendment of indictment, separate trial, and postponement of trial).
Part 5	Rule 5.5 is amended to clarify the circumstances in which a person who transcribes a recording of proceedings in the Crown Court may not supply a transcript to a person requesting it. Rules 5.7 and 5.8 are amended to clarify their relationship with rule 5.5.
Part 7	Rule 7.2 is amended to set out in detail the procedural requirements for an application to start a prosecution by summons or arrest warrant. Rules 7.3 and 7.4 are amended consequentially.
Part 13	Rule 13.3 is amended for consistency with section 11 of the Magistrates' Courts Act 1980 (Non-appearance of accused: general provisions), and in particular section 11(3A) which requires a defendant to be brought before the magistrates' court after being sentenced in absence to imprisonment or detention before being taken to a prison or other institution.
Part 19	Rule 19.4(e) is amended for consistency with section 127 of the Criminal Justice Act 2003 (Expert evidence: preparatory work), and in particular to require an expert witness to identify only those persons upon whose preparatory work the expert bases an opinion or inference.
Part 22	The rules in the current Part are replaced with new rules that include a clearer time limit for applying to introduce sexual behaviour evidence and which include explicit provision requiring directions for the treatment and questioning of a witness about whom such evidence is due to be introduced.
Part 23	Rule 23.2 is amended to specify the information and material that must be supplied to an advocate who is appointed by the court to cross-examine a witness where the defendant is prohibited from doing so, and to allow the advocate to apply if necessary for prosecution disclosure.
Part 24	Rule 24.12 is amended to complement the amendment to rule 13.3.
Part 25	Rule 25.14 is amended to prescribe the procedure on taking verdicts where the jury is due to return more than one verdict and reaches some before others.
Part 36	A new rule 36.15 is added to prescribe the procedure where the Court of Appeal is asked to reopen a previous decision. Rule 36.6 is amended consequentially.
Part 39	Rule 39.3 is amended to prescribe requirements for grounds of appeal that encourage clarity and concision.

- Part 41 Rule 41.2 is amended to remove from the Registrar of Criminal Appeals to the Attorney General the responsibility for notifying a defendant of an Attorney General's reference or application to the Court of Appeal. Rules 41.3 to 41.8 are renumbered and amended consequentially.
- Part 46 Rule 46.2 is amended to require a defendant's legal representative who withdraws from an extradition appeal case in the High Court to give specified information to the Administrative Court Office. Rule 46.3 is amended consequentially.
- Part 47 Rules 47.4, 47.13 and 47.20 are amended to provide for applications for further information orders made under amendments by the Criminal Finances Act 2017 to the other Acts to which those rules refer. Rule 47.9 is amended consequentially.

Amendments to cross-references. The following rules, and notes to rules ('n'), of the Criminal Procedure Rules are amended to make consequential and other corrections to the cross-references that they contain: 2.2, 10.2(n), 32.2, 36.3(n), 39.7(n), 42.6, 42.10, 47.33(n) and 47.62(n). In the preamble to the Criminal Procedure Rules 2015 the entry for rule 5.5 is added and the entry for Part 23 amended for the same purpose.

These Rules come into force on 2nd April 2018.

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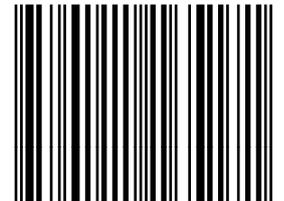
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