
STATUTORY INSTRUMENTS

2011 No. 1709

The Criminal Procedure Rules 2011

PART 16

REPORTING, ETC. RESTRICTIONS

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SECTION 1: GENERAL RULES

When this Part applies

- 16.1.**—(1) This Part applies where the court can—
- (a) impose a restriction on—
 - (i) reporting what takes place at a public hearing, or
 - (ii) public access to what otherwise would be a public hearing;
 - (b) vary or remove a reporting or access restriction that is imposed by legislation;
 - (c) withhold information from the public during a public hearing;

- (d) order a trial in private;
- (e) allow there to take place during a hearing—
 - (i) sound recording, or
 - (ii) communication by electronic means.

(2) This Part does not apply to arrangements required by legislation, or directed by the court, in connection with—

- (a) sound recording during a hearing, or the transcription of such a recording; or
- (b) measures to assist a witness or defendant to give evidence.

[Note. The court can impose reporting restrictions under—

- (a) *section 39 of the Children and Young Persons Act 1933***(1)** (*identity of a person under 18*);
- (b) *section 4(2) of the Contempt of Court Act 1981***(2)** (*postponed report of public hearing*);
- (c) *section 11 of the Contempt of Court Act 1981* (*matter withheld from the public during a public hearing*);
- (d) *section 58 of the Criminal Procedure and Investigations Act 1996***(3)** (*postponed report of derogatory assertion in mitigation*);
- (e) *section 46 of the Youth Justice and Criminal Evidence Act 1999***(4)** (*identity of a vulnerable adult witness*);
- (f) *section 82 of the Criminal Justice Act 2003***(5)** (*order for retrial after acquittal*); or
- (g) *section 75 of the Serious Organised Crime and Police Act 2005***(6)** (*identity of a defendant who assisted the police*).

There are reporting restrictions imposed by legislation that the court can vary or remove, under—

- (a) *section 49 of the Children and Young Persons Act 1933***(7)** (*youth court proceedings*);
- (b) *section 8 of the Magistrates' Courts Act 1980***(8)** (*committal for trial proceedings*);
- (c) *section 8C of the Magistrates' Courts Act 1980***(9)** (*pre-trial ruling in magistrates' courts*);
- (d) *section 11 of the Criminal Justice Act 1987***(10)** (*preparatory hearing in the Crown Court*);

(1) 1933 c. 12; section 39 was amended by sections 57 and 64 of, and Schedule 5 to, the Children and Young Persons Act 1963 (c. 37), sections 37 and 39 of, and Schedule 3 to, the Criminal Justice Act 1982 (c. 48) and it is amended by section 48 of, and paragraphs 1 and 2 of Schedule 2 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23); and section 25 of, and paragraph 3 of Schedule 3 to, the Children, Schools and Families Act 2010 (c. 26), with effect from a date to be appointed.

(2) 1981 c. 49.

(3) 1996 c. 25.

(4) 1999 c. 23.

(5) 2003 c. 44.

(6) 2005 c. 15.

(7) 1933 c. 12; section 49 was amended by section 49 of the Criminal Justice and Public Order Act 1994 (c. 33), section 45 of the Crime (Sentences) Act 1997 (c. 43), section 119 of, and paragraph 1 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 165 of, and paragraph 2 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 304 of, and paragraph 2 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44) and sections 208 and 210 of, and paragraphs 15 and 19 of Schedule 21, and Schedule 23 to, the Legal Services Act 2007 (c. 29). It is amended by section 48 of, and paragraphs 1 and 3 of Schedule 2 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 74 of, and paragraph 5 of Schedule 7 to, the Criminal Justice and Court Services Act 2000 (c. 43), sections 208 and 210 of, and paragraphs 15 and 19 of Schedule 21 and Schedule 23, to the Legal Services Act 2007 (c. 29) and sections 6 and 149 of, and paragraphs 1, 3 and 100 of Schedule 4 and Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4), with effect from dates to be appointed.

(8) 1980 c. 43; section 8 was amended by section 1 of the Criminal Justice (Amendment) Act 1981 (c. 27), section 4(4) of the Contempt of Court Act 1981 (c. 49), sections 38 and 46 of the Criminal Justice Act 1982 (c. 48), paragraph 37 of Schedule 5 to the Cable and Broadcasting Act 1984 (c. 46), paragraph 29 of Schedule 20 to the Broadcasting Act 1990 (c. 42), paragraph 25 of Schedule 18 to the Courts and Legal Services Act 1990 (c. 41) and paragraphs 15 and 16 of Schedule 4 to the Access to Justice Act 1999 (c. 22), and is repealed by paragraph 51 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(9) 1980 c. 43; section 8C was inserted by section 45(1) of, and Schedule 3 to, the Courts Act 2003 (c. 39).

(10) 1987 c. 38; section 11 was amended by paragraphs 1 and 6 of Schedule 3 to the Criminal Procedure and Investigations Act 1996 (c. 25), section 24 of, and paragraphs 38 and 40 of Schedule 4 to, the Access to Justice Act 1999 (c. 22), section 311

- (e) *paragraph 6 of Schedule 6 to the Criminal Justice Act 1991*(11) (transfer for trial proceedings);
- (f) *section 1 of the Sexual Offences (Amendment) Act 1992*(12) (identity of complainant of sexual offence);
- (g) *section 37 of the Criminal Procedure and Investigations Act 1996*(13) (preparatory hearing in the Crown Court);
- (h) *section 41 of the Criminal Procedure and Investigations Act 1996*(14) (pre-trial ruling in the Crown Court);
- (i) *paragraph 3 of Schedule 3 to the Crime and Disorder Act 1998*(15) (sending for trial proceedings);
- (j) *section 47 of the Youth Justice and Criminal Evidence Act 1999*(16) (special measures direction); and
- (k) *section 71 of the Criminal Justice Act 2003*(17) (prosecution appeal against Crown Court ruling).

There are reporting restrictions imposed by legislation that the court has no power to vary or remove, under—

- (a) *section 1 of the Judicial Proceedings (Regulation of Reports) Act 1926*(18) (indecent or medical matter);
- (b) *section 2 of the Contempt of Court Act 1981*(19) (risk of impeding or prejudicing active proceedings).

Access to a youth court is restricted under section 47 of the Children and Young Persons Act 1933(20). See also rule 37.2.

The court can restrict access to the courtroom under—

- (a) *section 8(4) of the Official Secrets Act 1920*(21), during proceedings for an offence under the Official Secrets Acts 1911 and 1920;

of the Criminal Justice Act 2003 (c. 44) and section 40(4) of, and paragraph 46 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4). It is further amended by paragraph 58 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(11) 1991 c. 53; Schedule 6 is repealed by Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(12) 1992 c. 34; section 1 was amended by section 48 of, and paragraphs 6 and 7 of Schedule 2 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23).

(13) 1996 c. 25; section 37 was amended by section 24 of, and paragraph 49 of Schedule 4 to, the Access to Justice Act 1999 (c. 22), section 311 of the Criminal Justice Act 2003 (c. 44) and section 40(4) of, and paragraph 61 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(14) 1996 c. 25; section 41 was amended by section 311 of the Criminal Justice Act 2003 (c. 44).

(15) 1998 c. 37; paragraph 3 of Schedule 3 was amended by section 24 of, and paragraphs 53 and 55 of Schedule 4 to, the Access to Justice Act 1999 (c. 22) and is amended by paragraphs 68 and 71 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(16) 1999 c. 23; section 47 was amended by section 52 of, and paragraph 37 of Schedule 14 to, the Police and Justice Act 2006 (c. 48).

(17) 2003 c. 44; section 71 was amended by section 40(4) of, and paragraph 82 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(18) 1926 c. 61; section 1 was amended by sections 38 and 46 of the Criminal Justice Act 1982 (c. 48) and paragraph 8 of Schedule 27 to the Civil Partnership Act 2004 (c. 33), and is amended by paragraph 2 of Schedule 8 to the Family Law Act 1996 (c. 27) and by paragraph 7 of Schedule 26 to the Criminal Justice Act 2003 (c. 44), with effect from dates to be appointed.

(19) 1981 c. 49; section 2 was amended by paragraph 31 of Schedule 20 to the Broadcasting Act 1990 (c. 42).

(20) 1933 c. 12; section 47 was amended by Parts II and III of Schedule 7 to the Justices of the Peace Act 1949 (c. 101), paragraph 40 of Schedule 11 to the Criminal Justice Act 1991 (c. 53), sections 47(7) and 120(2) of, and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37) and paragraphs 15 and 18 of Schedule 21 to the Legal Services Act 2007 (c. 29). It is further amended by paragraph 2 of Schedule 4 to the Youth Justice and Criminal Evidence Act 1999 (c. 23), with effect from a date to be appointed.

(21) 1920 c. 75; section 8 was amended by section 32 of the Magistrates' Courts Act 1980 (c. 43).

- (b) *section 37 of the Children and Young Persons Act 1933(22), where the court receives evidence from a person under 18;*
- (c) *section 75 of the Serious Organised Crime and Police Act 2005(23), where the court reviews a sentence passed on a defendant who assisted an investigation.*

The court has an inherent power, in exceptional circumstances—

- (a) *to allow information, for example a name or address, to be withheld from the public at a public hearing;*
- (b) *to restrict public access to what otherwise would be a public hearing, for example to control disorder;*
- (c) *to hear a trial in private, for example for reasons of national security.*

Under section 9(1) of the Contempt of Court Act 1981(24), it is a contempt of court without the court's permission to—

- (a) *use in court, or bring into court for use, a device for recording sound;*
- (b) *publish a recording of legal proceedings made by means of such a device; or*
- (c) *use any such recording in contravention of any condition on which permission was granted.*

The court has no power to allow photography. Under section 41 of the Criminal Justice Act 1925(25), it is an offence to take or attempt to take a photograph, or with a view to publication to make or attempt to make a portrait or sketch, of any judge, juror, witness or party, in the courtroom, or in the building or in the precincts of the building in which the court is held, or while that person is entering or leaving the courtroom, building or precincts; or to publish such a photograph, portrait or sketch.

By reason of sections 15 and 45 of the Senior Courts Act 1981(26), the Court of Appeal and the Crown Court each has an inherent power to deal with a person for contempt of court for disrupting the proceedings. Under section 12 of the Contempt of Court Act 1981(27), a magistrates' court has a similar power.

See also—

- (a) *rule 5.5, under which the court officer must make arrangements for recording proceedings in the Crown Court;*
- (b) *Part 29, which applies to live links and other measures to assist a witness or defendant to give evidence;*
- (c) *Part 62, which contains rules about contempt of court; and*
- (d) *rule 76.10, which applies to costs orders against a non-party for serious misconduct.]*

(22) 1933 c. 12; section 37 was amended by paragraphs 15 and 16 of Schedule 21 to the Legal Services Act 2007 (c. 29) and it is amended by paragraph 2 of Schedule 4 to the Youth Justice and Criminal Evidence Act 1999 (c. 23), with effect from a date to be appointed.

(23) 2005 c. 15.

(24) 1981 c. 49.

(25) 1925 c. 86; section 41 was amended by section 56(4) of, and Part IV of Schedule 11 to, the Courts Act 1971 (c. 23), sections 38 and 46 of the Criminal Justice Act 1982 (c. 48) and section 47 of the Constitutional Reform Act 2005 (c. 4).

(26) 1981 c. 54.

(27) 1981 c. 49; section 12 was amended by section 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), section 17(3) of, and Part I of Schedule 4 to, the Criminal Justice Act 1991 (c. 53); section 65(3) and (4) of, and paragraph 6(4) of Schedule 3 to, the Criminal Justice Act 1993 (c. 36) and section 165 of, and paragraph 83 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).

Exercise of court's powers to which this Part applies

16.2.—(1) When exercising a power to which this Part applies, as well as furthering the overriding objective, in accordance with rule 1.3, the court must have regard to the importance of—

- (a) dealing with criminal cases in public; and
 - (b) allowing a public hearing to be reported to the public.
- (2) The court may determine an application under this Part—
- (a) at a hearing, in public or in private; or
 - (b) without a hearing.

(3) But the court must not exercise a power to which this Part applies unless each party and any other person directly affected—

- (a) is present; or
- (b) has had an opportunity—
 - (i) to attend, or
 - (ii) to make representations.

[Note. See also section 121 of the Magistrates' Courts Act 1980(28) and rule 37.2.]

Court's power to vary requirements under this Part

16.3.—(1) The court may—

- (a) shorten or extend (even after it has expired) a time limit under this Part;
 - (b) require an application to be made in writing instead of orally;
 - (c) consider an application or representations made orally instead of in writing;
 - (d) dispense with a requirement to—
 - (i) give notice, or
 - (ii) serve a written application.
- (2) Someone who wants an extension of time must—
- (a) apply when making the application or representations for which it is needed; and
 - (b) explain the delay.

SECTION 2: REPORTING AND ACCESS RESTRICTIONS

Reporting and access restrictions

16.4.—(1) This rule applies where the court can—

- (a) impose a restriction on—
 - (i) reporting what takes place at a public hearing, or
 - (ii) public access to what otherwise would be a public hearing;
 - (b) withhold information from the public during a public hearing.
- (2) The court may do so—
- (a) on application by a party; or

(28) 1980 c. 43; section 121 was amended by section 61 of the Criminal Justice Act 1988 (c. 33), section 92 of, and paragraph 8 of Schedule 11 to, the Children Act 1989 (c. 41), section 109 of, and paragraph 237 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39).

- (b) on its own initiative.
- (3) A party who wants the court to do so must—
 - (a) apply as soon as reasonably practicable;
 - (b) notify—
 - (i) each other party, and
 - (ii) such other person (if any) as the court directs;
 - (c) specify the proposed terms of the order, and for how long it should last;
 - (d) explain—
 - (i) what power the court has to make the order, and
 - (ii) why an order in the terms proposed is necessary;
 - (e) where the application is for a reporting direction in respect of a witness under section 46 of the Youth Justice and Criminal Evidence Act 1999, explain—
 - (i) how the witness is eligible for assistance, and
 - (ii) why a reporting direction would be likely to improve the quality of the witness' evidence, or the level of co-operation the witness gives the applicant in connection with the preparation of the applicant's case.

Varying or removing restrictions

- 16.5.**—(1) This rule applies where the court can vary or remove a reporting or access restriction.
- (2) The court may do so—
 - (a) on application by a party or person directly affected; or
 - (b) on its own initiative.
- (3) A party or person who wants the court to do so must—
 - (a) apply as soon as reasonably practicable;
 - (b) notify—
 - (i) each other party, and
 - (ii) such other person (if any) as the court directs;
 - (c) specify the restriction;
 - (d) explain, as appropriate, why it should be varied or removed.

Trial in private

- 16.6.**—(1) This rule applies where the court can order a trial in private.
- (2) A party who wants the court to do so must—
 - (a) apply in writing not less than 5 business days before the trial is due to begin; and
 - (b) serve the application on—
 - (i) the court officer, and
 - (ii) each other party.
- (3) The applicant must explain—
 - (a) the reasons for the application;
 - (b) how much of the trial the applicant proposes should be in private; and
 - (c) why no measures other than trial in private will suffice, such as—

- (i) reporting restrictions,
 - (ii) an admission of facts,
 - (iii) the introduction of hearsay evidence,
 - (iv) a direction for a special measure under section 19 of the Youth Justice and Criminal Evidence Act 1999,
 - (v) a witness anonymity order under section 86 of the Coroners and Justice Act 2009, or
 - (vi) arrangements for the protection of a witness.
- (4) Where the application includes information that the applicant thinks ought not be revealed to another party, 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.
- (5) The court officer must at once—
- (a) display notice of the application somewhere prominent in the vicinity of the courtroom; and
 - (b) give notice of the application to reporters by such other arrangements as the Lord Chancellor directs.
- (6) The application must be determined at a hearing which—
- (a) will be in private, unless the court otherwise directs;
 - (b) if the court so directs, may be, wholly or in part, in the absence of a party from whom information has been withheld; and
 - (c) in the Crown Court, must be after the defendant is arraigned but before the jury is sworn.
- (7) At the hearing of the application—
- (a) the general rule is that the court will receive, 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.
- (8) The court must not hear a trial in private until—
- (a) the business day after the day on which it orders such a trial, or
 - (b) the disposal of any appeal against, or review of, any such order, if later.

Representations in response

16.7.—(1) This rule applies where a party, or person directly affected, wants to make representations about an application.

- (2) Such a party or person must—
- (a) serve the representations on—
 - (i) the court officer,
 - (ii) the applicant,

- (iii) each other party, and
 - (iv) such other person (if any) as the court directs;
 - (b) do so as soon as reasonably practicable after notice of the application; and
 - (c) ask for a hearing, if that party or person wants one, and explain why it is needed.
- (3) Representations must—
- (a) explain the reasons for any objection;
 - (b) specify any alternative terms proposed.

Order about restriction or trial in private

- 16.8.**—(1) This rule applies where the court—
- (a) orders, varies or removes a reporting or access restriction; or
 - (b) orders a trial in private.
- (2) The court officer must—
- (a) record the court’s reasons for the decision; and
 - (b) as soon as reasonably practicable, arrange for notice of the decision to be—
 - (i) displayed somewhere prominent in the vicinity of the courtroom, and
 - (ii) communicated to reporters by such other arrangements as the Lord Chancellor directs.

SECTION 3: SOUND RECORDING AND ELECTRONIC COMMUNICATION

Sound recording and electronic communication

- 16.9.**—(1) This rule applies where the court can give permission to—
- (a) bring into a hearing for use, or use during a hearing, a device for—
 - (i) recording sound, or
 - (ii) communicating by electronic means; or
 - (b) publish a sound recording made during a hearing.
- (2) The court may give such permission—
- (a) on application; or
 - (b) on its own initiative.
- (3) A person who wants the court to give such permission must—
- (a) apply as soon as reasonably practicable;
 - (b) notify—
 - (i) each party, and
 - (ii) such other person (if any) as the court directs; and
 - (c) explain why the court should permit the use or publication proposed.
- (4) As a condition of the applicant using such a device, the court may direct arrangements to minimise the risk of its use—
- (a) contravening a reporting restriction;
 - (b) disrupting the hearing; or

- (c) compromising the fairness of the hearing, for example by affecting—
 - (i) the evidence to be given by a witness, or
 - (ii) the verdict of a jury.
- (5) Such a direction may require that the device is used only—
 - (a) in a specified part of the courtroom;
 - (b) for a specified purpose;
 - (c) for a purpose connected with the applicant’s activity as a member of a specified group, for example representatives of news-gathering or reporting organisations;
 - (d) at a specified time, or in a specified way.

Forfeiture of unauthorised sound recording

- 16.10.**—(1) This rule applies where someone without the court’s permission—
- (a) uses a device for recording sound during a hearing; or
 - (b) publishes a sound recording made during a hearing.
- (2) The court may exercise its power to forfeit the device or recording—
- (a) on application by a party, or on its own initiative;
 - (b) provisionally, despite rule 16.2(3), to allow time for representations.
- (3) A party who wants the court to forfeit a device or recording must—
- (a) apply as soon as reasonably practicable;
 - (b) notify—
 - (i) as appropriate, the person who used the device, or who published the recording, and
 - (ii) each other party; and
 - (c) explain why the court should exercise that power.

[Note. Under section 9(3) of the Contempt of Court Act 1981(29), the court can forfeit any device or recording used or made in contravention of section 9(1) of the Act.]