STATUTORY INSTRUMENTS

2017 No. 755 (L. 11)

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

The Criminal Procedure (Amendment No. 3) Rules 2017

Made - - - -	*17th July 2017*
Laid before Parliament	*18th July 2017*
Coming into force in accordance with rule 2	

The Criminal Procedure Rule Committee makes the following Rules under section 69 of the Courts Act 2003(**1**), 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 No. 3) Rules 2017.

2. Rule 7, rule 10(a), (u) and (w) and rule 12 shall come into force on 10th August 2017 and the remaining rules on 2nd October 2017.

3. 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(**2**).

Amendments to the Criminal Procedure Rules 2015

4. In Part 3 (Case management)—

(a) in rule 3.13 (Pre-trial hearings: general rules)—

(i) renumber paragraphs (2) and (3) as (3) and (4) respectively, and

(ii) after paragraph (1) insert—

"(2) At the plea and trial preparation hearing the court must—

(a) satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary), that the defendant will receive credit for a guilty plea;

(**1**) 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).

(**2**) S.I. 2015/1490; amended by S.I. 2016/120, 2016/705, 2017/144, 2017/282.

(b) take the defendant's plea or if no plea can be taken then find out whether the defendant is likely to plead guilty or not guilty;

(c) unless the defendant pleads guilty, satisfy itself that there has been explained to the defendant, in terms the defendant can understand (with help, if necessary), that at the trial—

(i) the defendant will have the right to give evidence after the court has heard the prosecution case,

(ii) if the defendant does not attend, the trial may take place in the defendant's absence,

(iii) if the trial takes place in the defendant's absence, the judge may inform the jury of the reason for that absence, and

(iv) where the defendant is released on bail, failure to attend court when required is an offence for which the defendant may be arrested and punished and bail may be withdrawn; and

(d) give directions for an effective trial.";

(b) in rule 3.21 (Application for joint or separate trials, etc.), at the end of the note to the rule insert—

"Any issue arising from a decision under this rule may be subject to appeal to the Court of Appeal. Part 37 (Appeal to the Court of Appeal against ruling at preparatory hearing), Part 38 (Appeal to the Court of Appeal against ruling adverse to prosecution) and Part 39 (Appeal to the Court of Appeal about conviction or sentence) each contains relevant rules. The powers of the Court of Appeal on an appeal to which Part 39 applies are set out in sections 2, 3 and 7 of the Criminal Appeal Act 1968(**3**).";

(c) in rule 3.24 (Arraigning the defendant on the indictment), in paragraph (4)(a) for "rule 25.11" substitute "rule 25.10".

5. In Part 4 (Service of documents), in rule 4.11(2)(d) (Date of service) after "2.30pm that day", in each place it occurs, insert "(4.30pm that day, in an extradition appeal case in the High Court)".

6. In Part 12 (Discontinuing a prosecution), in the note to rule 12.1 (When this Part applies), in sub-paragraph (a) of the fourth paragraph for "has been served under rule 10.1" substitute "becomes an indictment under rule 10.2(5)".

7. In Part 18 (Measures to assist a witness or defendant to give evidence)—

(a) in rule 18.24 (Content of application for a live link direction)—

(i) the existing text becomes paragraph (1),

(ii) after paragraph (1) insert—

"(2) An applicant for a live link direction under section 32 of the Criminal Justice Act 1988(**4**) who wants the court also to make a European investigation order must—

(a) identify the participating State in which, and the place in that State from which, the witness will give evidence;

(**3**) 1968 c. 19; section 2 was amended by section 2 of the Criminal Appeal Act 1995 (c. 35). Section 3 was amended by section 316 of the Criminal Justice Act 2003 (c. 44). Section 7 was amended by sections 43 and 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33) and paragraph 44 of Schedule 36 to the Criminal Justice Act 2003 (c. 44).

(**4**) 1988 c. 33; section 32 was amended by section 55 of the Criminal Justice Act 1991 (c. 53), section 29 of, and paragraph 16 of Schedule 2 to, the Criminal Appeal Act 1995 (c. 35), section 62 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 67 of, and Schedule 6 and paragraph 3 of Schedule 7 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23) and paragraphs 24 and 26 of the Schedule to S.I. 2004/2035.

(b) explain why it is necessary and proportionate to make a European investigation order;

(c) if applicable, explain how the requirements of regulation 14 of the Criminal Justice (European Investigation Order) Regulations 2017(**5**) are met (Hearing a person by videoconference or telephone); and

(d) attach a draft order in the form required by regulation 8 of the 2017 Regulations (Form and content of a European investigation order) and Directive 2014/41/EU.

(3) Where the court makes a European investigation order, the court officer must promptly—

(a) issue an order in the form required by regulation 8 of the 2017 Regulations (Form and content of a European investigation order) and Directive 2014/41/EU;

(b) where the applicant is a constable or a prosecuting authority, serve that order on the applicant;

(c) in any other case, serve that order on the appropriate authority in the participating State in which the measure or measures are to be carried out.", and

(iii) in the note to the rule, for "and section 51 of the Criminal Justice Act 2003(**6**)" substitute ", section 51 of the Criminal Justice Act 2003 and regulation 6 of the Criminal Justice (European Investigation Order) Regulations 2017";

(b) in rule 18.25 (Application to discharge a live link direction)—

(i) for the heading to the rule substitute "Application to discharge a live link direction, etc.",

(ii) after paragraph (2) insert—

"(3) An applicant for the variation or revocation of a European investigation order made on an application under rule 18.24 must demonstrate that the applicant is, as the case may be—

(a) the person who applied for the order;

(b) a prosecuting authority; or

(c) any other person affected by the order.

(4) Where the court varies or revokes such an order, the court officer must promptly notify the appropriate authority in the participating State in which the measure or measures are to be carried out.", and

(iii) in the note to the rule, for "and section 52(3) of the Criminal Justice Act 2003" substitute ", section 52(3) of the Criminal Justice Act 2003 and regulation 10 of the Criminal Justice (European Investigation Order) Regulations 2017";

(c) amend the table of contents correspondingly; and

(d) in the note headed "Live link direction" at the end of the Part, after the second paragraph insert—

"The Criminal Justice (European Investigation Order) Regulations 2017 give effect in the United Kingdom to Directive 2014/41/EU of the European Parliament and of the Council regarding the European Investigation Order in criminal matters. Under

(**5**) S.I. 2017/730.
(**6**) 2003 c. 44.

regulation 6 of the 2017 Regulations the court can make an order specifying one or more 'investigative measures' that are to be carried out in a State listed in Schedule 2 to those Regulations (a 'participating State'). One such measure is hearing in proceedings in England and Wales, by live video or, potentially, audio link (described in the Regulations as 'videoconference or other audio visual transmission' and as 'telephone conference' respectively), a witness who is in a participating State. See also regulations 6(4)(c) and 14 of the 2017 Regulations, and regulation 9 which governs the transmission of an order to the participating State.

Under regulations 6(4)(b) and 11 of the 2017 Regulations any such measure must be one that could have been ordered or undertaken under the same conditions in a similar domestic case; but under regulation 11(5) that does not require the court to take into account any provision of domestic law imposing a procedural requirement which the court considers cannot effectively be applied when making a European investigation order for the measure concerned.".

8. In Part 24 (Trial and sentence in a magistrates' court), in the note to rule 24.1 (When this Part applies)—

(a) in the fourth paragraph, for "the Justices of the Peace (Size and Chairmanship of Bench) Rules 2005(**7**)" substitute "the Justices of the Peace Rules 2016(**8**)"; and

(b) for the sixth paragraph substitute—

"Under section 45 of the Children and Young Persons Act 1933(**9**) *and under the Justices of the Peace Rules 2016, where the court is a youth court comprising justices each member must be authorised to sit as a member of that youth court.".*

9. In Part 33 (Confiscation and related proceedings), in rule 33.24 (Payment of money in bank or building society account in satisfaction of confiscation order)—

(a) for the heading to the rule substitute "Payment of money held or detained in satisfaction of confiscation order";

(b) in paragraph (1), for "An order under section 67 of the Proceeds of Crime Act 2002(**10**) requiring a bank or building society to pay money to a magistrates' court officer" substitute "An order under section 67 of the Proceeds of Crime Act 2002 requiring the payment of money to a magistrates' court officer";

(c) for paragraph (1)(a) substitute—

"(a) be directed to—

(i) the bank or building society concerned, where the money is held in an account maintained with that bank or building society, or

(ii) the person on whose authority the money is detained, in any other case;"; and

(d) amend the table of contents correspondingly.

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

(a) in rule 47.1 (When this Part applies) for "47.51 and 47.54" substitute "47.51, 47.54 and 47.59";

(**7**) S.I. 2005/553.
(**8**) S.I. 2016/709.
(**9**) 1933 c. 12; section 45 was substituted by section 50 of the Courts Act 2003 (c. 39) and amended by section 15 of, and paragraph 20 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).
(**10**) 2002 c. 29; section 67 was amended by section 109 of, and paragraph 409 of Schedule 8 to, the Courts Act 2003 (c. 39), section 74 of, and paragraph 33 of Schedule 8 to, the Serious Crime Act 2007 (c. 27) and section 14 of the Serious Crime Act 2015 (c. 9). It is further amended by section 26 of the Criminal Finances Act 2017 (c. 22), with effect from a date to be appointed.

(b) in rule 47.1 (When this Part applies), as amended by paragraph (a) of this rule, for "47.54 and 47.59" substitute "47.54, 47.59 and 47.62";

(c) in rule 47.4 (Investigation orders; When this Section applies)—

(i) for paragraph (c) substitute—

"(c) for the purposes of—

(i) a terrorist investigation, a Circuit judge can make, and the Crown Court can vary or discharge, an account monitoring order, under paragraphs 2 and 4 of Schedule 6A to the 2000 Act(**11**),

(ii) a terrorist financing investigation, a judge entitled to exercise the jurisdiction of the Crown Court can make, and the Crown Court can vary or discharge, a disclosure order, under paragraphs 9 and 14 of Schedule 5A to the 2000 Act(**12**);",

(ii) in the first paragraph of the note to the rule, renumber sub-paragraphs (c) and (d) as (d) and (e) respectively and after sub-paragraph (b) insert—

"(c) *for the purposes of a terrorist financing investigation under the Terrorism Act 2000, a disclosure order, requiring a person to provide information or documents, or to answer questions;",*

(iii) in the seventh paragraph of the note to the rule, for sub-paragraph (a) substitute—

"(a) *an investigation into (i) whether a person has benefited from criminal conduct, (ii) the extent or whereabouts of such benefit, (iii) the available amount in respect of that person, or (iv) the extent or whereabouts of realisable property available for satisfying a confiscation order made in respect of that person ('a confiscation investigation');",*

(iv) in the seventh paragraph of the note to the rule, renumber sub-paragraph (e) as (g) and after sub-paragraph (d) insert—

"(e) *an investigation into the derivation of property detained under the 2002 Act, or into whether such property is intended to be used in unlawful conduct ('a detained property investigation');*

(f) *an investigation into the derivation of money held in an account in relation to which an account freezing order made under the 2002 Act has effect, or into whether such money is intended to be used in unlawful conduct ('a frozen funds investigation');",*

(v) in the eighth paragraph of the note to the rule, in sub-paragraph (a) for "or a detained cash investigation" substitute ", a detained cash investigation, a detained property investigation or a frozen funds investigation", and

(vi) in the ninth paragraph of the note to the rule, in sub-paragraph (b) after "paragraph 10 of Schedule 5" insert ", paragraph 14 of Schedule 5A";

(d) in rule 47.9 (Investigation orders; Application to punish for contempt of court)—

(i) in the third paragraph of the note to the rule, after "explanation order" insert ", to a disclosure order", and

(ii) in the third paragraph of the note to the rule, after "paragraph 14 of Schedule 5" insert ", paragraph 11 of Schedule 5A";

(**11**) 2000 c. 11; Schedule 6A was inserted by section 3 of, and paragraph 1(1) and (3) of Part 1 of Schedule 2 to, the Anti-terrorism, Crime and Security Act 2001 (c. 24). Paragraph 4 is amended by section 41(5)(c) of the Criminal Finances Act 2017 (c. 22), with effect from a date to be appointed.

(**12**) 2000 c. 11; Schedule 5A is inserted by Schedule 2 to the Criminal Finances Act 2017 (c. 22), with effect from a date to be appointed.