STATUTORY INSTRUMENTS

2016 No. 705 (L. 8)

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

The Criminal Procedure (Amendment No. 2) Rules 2016

Made - - - -	*27th June 2016*
Laid before Parliament	*7th July 2016*
Coming into force - -	*3rd October 2016*

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. 2) Rules 2016 and shall come into force on 3rd October 2016.

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(**2**).

Amendments to the Criminal Procedure Rules 2015

3. In Part 3 (Case management)—

(a) in rule 3.2 (The duty of the court), after paragraph (3) insert—

3.—"(4) Where appropriate live links are available, making use of technology for the purposes of this rule includes directing the use of such facilities, whether an application for such a direction is made or not—

(a) for the conduct of a pre-trial hearing, including a pre-trial case management hearing;

(b) for the defendant's attendance at such a hearing—

(**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.

(i) where the defendant is in custody, or where the defendant is not in custody and wants to attend by live link, but

(ii) only if the court is satisfied that the defendant can participate effectively by such means, having regard to all the circumstances including whether the defendant is represented or not; and

(c) for receiving evidence under one of the powers to which the rules in Part 18 apply (Measures to assist a witness or defendant to give evidence).

(5) Where appropriate telephone facilities are available, making use of technology for the purposes of this rule includes directing the use of such facilities, whether an application for such a direction is made or not, for the conduct of a pre-trial case management hearing—

(a) if telephone facilities are more convenient for that purpose than live links;

(b) unless at that hearing the court expects to take the defendant's plea; and

(c) only if—

(i) the defendant is represented, or

(ii) exceptionally, the court is satisfied that the defendant can participate effectively by such means without a representative.

[Note. In relation to the defendant's attendance by live link at a pre-trial hearing, see sections 46ZA and 47 of the Police and Criminal Evidence Act 1984(**3**) *and sections 57A to 57D and 57F of the Crime and Disorder Act 1998*(**4**)*.*

In relation to the giving of evidence by a witness and the giving of evidence by the defendant, see section 32 of the Criminal Justice Act 1988(**5**)*, sections 19, 24 and 33A of the Youth Justice and Criminal Evidence Act 1999*(**6**) *and section 51 of the Criminal Justice Act 2003*(**7**)*. Part 18 (Measures to assist a witness or defendant to give evidence) contains relevant rules.]";*

(b) in rule 3.3 (The duty of the parties)—

(i) at the end of paragraph (2)(c) omit 'and',

(ii) at the end of paragraph (2)(d) insert '; and', and

(iii) after paragraph (2)(d) insert—

"(e) alerting the court to any reason why—

(**3**) 1984 c. 60; section 46ZA was inserted by section 46 of the Police and Justice Act 2006 (c. 48) and amended by section 107 of the Coroners and Justice Act 2009 (c. 25). Section 47 was amended by sections 27, 29 and 168 of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 46 of the Crime and Disorder Act 1998 (c. 37), section 109 of, and paragraph 283 of Schedule 8 to, the Courts Act 2003 (c. 39), sections 12 and 28 of, and paragraphs 1 and 10 of Schedule 1 and paragraphs 1 and 6 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44), sections 10 and 46 of, and paragraphs 1, 6 and 11 of Schedule 6 to, the Police and Justice Act 2006 (c. 48) and section 1 of the Police (Detention and Bail) Act 2011 (c. 9).

(**4**) 1998 c. 37; sections 57A to 57E were substituted for section 57 as originally enacted by section 45 of the Police and Justice Act 2006 (c. 48). Section 57A was amended by section 109 of the Coroners and Justice Act 2009 (c. 25) and section 105 of, and paragraphs 36 and 39 of Schedule 12 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Sections 57B, 57C and 57D were amended by section 106 of the Coroners and Justice Act 2009 (c. 25). Section 57F was inserted by section 109 of the Coroners and Justice Act 2009 (c. 25).

(**5**) 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 article 3 of, and paragraphs 24 and 26 of the Schedule to S.I. 2004/2035.

(**6**) 1999 c. 23; section 24 was amended by paragraph 385 of Schedule 8 to, and Schedule 10 to, the Courts Act 2003 (c. 39) and section 102(1) of the Coroners and Justice Act 2009 (c. 25). Section 33A was inserted by section 47 of the Police and Justice Act 2006 (c. 48).

(**7**) 2003 c. 44.

(i) a direction should not be made in any of the circumstances listed in rule 3.2(4) or (5) (The duty of the court: use of live link or telephone facilities), or

(ii) such a direction should be varied or revoked.";

(c) in rule 3.5 (The court's case management powers), for paragraph (2)(d) substitute—

"(d) receive applications, notices, representations and information by letter, by telephone, by live link, by email or by any other means of electronic communication, and conduct a hearing by live link, telephone or other such electronic means;";

(d) in rule 3.21 (Application for joint or separate trials, etc.)—

(i) after paragraph (3) insert—

"(4) Where the same indictment charges more than one offence, the court—

(a) must exercise its power to order separate trials of those offences unless the offences to be tried together—

(i) are founded on the same facts, or

(ii) form or are part of a series of offences of the same or a similar character;

(b) may exercise its power to order separate trials of those offences if of the opinion that—

(i) the defendant otherwise may be prejudiced or embarrassed in his or her defence, or

(ii) for any other reason it is desirable that the defendant should be tried separately for any one or more of those offences."; and

(ii) in the note to the rule, after 'Rule 10.2' insert '(The indictment: general rules)';

(e) in rule 3.24 (Arraigning the defendant on the indictment)—

(i) renumber paragraphs (1)(a) and (b) as (1)(b) and (c) respectively,

(ii) before paragraph (1)(b), as so renumbered, insert—

"(a) obtain the prosecutor's confirmation, in writing or orally—

(i) that the indictment (or draft indictment, as the case may be) sets out a statement of each offence that the prosecutor wants the court to try and such particulars of the conduct constituting the commission of each such offence as the prosecutor relies upon to make clear what is alleged, and

(ii) of the order in which the prosecutor wants the defendants' names to be listed in the indictment, if the prosecutor proposes that more than one defendant should be tried at the same time;",

(iii) in paragraph (1)(b), as so renumbered, after 'indictment' insert 'or draft indictment',

(iv) in paragraph (1)(c), as so renumbered, for 'in respect of each count in the indictment' substitute 'in respect of each count', and

(v) in the note to the rule, at the end of the first paragraph insert ': see in particular rule 10.2 (The indictment: general rules)'.

4. In Part 6 (Reporting, etc. restrictions), in rule 6.3(1)(d)(ii) (Court's power to vary requirements under this Part), for 'serve a written application' substitute 'serve an application'.

5. In Part 9 (Allocation and sending for trial)—

(a) in rule 9.6 (Prosecutor's notice requiring Crown Court trial), in paragraph (2) omit 'written'; and

(b) for the final paragraph of the note to rule 9.10 (Adult defendant: not guilty plea) substitute —

"The Sentencing Council may issue allocation guidelines under section 122 of the Coroners and Justice Act 2009(**8**)*. The definitive allocation guideline which took effect on 1st March, 2016 provides:*

(1) *In general, either way offences should be tried summarily unless—*

(a) *the outcome would clearly be a sentence in excess of the court's powers for the offence(s) concerned after taking into account personal mitigation and any potential reduction for a guilty plea; or*

(b) *for reasons of unusual legal, procedural or factual complexity, the case should be tried in the Crown Court. This exception may apply in cases where a very substantial fine is the likely sentence. Other circumstances where this exception will apply are likely to be rare and case specific; the court will rely on the submissions of the parties to identify relevant cases.*

(2) *In cases with no factual or legal complications the court should bear in mind its power to commit for sentence after a trial and may retain jurisdiction notwithstanding that the likely sentence might exceed its powers.*

(3) *Cases may be tried summarily even where the defendant is subject to a Crown Court Suspended Sentence Order or Community Order.*

(4) *All parties should be asked by the court to make representations as to whether the case is suitable for summary trial. The court should refer to definitive guidelines (if any) to assess the likely sentence for the offence in the light of the facts alleged by the prosecution case, taking into account all aspects of the case including those advanced by the defence, including any personal mitigation to which the defence wish to refer.*

Where the court decides that the case is suitable to be dealt with in the magistrates' court, it must warn the defendant that all sentencing options remain open and, if the defendant consents to summary trial and is convicted by the court or pleads guilty, the defendant may be committed to the Crown Court for sentence.".

6. For Part 10 (The indictment) substitute the Part set out in the Schedule to these Rules.

7. In Part 14 (Bail and custody time limits)—

(a) for the first paragraph of the note to rule 14.7 (The duty of the court) substitute—

"Note. The Practice Direction sets out a form of application for use in connection with this rule, and forms of application, draft order and certificate for use where an applicant wants the court to exercise the powers to which rule 14.16 applies (Bail condition to be enforced in another European Union member State).";

(b) in rule 14.16 (Bail condition to be enforced in another European Union member State)—

(i) at the end of paragraph (4)(b)(i) insert ', or',

(ii) after paragraph (4) insert—

"(5) A party who wants the court to exercise the power to which this rule applies must serve with an application under rule 14.7 (Notice of application to consider bail)—

(a) a draft order; and

(**8**) 2009 c. 25.

(b) a draft certificate in the form required by EU Council Framework Decision 2009/829/JHA.", and

(iii) for the first paragraph of the note to the rule substitute—

"Note. The Practice Direction sets out a form of application under rule 14.7 and forms of draft order and certificate for use in connection with this rule.

See regulations 77 to 84 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014(**9**)*."*.

8. In Part 16 (Written witness statements), for rule 16.3 (Reference to exhibit) substitute—

"**16.3.** Where the statement refers to a document or object as an exhibit, it must identify that document or object clearly.

[Note. See section 9(7) of the Criminal Justice Act 1967(**10**)*.]"*.

9. In Part 18 (Measures to assist a witness or defendant to give evidence), in rule 18.4 (Decisions and reasons)—

(a) renumber paragraph (2) as (3),

(b) after paragraph (1) insert—

"(2) The court must—

(a) promptly determine an application; and

(b) allow a party 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(**11**)."; and

(c) in the note to the rule, after the first paragraph insert—

"Under section 32 of the Domestic Violence, Crime and Victims Act 2004, the Secretary of State for Justice must issue a code of practice as to the services to be provided by specified persons to a victim of criminal conduct.".

10. In Part 29 (Road traffic penalties), after the first paragraph of the note to rule 29.1 (Representations about obligatory disqualification or endorsement) insert—

"For the circumstances in whichthe period of a disqualification from driving must or may be extended where the court also imposes a custodial sentence, see sections 35A and 35B of the 1988 Act(**12**)*."*.

11. In Part 31 (Behaviour orders)—

(a) in the first paragraph of the note to rule 31.1 (When this Part applies), after sub-paragraph (a)(viii) insert—

"(ix) *section 19 of the Psychoactive Substances Act 2016*(**13**) *(prohibition orders);";*

(b) in rule 31.3 (Application for behaviour order and notice of terms of proposed order: special rules)—

(**9**) S.I. 2014/3141.
(**10**) 1967 c. 80.
(**11**) 2004 c. 28; section 32 was amended by article 8 of, and paragraph 10 of the Schedule to, S.I. 2007/2128.
(**12**) 1988 c. 53; sections 35A and 35B were inserted by section 137 of, and paragraph 2 of Schedule 16 to, the Coroners and Justice Act 2009 (c. 25). Section 35A was amended by sections 89, 111 and 126 of, and paragraph 5 of Schedule 10, paragraph 1 of Schedule 14 and paragraph 4 of Schedule 21 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and sections 6 and 30 of, and paragraph 11 of Schedule 1 to, the Criminal Justice and Courts Act 2015 (c. 2).
(**13**) 2016 c. 2.