

The Criminal Procedure (Amendment) Rules 2007 SI number 699 of 2007

Guide for Court Users, Staff and Practitioners

March 2007

Summary

On 2 April, 2007, the third amendment of the Criminal Procedure Rules 2005 will come into force, affecting procedures used in all criminal courts. The following information explains the types of change and is intended for court users, staff and practitioners.

Background

These Rules amend the Criminal Procedure Rules 2005 (SI reference 384 of 2005), which govern the practice and procedure to be followed in the criminal courts - i.e. the criminal division of the Court of Appeal and (when dealing with any criminal cause or matter) the Crown Court and magistrates' courts.

The elements of change are the introduction of some new provisions; the amendment of the current rules and the Glossary; and some revocations, most notably the Indictment Rules 1971 (SI reference 1253 of 1971).

1. New Provisions

The Rules add the following **new provisions** to the Criminal Procedure Rules 2005:

Part 2 – when the Rules apply

The new rules about service of documents (Part 4) will apply in all cases on and after 2nd April 2007.

The new indictment rules in Part 14 will apply only to cases sent, committed or transferred for trial to the Crown Court on or after 2nd April 2007.

The new rules about witness summonses, warrants and orders in Part 28 will apply only where someone applies for a witness summons on or after 2nd April 2007.

Part 4 – Service of documents

A new Part 4, which consolidates, revises and simplifies the rules about the service of documents in criminal cases, replaces the existing Part 4. The instrument also contains consequential amendments of related rules.

This note was prepared by the Secretariat to the Criminal Procedure Rule Committee

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Background note: The rules adopted in the Criminal Procedure Rules 2005 contained a number of different provisions about service that had been made at different times in the past and for different purposes. They consequently contained some inconsistencies. Once they all became part of a single set of rules, the need for separate service rules for different purposes disappeared. As part of its reform programme, the Rule Committee has now consolidated, revised and simplified those rules.

Under the new rules, documents can be served, generally, in any one of the various ways specified, including by electronic means where possible. Note, however, that the new rules retain the present provision that restricts the method of service of certain documents - notably, summonses - to established ways of bringing them to the personal attention of the intended recipient.

Part 14 – The Indictment

A new Part 14 revises and simplifies the rules about the service, form and content of indictments. This new part replaces the existing Part 14.

In some circumstances, the new rules allow more than one incident of the same offence to be charged in a single paragraph of an indictment, which was not explicitly permitted by the rules these replace.

Background note: The Amendment Rules revoke the Indictment Rules 1971 and consolidate them with the procedure rules about indictments that were already included in Part 14. In a judgment (*R v Liaquat Ali and others* [2005] EWCA Crim 87) given in June, 2005, the Court of Appeal called for the Criminal Procedure Rule Committee to review aspects of the Indictment Rules 1971 that the court thought had caused an unnecessary difficulty for the prosecution in that case.

The Criminal Procedure Rule Committee consulted widely on these rules between March and June 2006. It invited comments from participants in the criminal justice system, including the various professional bodies involved. It considered the compatibility of its proposals with Article 6 of the European Convention on Human Rights and took account of the corresponding rules in Scotland. The Committee took advice from leading counsel.

New rule 14.2(2) of the Criminal Procedure Rules 2005 is a revision of what is often called the “rule against duplicity”. The new rule allows a prosecutor in certain circumstances to bring a single charge against a defendant even though that includes more than one incident of the offence alleged – for example, where the defendant has laundered the proceeds of drug trafficking in comparatively small weekly sums for week after week, or has assaulted the same victim in the same way repeatedly over a period of time. The Committee took account, among other things, of the potential under the old rules for a perceived unfairness to a victim of multiple offending where, out of

many alleged offences, only a few are prosecuted as examples, giving the impression that the victim's distress has been under-estimated, or that he or she has not been believed. The Committee was satisfied that the new rule reflects what judgments of the House of Lords in the past have found consistent with fundamental principles of fairness.

The new rules are supplemented by a Practice Direction giving guidance on when a 'multiple incident' count under rule 14.2(2) may be appropriate; and when it may be appropriate to apply for a two stage trial under sections 17 – 21, Domestic Violence, Crime and Victims Act 2004. See point 4, Other News, below.

Part 28 – Witness summonses, warrants and orders

A new Part 28 (witness summonses, warrants and orders), in substitution for the existing Part 28. The new Part 28 revises and simplifies the rules about applications for witnesses to give evidence or produce documents for use in evidence. The new rules require the court to consider the rights of those to whom confidential information or documents relate, before a witness can be required to give evidence about them. They allow for applications to set aside orders that have been made.

An important feature of the new rules is that before issuing a witness summons the court must be satisfied that it has taken proper account of the rights of any person the production of whose medical or other confidential records is being sought, and such a person – frequently the victim of the offence – must have had an opportunity to make representations.

Background note: The Criminal Procedure Rule Committee received reports of difficulties with the existing procedure rules. In particular, it was reported that applications for the production of confidential documents held, for example, by health and local authorities often were made late and without adequate consideration being given to the relevance and admissibility of the documents concerned. The same difficulties had been pointed out by Lord Justice Auld in his *Review of the Criminal Courts of England and Wales* published in October, 2001.

The Committee consulted widely on these rules between June and September 2006. It invited comments from participants in the criminal justice system (including the various professional bodies involved) and from organisations representing bodies likely to be recipients of witness summonses. During the period of the consultation, two applications for judicial review arising out of the operation of the existing rules came before the Administrative Court. These were *R. (TB) v Stafford Crown Court* [2006] EWHC 1645 Admin and *R. (Cunliffe) v West London Magistrates' Court and Others* [2006] EWHC 2081 Admin, in the first of

which the court commented in its judgment on the Committee's proposals. The Committee took account of both of those cases.

The amendment of the Practice Direction will prescribe a form of application for use with these Part 28 rules.

Glossary

The Glossary is extended, to include explanations of the expressions "requisition" and "written charge".

2. Amendments

The following **amendments** to the current Rules are made:

Part 19 – Bail in magistrates’ courts and the Crown Court

The rules about custody and bail are amended, to take account of applications to vary bail conditions before charge and to remove some inconsistencies in that Part.

Note in particular that Rule 19.1 is amended to allow for applications under section 47(1E) of the Police and Criminal Evidence Act 1984 to vary bail conditions imposed by the police before a defendant is charged and to make some minor consequential amendments.

Part 31 – Restriction on cross-examination by a defendant acting in person

Part 31 is amended so that the rules apply in magistrates’ courts, as well as in the Crown Court.

The rules in Part 31 deal with the restrictions imposed by sections 34, 35 and 36 of the Youth Justice and Criminal Evidence Act 1999 which prevent a defendant in person cross-examining a witness who is the victim of a sexual offence. The old rules in Part 31 applied only in the Crown Court, despite the fact that the restrictions under the 1999 Act in principle could apply in magistrates’ courts as well. This change removes that anomaly.

Note that there are also some minor amendments to other Criminal Procedure Rules, in consequence of the changes to Part 4 – Service of documents.

3. Revocations

The following **revocations** of the current Rules are made:

Part 4

Most of the existing rules about service of documents are revoked (they are superseded by the new consolidated rules in Part 4) and other existing rules are amended to make them consistent with the new Part 4 rules.

Part 14

The rules contained in the Indictment Rules 1971 are revoked. They are superseded by the new rules in Part 14.

Part 28

The existing rules about witness summonses and orders are superseded by the new rules in Part 28.

4. Other News

The Consolidated Criminal Practice Direction

There is to be a further amendment of the Consolidated Criminal Practice Direction – number 15. This amendment addresses the subjects of the Treatment of Vulnerable Defendants; Binding Over Orders and Conditional Discharges; Settling the Indictment; Management of Cases to be Heard in the Crown Court and Forms for Use in Criminal Proceedings.

These will come into force at the same time as the Amendment Rules and will introduce :-

- In Part III of the Consolidated Criminal Practice Direction (Further Directions applying in the Crown Court and Magistrates' Court), a new direction about vulnerable defendants that will apply in magistrates' courts as well as in the Crown Court. The direction will take account of decisions of the European Court of Human Rights and of amendments to the Youth Justice and Criminal Evidence Act 1999 made by section 47 of the Police and Justice Act 2006. It will require courts to take account of a defendant's age and maturity, and of his or her ability to understand what is going on, in making arrangements for trial. Therefore
 - New text on the Treatment of Vulnerable Defendants is inserted at Part III.30, replacing the text on the Trial of Children and Young Persons in Part IV (Further Directions applying in the Crown Court).
- In Part III of the Consolidated Criminal Practice Direction (Further Directions applying in the Crown Court and Magistrates' Court), new text on Binding Over Orders and Conditional Discharges is inserted at Part III.31.
- In Part IV of the Consolidated Criminal Practice Direction (Further Directions applying in the Crown Court),
 - New text on Settling the Indictment is substituted for the existing text at Part IV.34;
 - New text on the Management of Cases to be Heard in the Crown Court is substituted for the existing text at Part IV.41. This reflects revised direction about case management in the Crown Court and about new case management forms in the Crown Court and in magistrates' courts. The Practice Direction also will introduce a form for recording case management directions in the Crown Court; and forms for use in youth courts. Between 2005 and 2006, the Criminal Procedure Rule Committee consulted widely on new arrangements to

recommend to the Lord Chief Justice. These new arrangements and forms (to be found in Annexes D and E) are the product of that consultation.

5. Useful Web Addresses

- The Committee's statutory duty is to make Criminal Procedure Rules that are simple and simply expressed – wherever possible, having consulted beforehand. (Sections 69-74 of the Courts Act 2003 refer.) **The Criminal Procedure Rule Committee's page** can be found at :
http://www.dca.gov.uk/procedurerules/criminalpr_committee.htm

- When new Criminal Procedure Rules are made and the Statutory Instrument has been laid before Parliament, we post information on the DCA website on the **Further Background to the Rules** page at :-
http://www.dca.gov.uk/procedurerules/criminalpr_background.htm

This provides advance notice of changes, to give the public information as soon as possible.

- **This Statutory Instrument can be found from 7 March 2007 at:**
<http://www.opsi.gov.uk/si/si2007/20070699.htm>
- The **DCA website** area containing the complete **Criminal Procedure Rules, the Consolidated Criminal Practice Direction and Forms** is:
http://www.dca.gov.uk/criminal/procrules_fin/index.htm.

Please note that the website is not updated with amendments until they have actually come into force. This means that the effects of the third amendment will not appear there until 2 April, 2007.

- This website also contains the forms for use in the criminal courts in Acrobat format, at:
http://www.dca.gov.uk/criminal/procrules_fin/contents/formssection/formspage.htm
- The HMCS website address for Practice Directions generally is :-
<http://www.hmcourts-service.gov.uk/cms/pds.htm>
- The address for the Consolidated Criminal Practice Direction is :-
http://www.hmcourts-service.gov.uk/cms/files/consolidated_criminal_practice_direction_060328.pdf
- The following route provides access to the HMCS website location for the related forms in Word format :-

From the HMCS Home Page at <http://www.hmcourts-service.gov.uk/cms/index.htm>, select the “Form Finder” menu as it appears on the left hand side of the screen. Go to the “Work-type” field in the

centre of the screen and from the drop-down menu, choose “Criminal Procedure Rules”. A list of forms will then appear, from which you can make your selection. We are continuing to develop ways to improve electronic access to these Word forms.