STATUTORY INSTRUMENTS

2021 No. 849 (L. 11)

SENIOR COURTS OF ENGLAND AND WALES

MAGISTRATES' COURTS, ENGLAND AND WALES

The Criminal Procedure (Amendment No. 2) Rules 2021

Made - - - -	*14th July 2021*
Laid before Parliament	*15th July 2021*
Coming into force - -	*4th October 2021*

The Criminal Procedure Rule Committee makes the following Rules under sections 69 and 86A(2) 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 No. 2) Rules 2021 and come into force on 4th October 2021.

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 2020(**b**).

Amendments to the Criminal Procedure Rules

3. In Part 2 (Understanding and applying the Rules and Powers of authorised court officers)—

(a) in rule 2.1 (When the Rules apply)—

(i) in paragraph (5), after "expires" insert "or is repealed", and

(ii) in paragraph (6), after "expire" insert "or are repealed"; and

(b) in rule 2.8 (Exercise of functions of a magistrates' court), for paragraph (4)(f) substitute—

"(f) where rule 5.10 applies (Request for information determined by the court)—

(i) directing service of a request under rule 5.10(2)(a)(ii) (service on a person not specified by the rule),

(ii) extending the period for objection under rule 5.10(3), and

(iii) determining a request referred to the court under rule 5.9(7) (Request for information by a party or person directly affected by a case) where no notice of objection is given within the time for which rule 5.10(3) provides;".

(**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). Section 86A was inserted by section 162 of the Policing and Crime Act 2017 (c. 3).

(**b**) S.I. 2020/759; amended by S.I. 2021/40.

4. In Part 3 (Case management)—

(a) in rule 3.1 (When this Part applies)—

(i) for paragraph (2) substitute—

"(2) Rules 3.16 to 3.18 apply where the case must be tried in a magistrates' court, or the court orders trial there.", and

(ii) for the second paragraph of the note to the rule substitute—

"*At the first hearing in a magistrates' court the court may (and in some cases must) order trial in that court, or may (and in some cases must) send the defendant to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998*(**a**)*. See Part 9 (Allocation and sending for trial) for the procedure. The decision depends upon—*

(a) the classification of the offence (and the general rule, subject to exceptions, is that an offence classified as triable only on indictment must be sent to the Crown Court for trial; an offence classified as triable only summarily must be tried in a magistrates' court; and an offence classified as triable either way, on indictment or summarily, must be allocated to one or the other court for trial, subject to the defendant's right to choose Crown Court trial: see in particular sections 50A, 51 and 51A of the 1998 Act(**b**) *and section 19 of the Magistrates' Courts Act 1980*(**c**)*);*

(b) the defendant's age (and the general rule, subject to exceptions, is that an offence alleged against a defendant under 18 must be tried in a magistrates' court sitting as a youth court: see in particular sections 24 and 24A of the 1980 Act(**d**)*);*

(c) whether the defendant is awaiting Crown Court trial for another offence;

(d) whether another defendant, charged with the same offence, is awaiting Crown Court trial for that offence;

(e) in some cases (destroying or damaging property; aggravated vehicle taking), whether the value involved is more or less than £5,000; and

(f) in a case of low-value shoplifting, whether the defendant chooses Crown Court trial: see section 22A of the 1980 Act(**e**).", and

(b) in rule 3.5 (The court's case management powers), in paragraph (2)(k)—

(i) for "an application" substitute "a request", and

(ii) for "(Supply to the public, including reporters, of information about cases)" substitute "(Request for information about a case)";

(c) in rule 3.14 (Duty of court officer), for the note to the rule substitute—

"*[Note. See also rule 5.9 (Request for information by a party or person directly affected by a case).]*", and

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(**a**) 1998 c. 37; section 51 was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4). Section 51A was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 6 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(**b**) 1998 c. 37; section 50A was inserted by paragraphs 15 and 17 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**c**) 1980 c. 43; section 19 was substituted by paragraphs 1 and 5 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by sections 144, 177 and 178 of, and paragraph 4 of Schedule 17, paragraph 80 of Schedule 21 and Part 5 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).

(**d**) 1980 c. 43; section 24 was amended by paragraph 47 of Schedule 14 to the Criminal Justice Act 1982 (c. 48), sections 17, 68 and 101 of, and paragraph 6 of Schedule 8 and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), paragraph 40 of Schedule 10, and Schedule 11, to the Criminal Justice and Public Order Act 1994 (c. 33), sections 47 and 119 of, and paragraph 40 of Schedule 8, to the Crime and Disorder Act 1998 (c. 37), paragraph 64 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 42 of, and paragraphs 1 and 9 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44) and sections 49 and 65 of, and paragraph 1 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38). Section 24A was inserted by paragraphs 1 and 10 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**e**) 1980 c. 43; section 22A was inserted by section 176 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12) and amended by section 52 of the Criminal Justice and Courts Act 2015 (c. 2).

(d) in rule 3.16 (Pre-trial hearings in a magistrates' court: general rules)—

(i) for paragraph (1)(a)(i) substitute "under rule 9.11 or rule 9.13 (Adult defendant: allocation for magistrates' court trial; Young defendant) the defendant indicates an intention to plead guilty, or",

(ii) for paragraph (3) substitute—

"(3) At a preparation for trial hearing, if the defendant is present—

(a) the court must 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;

(b) the court may explain, in terms the defendant can understand (with help, if necessary), that the defendant may ask the court for an indication of whether a custodial or non-custodial sentence is more likely in the event of a guilty plea there and then, but the court need not give such an indication;

(c) whether the court gives such an explanation or not the defendant may ask the court for such an indication;

(d) if the defendant asks the court for such an indication, the prosecutor must—

(i) provide any information relevant to sentence not yet served but which is available there and then, and

(ii) identify any other matter relevant to sentence, including the legislation applicable, any sentencing guidelines or guideline cases and aggravating and mitigating factors;

(e) the court must 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; and

(f) unless the defendant pleads guilty, the court must 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 is likely to take place in the defendant's absence, and

(iii) 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.",

(iii) in paragraph (5)(a), after "date of birth" insert ", unless already provided under rule 9.2 (Allocation and sending for trial; Exercise of magistrates' court's powers)", and

(iv) save for the introductory word "[Note.", omit the first paragraph of the note to the rule.

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

(a) in rule 5.4 (Duty to make records)—

(i) in paragraph (1)(j)(i), for "in connection with the allocation of a case for trial, and" substitute "by the court,",

(ii) after paragraph (1)(j)(ii) insert—

"(iii) the power exercised where the court sends the defendant to the Crown Court for trial for an offence, and

(iv) the exercise of a power to which paragraph (3) applies (judges exercising powers of District Judges (Magistrates' Courts));",

(iii) after paragraph (2) insert—

"(3) Where a judge acting under section 66 of the Courts Act 2003(**a**) (Judges having powers of District Judges (Magistrates' Courts)) exercises the power of a magistrates' court, the court officer then assisting that judge must—

(a) record, by such means as the Lord Chancellor directs, the magistrates' court power exercised by that judge; and

(b) as soon as practicable arrange the transmission to the magistrates' court of—

(i) that record, and

(ii) a record of the circumstances in which that power was exercised.",

(iv) at the end of the fourth paragraph of the note to the rule insert ": see also rule 9.11(3). Rules 3.16 and 9.13 provide for sentencing indications in other circumstances in magistrates' courts.", and

(v) after the fifth paragraph of the note to the rule insert—

"*Under section 66 of the Courts Act 2003, every holder of a judicial office listed in that section has the powers of a justice of the peace who is a District Judge (Magistrates' Courts) in relation to criminal causes and matters. The list includes Circuit judges and judges of the High Court and Court of Appeal.*";

(b) in rule 5.9 (Supply of written certificate or extract from records for use in evidence, etc.)—

(i) for the heading to the rule substitute "Request for written certificate or extract for use in evidence, etc.", and

(ii) renumber the rule as rule 5.12;

(c) for rule 5.7 (Supply to a party of information or documents from records or case materials) and rule 5.8 (Supply to the public, including reporters, of information about cases) substitute—

"ACCESS TO INFORMATION IN COURT RECORDS

The open justice principle

5.7.—(1) Where rules 5.8, 5.9, 5.10 and 5.11 apply, as well as furthering the overriding objective in accordance with rules 1.2 and 1.3 the court officer and the court must have regard to the importance of—

(a) dealing with criminal cases in public;

(b) allowing a public hearing to be reported to the public; and

(c) the rights of a person affected by a direction or order made, or warrant issued, by the court to understand why that decision was made.

(2) In rules 5.10 and 5.11 this requirement is called 'the open justice principle'.

Request for information about a case

5.8.—(1) This rule applies where anyone, including a member of the public or a reporter, requests information about a case.

(2) A person requesting information must—

(a) ask the court officer;

(b) specify the information requested; and

(c) pay any fee prescribed.

(3) The request—

(**a**) 2003 c. 39; section 66 was amended by section 32 of, and paragraph 6 of Schedule 2 to, the Armed Forces Act 2011 (c. 18) and section 61 of, and paragraph 90 of Schedule 10 and paragraph 4 of Schedule 14 to, the Crime and Courts Act 2013 (c. 22).

(a) may be made orally or in writing, and need not explain why the information is requested, if this rule requires the court officer to supply that information; but

(b) must be in writing, unless the court otherwise permits, and must explain why the information is requested, if this rule does not so require.

(4) Subject to paragraph (5), the court officer must supply to the person making the request—

(a) the date of a hearing in public;

(b) each alleged offence and any plea entered;

(c) the court's decision—

(i) at a hearing in public,

(ii) about bail, or

(iii) about the committal, sending or transfer of the case to another court;

(d) whether the case is under appeal;

(e) the outcome of the case;

(f) the identity of—

(i) the prosecutor,

(ii) the defendant, including the defendant's date of birth,

(iii) the parties' representatives, including their addresses, and

(iv) the judge, magistrate or magistrates, or justices' legal adviser by whom a decision at a hearing in public was made;

(g) such other information about the case as is required by arrangements to which paragraph (6)(c) refers; and

(h) details of any reporting or access restriction ordered by the court.

(5) The court officer must not supply the information requested if—

(a) the supply of that information is prohibited by a reporting restriction;

(b) that information is—

(i) the date of a hearing in public of which a party has yet to be notified, or

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

(c) that information concerns a trial in which the verdict was more than 6 months ago; or

(d) that information is not readily available to the court officer (for example, because of the location or conditions of its storage).

(6) Where the court officer must supply the information requested the supply may be—

(a) by word of mouth;

(b) in writing, including by written certificate or extract from a court record; or

(c) by such other arrangements as the Lord Chancellor directs, including supply by electronic means.

(7) Where this rule does not require the court officer to supply the information requested then unless that information can be supplied under rule 5.9—

(a) the court officer must refer the request to the court; and

(b) rule 5.10 applies.

[Note. See also rule 5.7 (The open justice principle).]

Request for information by a party or person directly affected by a case

5.9.—(1) This rule applies where a party, or a person directly affected by a direction or order made or warrant issued by the court, wants information about their case.

(2) Such a party or person must—

(a) ask the court officer;

(b) specify the information requested; and

(c) pay any fee prescribed.

(3) The request—

(a) may be made orally or in writing, and need not explain why the information is requested, if this rule requires the court officer to supply that information; but

(b) must be in writing, unless the court otherwise permits, and must explain why the information is requested, if this rule does not so require.

(4) Subject to paragraph (5), the court officer must supply to the party or person making the request—

(a) information about the terms of any direction or order made, or warrant issued, which was—

(i) served on, or addressed or directed to, that party or person, or

(ii) made on an application by that party or person; and

(b) information received from that party or person (which might be, for example, to establish what information the court holds, or in case of a loss of that information by the party or person making the request).

(5) The court officer must not supply the information requested if that information—

(a) concerns the grounds on which a direction or order was made, or a warrant issued, in the absence of the party or person making the request;

(b) is a recording arranged under rule 5.5 (Recording and transcription of proceedings in the Crown Court), or a copy or transcript of such a recording; or

(c) is not readily available to the court officer (for example, because of the location or conditions of its storage).

(6) Where the court officer must supply the information requested the supply may be, at the choice of the party or person making the request—

(a) by word of mouth;

(b) in writing, including by written certificate or extract from a court record; or

(c) by a copy of a document served by, or on, that party or person (but not of a document not so served).

(7) Where this rule does not require the court officer to supply the information requested—

(a) the court officer must refer the request to the court; and

(b) rule 5.10 applies.

[Note. See also rule 5.7 (The open justice principle).]

Request for information determined by the court

5.10.—(1) This rule applies where the court officer refers to the court a request for information under rule 5.8 (Request for information about a case) or rule 5.9 (Request for information by a party or person directly affected by a case).

(2) The court officer must—

(a) serve the request on—

(i) the applicant for any direction, order or warrant that the request concerns which was made or issued in the absence of the party or person making the request, and

(ii) anyone else, and to such extent, as the court directs; and

(b) notify the party or person making the request of—

(i) the date of its service under this rule, and

(ii) the identity of each person served with it, if the court so directs.

(3) If a party or person served with the request objects to the supply of information requested the objector must—

(a) give notice of the objection not more than 20 business days after service of the request, or within any longer period allowed by the court;

(b) serve that notice on the court officer and on the party or person making the request; and

(c) if the objector wants a hearing, explain why one is needed.

(4) A notice of objection must explain—

(a) whether the objection is to the supply of the whole of the information requested, or only to the supply of a specified part or specified parts;

(b) whether the objection applies without limit of time, or only for a specified period (for example, until a date or event specified by the objector); and

(c) the grounds of the objection.

(5) Where a notice of objection includes material that the objector thinks ought not be revealed to the party or person making the request, the objector must—

(a) omit that material from the notice served on that party or person;

(b) mark the material to show that it is only for the court; and

(c) with that material include an explanation of why it has been withheld.

(6) The court must not determine the request, and information requested must not be supplied, until—

(a) each party or person served with the request has had at least 20 business days, or any longer period allowed by the court, in which to object or make other representations; and

(b) the court is satisfied that in all the circumstances every such party or person has had a reasonable opportunity to do so.

(7) The court may determine the request—

(a) without a hearing; or

(b) at a hearing, which—

(i) may be in public or private, but

(ii) must be in private, unless the court otherwise directs, where the request concerns a direction, order or warrant made or issued in the absence of the party or person making the request.

(8) Where a notice of objection includes material that the objector thinks ought not be revealed to the party or person making the request—

(a) any hearing of the request may take place, wholly or in part, in the absence of the party or person making it; and

(b) at any such hearing the general rule is that the court must consider, in the following sequence—

(i) representations first by the party or person making the request and then by the objector, in the presence of both, and then

(ii) further representations by the objector, in the absence of the party or person making the request

but the court may direct other arrangements for the hearing.

(9) In deciding whether to order the supply of the information requested the court must have regard to—

(a) the open justice principle;

(b) any reporting restriction;

(c) rights and obligations under other legislation;

(d) the importance of any public interest in the withholding of that information, or in its supply only in part or subject to conditions (which public interest might be, for example, in preventing injustice, protecting others' rights, protecting the confidentiality of a criminal investigation or protecting national security); and

(e) the extent to which that information is otherwise available to the party or person making the request.

(10) Where the court orders the supply of the information requested the supply may be, at the court's direction—

(a) by word of mouth;

(b) in writing, including by written certificate or extract from a court record; or

(c) by a copy of a document.

[Note. See also rule 5.7 (The open justice principle).

The court's decision under this rule may be affected by—

(a) a reporting restriction imposed by legislation or by the court (Part 6 lists the reporting restrictions that might apply);

(b) Articles 6, 8 and 10 of the European Convention on Human Rights;

(c) the Rehabilitation of Offenders Act 1974(**a**) *(section 5 of the Act*(**b**) *lists sentences and rehabilitation periods);*

(d) section 18 of the Criminal Procedure and Investigations Act 1996(**c**)*, which affects the supply of information about material, other than evidence, disclosed by the prosecutor;*

(e) Part 3 of the Data Protection Act 2018(**d**) *(sections 43(3) and 117 of which make exceptions for criminal proceedings from some other provisions of that Act); and*

(f) sections 33, 34 and 35 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**e**)*, which affect the supply of information about applications for legal aid.]*

Publication of information about court hearings

5.11.—(1) Where a case is due to be heard in public, the court officer must—

(a) publish the information listed in paragraph (2)—

(i) if that information is available to the court officer, and

(ii) unless the publication of that information is prohibited by a reporting restriction; and

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(**a**) 1974 c. 53.
(**b**) 1974 c. 53; section 5 was amended by section 15 of, and paragraphs 77 and 78 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4) and by sections 126 and 139 of, and paragraph 2 of Schedule 21 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
(**c**) 1996 c. 25.
(**d**) 2018 c. 12.
(**e**) 2012 c. 10.

(b) publish that information for no longer than 5 business days—

(i) by notice displayed somewhere prominent in the vicinity of a court room in which the hearing is due to take place, and

(ii) by such arrangements as the Lord Chancellor directs, including arrangements for publication by electronic means, but only to the extent needed to comply with the open justice principle.

(2) The information that paragraph (1) requires the court officer to publish is—

(a) the date, time and place of the hearing;

(b) the identity of the defendant; and

(c) such other information as it may be practicable to publish concerning—

(i) the type of hearing,

(ii) the identity of the prosecutor,

(iii) the identity of the court,

(iv) the offence or offences alleged, and

(v) whether any reporting or access restriction applies.

(3) Where a case is ready to be tried without a hearing under rule 24.9 (Single justice procedure: special rules), the court officer must—

(a) publish the information listed in paragraph (4) if—

(i) the information is available to the court officer, and

(ii) the publication of the information is not prohibited by a reporting restriction; and

(b) publish that information for no longer than 5 business days by such arrangements as the Lord Chancellor directs, including arrangements for publication by electronic means, but only to the extent needed to comply with the open justice principle.

(4) The information that paragraph (3) requires the court officer to publish is—

(a) the identity of the defendant;

(b) the identity of the prosecutor;

(c) the offence or offences alleged; and

(d) whether any reporting restriction applies.

[Note. See also rule 5.7 (The open justice principle).]"; and

(d) amend the table of contents correspondingly.

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

(a) in rule 9.1 (When this Part applies), for the first two paragraphs of the note to the rule substitute—

"*[Note. At the first hearing in a magistrates' court the court may (and in some cases must) order trial in that court, or may (and in some cases must) send the defendant to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998*(**a**)*. The decision depends upon—*

(a) the classification of the offence (and the general rule, subject to exceptions, is that an offence classified as triable only on indictment must be sent to the Crown Court

(**a**) 1998 c. 37; section 51 was substituted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4). Section 51A was inserted by paragraphs 15 and 18 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by section 49 of, and paragraph 5 of Schedule 1 to, the Violent Crime Reduction Act 2006 (c. 38) and paragraph 6 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

for trial; an offence classified as triable only summarily must be tried in a magistrates' court; and an offence classified as triable either way, on indictment or summarily, must be allocated to one or the other court for trial, subject to the defendant's right to choose Crown Court trial: see in particular sections 50A, 51 and 51A of the 1998 Act(**a**) *and section 19 of the Magistrates' Courts Act 1980*(**b**)*);*

(b) the defendant's age (and the general rule, subject to exceptions, is that an offence alleged against a defendant under 18 must be tried in a magistrates' court sitting as a youth court: see in particular sections 24 and 24A of the 1980 Act(**c**)*);*

(c) whether the defendant is awaiting Crown Court trial for another offence;

(d) whether another defendant, charged with the same offence, is awaiting Crown Court trial for that offence;

(e) in some cases (destroying or damaging property; aggravated vehicle taking), whether the value involved is more or less than £5,000; and

(f) in a case of low-value shoplifting, whether the defendant chooses Crown Court trial: see section 22A of the 1980 Act(**d**).";

(b) in rule 9.2 (Exercise of magistrates' court's powers)—

(i) in paragraph (3), renumber sub-paragraphs (a) and (b) as (b) and (c) respectively and before sub-paragraph (b), as thus renumbered, insert—

"(a) where rule 9.7 (Sending for Crown Court trial) applies, if the defendant is represented;",

(ii) for paragraph (4) substitute—

"(4) The court—

(a) at the first hearing in the case must require a defendant who is present to provide, in writing or orally, his or her name and date of birth;

(b) at any subsequent hearing may require such a defendant to provide that information by those means; and

(c) may exercise its power to adjourn—

(i) if either party asks, or

(ii) on its own initiative.", and

(iii) after the fourth paragraph of the note to the rule insert—

"*Under section 86A of the Courts Act 2003*(**e**)*, Criminal Procedure Rules must specify stages of proceedings at which the court must require the information listed in rule 9.2(4) and may specify other stages of proceedings when such requirements may be imposed. A person commits an offence if, without reasonable excuse, that person fails to comply with such a requirement, whether by providing false or incomplete information or by providing no information.*";

(**a**) 1998 c. 37; section 50A was inserted by paragraphs 15 and 17 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**b**) 1980 c. 43; section 19 was substituted by paragraphs 1 and 5 of Schedule 3 to the Criminal Justice Act 2003 (c. 44) and amended by sections 144, 177 and 178 of, and paragraph 4 of Schedule 17, paragraph 80 of Schedule 21 and Part 5 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).

(**c**) 1980 c. 43; section 24 was amended by paragraph 47 of Schedule 14 to the Criminal Justice Act 1982 (c. 48), sections 17, 68 and 101 of, and paragraph 6 of Schedule 8 and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), paragraph 40 of Schedule 10, and Schedule 11, to the Criminal Justice and Public Order Act 1994 (c. 33), sections 47 and 119 of, and paragraph 40 of Schedule 8, to the Crime and Disorder Act 1998 (c. 37), paragraph 64 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 42 of, and paragraphs 1 and 9 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44) and sections 49 and 65 of, and paragraph 1 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38). Section 24A was inserted by paragraphs 1 and 10 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

(**d**) 1980 c. 43; section 22A was inserted by section 176 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12) and amended by section 52 of the Criminal Justice and Courts Act 2015 (c. 2).

(**e**) 2003 c. 39; section 86A was inserted by section 162 of the Policing and Crime Act 2017 (c. 3).

(c) in rule 9.5 (Duty of magistrates' court officer), in paragraph (1)(c) after "rule 9.11" insert "or rule 9.13";

(d) in rule 9.11 (Adult defendant: allocation for magistrates' court trial), at the end of the note to the rule insert—

"*Where the court orders trial in a magistrates' court, see also rules 3.16 to 3.18 about preparation for trial.*"; and

(e) in rule 9.13 (Young defendant)—

(i) renumber paragraph (3)(f) as (3)(g),

(ii) at the end of paragraph (3)(e) omit "and",

(iii) after paragraph (3)(e) insert—

"(f) that before answering and at any time until the court decides whether to send the defendant for Crown Court trial or order trial in a youth court—

(i) the defendant may ask the court for an indication of whether a custodial or non-custodial sentence is more likely in the event of a guilty plea there and then, but

(ii) the court need not give such an indication; and",

(iv) renumber paragraphs (4), (5) and (6) as (5), (6) and (7) respectively,

(v) after paragraph (3) insert—

"(4) The defendant may then ask the court for such an indication of sentence.",

(vi) in paragraph (5), as thus renumbered, for the initial "The" substitute "Whether the defendant asks for and the court gives such an indication or not, the",

(vii) in paragraph (7), as thus renumbered, in sub-paragraph (c) after "allocate the case for trial" insert "in the Crown Court or a youth court", and

(viii) at the end of the note to the rule insert—

"*Where the court orders trial in a youth court, see also rules 3.16 to 3.18 about preparation for trial.*"

7. In Part 19 (Expert evidence)—

(a) in rule 19.1 (When this Part applies), after paragraph (2) insert—

"(3) Where evidence that is introduced as evidence of fact within a witness' direct knowledge includes expert opinion the court may direct that the requirements of rules 19.2 (Expert's duty to the court) and 19.3 (Introduction of expert evidence) apply, to the extent and with such adaptations as the court directs.";

(b) in rule 19.3 (Introduction of expert evidence)—

(i) for paragraph (3)(c) substitute—

"(c) serve with the report—

(i) notice of anything of which the party serving it is aware which might reasonably be thought capable of undermining the reliability of the expert's opinion, or detracting from the credibility or impartiality of the expert, and

(ii) an explanation of how facts stated in the report are admissible as evidence if that is not explained by the report;",

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

"*[Note. The Practice Direction sets out a form of notice for use in connection with this rule.*

A party who accepts another party's expert's conclusions may admit them as fact under section 10 of the Criminal Justice Act 1967(**a**).", and

---

(**a**) 1967 c. 80.

(iii) at the end of the note to the rule insert—

"*Evidence of facts which are material to the opinions expressed in an expert report, or upon which those opinions are based, may be admissible if (i) they are within the expert witness' own direct knowledge, or (ii) as hearsay evidence within the meaning of section 114 of the Criminal Justice Act 2003*(**a**)*: see also rule 19.4(b), (c), (d) and (e). Evidence of examinations etc. on which an expert relies may be admissible under section 127 of the 2003 Act*(**b**)*. Part 20 contains rules about the introduction of hearsay evidence under other provisions of that Act.*"; and

(c) in rule 19.4 (Content of expert's report), in the note to the rule omit the second sentence.

8. In Part 24 (Trial and sentence in a magistrates' court)—

(a) in rule 24.4 (Evidence of a witness in person)—

(i) for paragraph (3) substitute—

"(3) Before the witness gives evidence—

(a) the party who introduces the witness' evidence must explain how that evidence is admissible, unless it is only evidence of fact within the witness' direct knowledge; and

(b) the witness must take an oath or affirm, unless other legislation otherwise provides.", and

(ii) after the first paragraph of the note to the rule insert—

"*Part 19 contains rules about the introduction of evidence of expert opinion. Part 20 contains rules about the introduction of hearsay evidence.*"; and

(b) in rule 24.5 (Evidence of a witness in writing)—

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

(ii) after paragraph (1) insert—

"(2) That party must explain how the evidence is admissible unless it is—

(a) evidence of fact within the direct knowledge of the person who made the written statement served under rule 16.4 (Written witness statement in evidence);

(b) contained in an expert's report served under rule 19.3 (Introduction of expert evidence); or

(c) identified as hearsay in a notice served under rule 20.2 (Notice to introduce hearsay evidence).", and

(iii) at the end of the note to the rule insert—

"*A written witness statement to which Part 16 applies may only be introduced in evidence if there has been no objection within the time limit to which rule 16.4 refers.*

An expert report to which Part 19 applies may only be introduced in evidence if it has been served in accordance with rule 19.3.

Rule 20.3 provides for opposing the introduction of hearsay evidence, including such evidence in a document.

Where a witness gives evidence in person, a previous written statement by that witness may be admissible as evidence under section 119 (Inconsistent statements) or under section 120 (Other previous statements of witnesses) of the Criminal Justice Act 2003(**c**)*.*"

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

(**a**) 2003 c. 44.
(**b**) 2003 c. 44; section 127 was amended by article 3 of, and paragraphs 45 and 50 of the Schedule to, S.I. 2004/2035.
(**c**) 2003 c. 44; section 120 was amended by sections 112 and 178 of, and Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).

(a) in rule 25.11 (Evidence of a witness in person)—

(i) for paragraph (3) substitute—

"(3) Before the witness gives evidence—

(a) the party who introduces the witness' evidence must explain how that evidence is admissible, unless it is only evidence of fact within the witness' direct knowledge; and

(b) the witness must take an oath or affirm, unless other legislation otherwise provides.", and

(ii) after the first paragraph of the note to the rule insert—

"*Part 19 contains rules about the introduction of evidence of expert opinion. Part 20 contains rules about the introduction of hearsay evidence.*"; and

(b) in rule 25.12 (Evidence of a witness in writing)—

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

(ii) after paragraph (1) insert—

"(2) That party must explain how the evidence is admissible unless it is—

(a) evidence of fact within the direct knowledge of the person who made the written statement served under rule 16.4 (Written witness statement in evidence);

(b) contained in an expert's report served under rule 19.3 (Introduction of expert evidence); or

(c) identified as hearsay in a notice served under rule 20.2 (Notice to introduce hearsay evidence)."

10. In Part 31 (Behaviour orders)—

(a) in rule 31.1 (When this Part applies), in paragraph (1) for "make, vary or revoke" substitute "make, vary, renew, discharge or revoke";

(b) in rule 31.5 (Application to vary or revoke behaviour order)—

(i) for the heading to the rule substitute "Application to vary, renew, discharge or revoke behaviour order",

(ii) in paragraph (1) for "vary or revoke" substitute "vary, renew, discharge or revoke",

(iii) for paragraph (2) substitute—

"(2) A person applying under this rule must—

(a) apply in writing as soon as practicable after becoming aware of the grounds for doing so, explaining—

(i) what material circumstances have changed, if any, since the order was made, and

(ii) why the order should be varied, renewed, discharged or revoked, by reference to the legislation under which it was made;

(b) in every case, serve the application on—

(i) the court officer, and

(ii) the prosecutor (unless the prosecutor is the person applying under this rule);

(c) unless the order was a restraining order, serve the application on, as appropriate—

(i) the person to whom the order was directed, and

(ii) any other person protected or affected by the order; and

(d) serve the application on any other person if the court so directs.",

(iv) for paragraph (3) substitute—

"(3) A party who wants the court to take account of any particular evidence before making its decision must, as soon as practicable—

(a) in every case, serve notice on—

(i) the court officer, and

(ii) the prosecutor (unless the prosecutor is the party serving the notice);

(b) unless the order was a restraining order, serve the notice on, as appropriate—

(i) the person to whom the order was directed, and

(ii) any other person protected or affected by the order;

(c) serve the notice on any other person if the court so directs; and

(d) in that notice identify the evidence and attach any written statement that has not already been served.",

(v) for paragraph (4) substitute—

"(4) The court may decide an application under this rule—

(a) at a hearing, in public or in private; or

(b) without a hearing, if the legislation under which the order was made so allows.",

(vi) in paragraph (5)(b), after "hearing" insert "if none is otherwise required",

(vii) for paragraph (6) substitute—

"(6) The court officer must—

(a) if the order was a restraining order, serve the application under this rule on—

(i) as appropriate, the person to whom the order was directed and any other person protected or affected by the order, and

(ii) the relevant Chief Officer of Police;

(b) serve the application on any other person if the court so directs;

(c) serve any notice of evidence received by the court officer under paragraph (3) on—

(i) each person, if any, on whom the court officer serves the application under this rule, and

(ii) any other person if the court so directs; and

(d) give notice of any hearing to—

(i) the applicant, and

(ii) any person required to be served, by this rule or by the court.", and

(viii) in the first paragraph of the note to the rule, for "varied or revoked" substitute "varied, renewed, discharged or revoked";

(c) in rule 31.9 (Court's power to vary requirements under this Part)—

(i) at the end of paragraph (b) insert "; and", and

(ii) after paragraph (b) insert—

"(c) dispense with a requirement for service (even after service was required).", and

(d) amend the table of contents correspondingly.

11. In Part 34 (Appeal to the Crown Court)—

(a) in rule 34.1 (When this Part applies)—

(i) omit paragraph (1)(a)(iii),

(ii) renumber paragraph (1)(a)(iv) as (1)(a)(iii),

(iii) after paragraph (1)(a)(iii), as thus renumbered, insert—

"(iv) paragraph 10 of Schedule 5, paragraph 6(11) or 21(6) of Schedule 7, or paragraph 10(11), 14(8) or 23(6) of Schedule 10 to the Sentencing Act 2020(**a**);",

(iv) in paragraph (1)(d)(v), after "section 10" omit "(4) or (5)",

(v) after paragraph (1)(d)(vi) insert—

"(vii) section 366(9) of the Sentencing Act 2020.",

(vi) in the second paragraph of the note to the rule, for sub-paragraph (c) substitute—

"*(c) under paragraph 10 of Schedule 5, paragraph 6(11) or 21(6) of Schedule 7, or paragraph 10(11), 14(8) or 23(6) of Schedule 10 to the Sentencing Act 2020, where the magistrates' court—*

(i) deals with the defendant for breach of a reparation order, a youth rehabilitation order or a community order,

(ii) except in some circumstances, amends a reparation order, or

(iii) except in some circumstances, deals with an application to revoke a reparation order or a community order;", and

(vii) for the eleventh paragraph of the note to the rule substitute—

"*Under section 10 of the Crime and Disorder Act 1998 or under section 366(9) of the Sentencing Act 2020, a person in respect of whom a magistrates' court makes a parenting order may appeal against that order to the Crown Court.*"; and

(b) in rule 34.2 (Service of appeal and respondent's notices)—

(i) in paragraph (2)(b)(i), for "or the date sentence is deferred" substitute "the date sentence is deferred or the date of committal for sentence", and

(ii) in the first paragraph of the note to the rule, for "section 1(1) of the Powers of Criminal Courts (Sentencing) Act 2000" substitute "sections 4 and 5 of the Sentencing Act 2020(**b**)".

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

(a) in rule 47.3 (Documents served on the court officer), for paragraph (1) substitute—

"(1) Unless the court otherwise directs—

(a) the court officer—

(i) may keep a written application, or arrange for the whole or any part to be kept by some other appropriate person, including the applicant, subject to any conditions that the court may impose, and

(ii) must arrange for any separate document to which rule 47.26(4) refers (information that the applicant thinks should be kept confidential) to be retained by the applicant, subject to any such conditions; and

(b) a person who, under such arrangements, keeps an application or retains such a document must return it to the court if and when the court officer so requires.";

(b) in rule 47.25 (Section 3: Investigation warrants; Exercise of court's powers)—

(i) renumber paragraph (6) as (7),

(ii) after paragraph (5) insert—

"(6) If the court considers information to which rule 47.26(4) refers (information that the applicant thinks should be kept confidential), the court must so record.", and

(iii) after paragraph (7) as thus renumbered insert—

"(8) Paragraph (9) applies—

(**a**) 2020 c. 17.
(**b**) 2020 c. 17.

(a) only in a magistrates' court; and

(b) unless the court—

(i) includes a District Judge (Magistrates' Courts), and

(ii) otherwise directs.

(9) A justices' legal adviser must—

(a) give the court legal advice; and

(b) assist the court by completing the preparation of any warrant to be issued.";

(c) in rule 47.26 (Application for warrant: general rules), in paragraph (4) for the words before ", the applicant may" substitute "Where the application includes information that the applicant thinks should be kept confidential";

(d) in rule 47.27 (Information to be included in a warrant), for paragraph (1)(c) substitute—

"(c) so far as practicable—

(i) the material, documents, articles or persons to be sought, and

(ii) any information to be sought which may be stored electronically;";

(e) in rule 47.28 (Application for warrant under section 8 of the Police and Criminal Evidence Act 1984), for paragraph (4) substitute—

"(4) In relation to the material sought, the application must—

(a) explain the grounds for believing that that material—

(i) is likely to be of substantial value to the investigation (whether by itself, or together with other material),

(ii) is likely to be admissible evidence at trial for the offence under investigation, and

(iii) does not consist of or include items subject to legal privilege, excluded material or special procedure material; and

(b) if that material may be stored in an electronic device or devices—

(i) so far as practicable, describe each device or kind of device sought, and

(ii) explain the grounds for believing that the material may be stored there.";

(f) in rule 47.29 (Application for warrant under section 2 of the Criminal Justice Act 1987)—

(i) at the end of paragraph (3)(a) omit "and",

(ii) at the end of paragraph (3)(b) insert "; and", and

(iii) after paragraph (3)(b) insert—

"(c) if the document or documents may be stored in an electronic device or devices—

(i) so far as practicable, describe each device or kind of device sought, and

(ii) explain the grounds for believing that the document or documents may be stored there.";

(g) in rule 47.30 (Application for warrant under paragraph 12 of Schedule 1 to the Police and Criminal Evidence Act 1984), for paragraph (2)(c) substitute—

"(c) so far as practicable, identify the material sought and if that material may be stored in an electronic device or devices—

(i) so far as practicable, describe each device or kind of device sought, and

(ii) explain the grounds for believing that the material may be stored there;";

(h) in rule 47.31 (Application for warrant under paragraph 11 of Schedule 5 to the Terrorism Act 2000), for paragraph (2)(c) substitute—

"(c) so far as practicable, identify the material sought (see also paragraph (4)) and if that material may be stored in an electronic device or devices—

(i) so far as practicable, describe each device or kind of device sought, and

(ii) explain the grounds for believing that the material may be stored there;";

(i) in rule 47.32 (Application for warrant under section 352 of the Proceeds of Crime Act 2002), for paragraph (4)(a) substitute—

"(a) specify the material and if that material may be stored in an electronic device or devices—

(i) so far as practicable, describe each device or kind of device sought, and

(ii) explain the grounds for believing that the material may be stored there;";

(j) in rule 47.33 (Application for warrant under section 160 of the Extradition Act 2003), for paragraph (4) substitute—

"(4) In relation to the material sought, the application must—

(a) explain the grounds for believing that—

(i) the material consists of or includes special procedure or excluded material, and

(ii) the material would be likely to be admissible evidence at a trial in England and Wales for the offence for which extradition is sought; and

(b) if that material may be stored in an electronic device or devices—

(i) so far as practicable, describe each device or kind of device sought, and

(ii) explain the grounds for believing that the material may be stored there."; and

(k) in rule 47.34 (Application for warrant under any other power), for paragraph (2)(c) substitute—

"(c) so far as practicable, identify the articles or persons sought (see also paragraph (4)) and if such an article may be stored in an electronic device or devices—

(i) so far as practicable, describe each device or kind of device sought, and

(ii) explain the grounds for believing that the article may be stored there;".

13. In the preamble to the Criminal Procedure Rules 2020, in sub-paragraph (b)—

(a) in the first column, headed "Rule", immediately after the entry for Part 8 insert "9.2" and in the second column, headed "Power", in the corresponding position insert "Section 86A(2) of the Courts Act 2003(**a**)";

(b) in the entries for rule 24.11 and rule 25.16, for "Section 174(4) of the Criminal Justice Act 2003(**b**)" in each place it occurs substitute "Section 52(4) of the Sentencing Act 2020(**c**)";

(c) in the entry for rule 28.4, for "Section 155(7) of the Powers of Criminal Courts (Sentencing) Act 2000(**d**)" substitute "Section 385(7) of the Sentencing Act 2020"; and

(d) in the entry immediately after the entry for rule 47.49, for "47.66 to 47.71 inclusive" in the first column substitute "47.63 to 47.68 inclusive".

Burnett of Maldon, C.J.
Fulford, L.J.
Haddon-Cave, L.J.
William Davis, J.
Martin Edmunds
Patrick Field
Michael Snow
Louise Bryant
Nicola Hewer and Melissa Case

(**a**) 2003 c. 39; section 86A was inserted by section 162 of the Policing and Crime Act 2017 (c. 3).
(**b**) 2003 c. 44; section 174 was repealed by section 413 of, and Schedule 28 to, the Sentencing Act 2020 (c. 17).
(**c**) 2020 c. 17.
(**d**) 2000 c. 6; section 155 was repealed by section 413 of, and Schedule 28 to, the Sentencing Act 2020 (c. 17).

Suzanne Gadd
Max Hill
Alison Pople
Paul Jarvis
Folashade Abiodun
Edmund Smyth
Nicholas Ephgrave
Jodie Blackstock

I allow these Rules, which shall come into force on 4th October 2021.

Robert Buckland
14th July 2021 Lord Chancellor

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Criminal Procedure Rules 2020, S.I. 2020/759, as follows:

Rule	*Amendment*
Part 2	Rule 2.1 is amended to accommodate the possibility of a repeal of the provisions of the Coronavirus Act 2020 to which the rule refers before their expiry. Rule 2.8 is amended to allow an authorised court officer to exercise under new rule 5.10 the same judicial function as such an officer may exercise under current rule 5.7.
Part 3	Rules 3.1(2) and 3.16(1) are amended more clearly to define the circumstances in which the rules about pre-trial preparation in magistrates' courts apply. Rule 3.16 is amended to govern the exercise of a magistrates' court's power to give an indication of likely sentence in the event of a guilty plea during preparation for trial.
Part 5	Rule 5.4 is amended explicitly to require the making of a record of the exercise of a magistrates' court's powers (i) on sending a case to the Crown Court for trial, (ii) on giving a sentencing indication, and (iii) by a judge who is entitled under section 66 of the Courts Act 2003 to exercise those powers. New rules 5.7 to 5.11 are substituted for current rules 5.7 and 5.8 more clearly to define the procedure governing the supply of information about cases from court records.
Part 9	Rule 9.2 is amended (i) explicitly to refer to a magistrates' court's power to send a defendant for trial in the Crown Court in the defendant's absence where rule 9.7 applies, and (ii) explicitly to require the taking of a defendant's name and date of birth at the first hearing in a magistrates' court where that is a hearing to which the Part 9 rules apply. Rule 9.13 is amended to govern the exercise of a youth court's power to give an indication of likely sentence in the event of a guilty plea during allocation proceedings in that court.
Part 19	Rule 19.1 is amended to acknowledge the court's power to impose procedural requirements for the introduction of expert opinion evidence where evidence of fact in the event includes such opinion evidence. Rule 19.3 is amended to require a party who introduces expert opinion evidence to make sure that the admissibility of facts stated in the expert's report is explained.
Part 24	Rule 24.4 is amended to require a party who introduces oral evidence to explain how that evidence is admissible, unless it is the witness' direct evidence of fact. Rule 24.5 is amended to impose the same requirement on a party who introduces written evidence.
Part 25	Rule 25.11 is amended to require a party who introduces oral evidence to explain how that evidence is admissible, unless it is the witness' direct evidence of fact. Rule 25.12 is amended to impose the same requirement on a party who introduces written evidence.
Part 31	Rules 31.1 and 31.5 are amended to make it clear that the rules apply not only to the variation or revocation of behaviour orders but also to the renewal or discharge of such orders. Rule 31.5 is also amended to require

service by the court officer, not by the applicant, of an application to vary or discharge a restraining order, and of any notice of evidence in support of such an application. Rule 31.9 is amended to allow the court to dispense with a requirement for service where that would be unnecessary or inappropriate.

Part 34 Rule 34.2 is amended to provide that where a defendant is convicted by a magistrates' court and committed to the Crown Court for sentence then the time limit for an appeal against the conviction runs from the date of that committal for sentence, not from the date of sentence in the Crown Court.

Part 47 Rule 47.3 is amended to require the court to arrange for the applicant for a search warrant to retain any confidential document used in the application. Rule 47.26 is amended to require the court to record the fact if it has considered any such document. Rule 47.25 is amended to require a justices' legal adviser to advise and assist a magistrates' court when the court considers an application for a search warrant, unless the court includes a District Judge (Magistrates' Courts) and dispenses with such assistance. Rule 47.27 is amended to require a search warrant to identify, so far as practicable, information sought which may be stored in an electronic device. Rules 47.28, 47.29, 47.30, 47.31, 47.32, 47.33 and 47.34 are amended to require an application for a search warrant so far as practicable to identify information sought which may be stored in an electronic device and, so far as practicable, to describe any such device.

Amendments consequent on the Sentencing Act 2020. Rule 34.1 and the Preamble to the Criminal Procedure Rules 2020 are amended to substitute references to provisions of the Sentencing Act 2020 for references to provisions that that Act supersedes.

Amendments consequent on other amendments. The following rules and notes to rules ('n') are amended in consequence of the other amendments listed above: 3.5, 3.14(n), 5.4(n), 5.9 (which is renumbered), 9.1(n), 9.5, 9.11(n) and 47.26(4).

These Rules come into force on 4th October 2021.

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