

1999 No. 598 (L. 2)

SUPREME COURT OF ENGLAND AND WALES

The Crown Court (Miscellaneous Amendments) Rules 1999

<i>Made</i> - - - -	<i>5th March 1999</i>
<i>Laid before Parliament</i>	<i>8th March 1999</i>
<i>Coming into force</i>	<i>1st April 1999</i>

We, the Crown Court Rule Committee, in exercise of the powers conferred upon us by sections 84(1) and 86 of the Supreme Court Act 1981(a), sections 2, 2B, 2C and 2E of the Criminal Procedure (Attendance of Witnesses) Act 1965(b) and section 19 of the Criminal Procedure and Investigations Act 1996(c), hereby make the following Rules:

1. These Rules may be cited as the Crown Court (Miscellaneous Amendments) Rules 1999 and, subject to rule 2(1) below, shall come into force on 1st April 1999.

Crown Court Rules 1982

2.—(1) This Rule applies in relation to any proceedings for the purpose of which no witness summons has been issued under section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965 before 1st April 1999.

(2) For rule 23 of the Crown Court Rules 1982(d) there shall be substituted the following rules:

“Application for witness summons

23.—(1) This rule applies to an application under section 2 of the 1965 Act for the issue of a witness summons and in this rule references to “the application” and “the applicant” shall be construed accordingly.

(2) Subject to paragraphs (8) to (10), the application shall be made in writing to the appropriate officer of the Crown Court and shall—

- (a) contain a brief description of the stipulated evidence, document or thing;
- (b) set out the reasons why the applicant considers that the stipulated evidence, document or thing is likely to be material evidence;
- (c) set out the reason why the applicant considers that the directed person will not voluntarily attend as a witness or produce the document or thing; and
- (d) if the witness summons is proposed to require the directed person to produce a document or thing—
 - (i) inform the directed person of his right to make representations in writing and at a hearing, under paragraph (5); and

(a) 1981 c. 54.

(b) 1996 c. 69; section 2 was substituted, and sections 2B, and 2C and 2E were inserted, by section 66(2) of the Criminal Procedure and Investigations Act 1996 (c. 25).

(c) 1996 c. 25.

(d) S.I. 1982/1109; the only relevant amending instrument is S.I. 1992/1847.

- (ii) state whether the applicant seeks a requirement also to be imposed under section 2A of the 1965 Act (advance production) and, if such a requirement is sought, specify the place and time at which the applicant wishes the document or thing to be produced.
- (3) The application shall be supported by an affidavit–
 - (a) setting out any charge on which the proceedings concerned are based;
 - (b) specifying the stipulated evidence, document or thing in such a way as to enable the directed person to identify it;
 - (c) specifying grounds for believing that the directed person is likely to be able to give the stipulated evidence or to produce the stipulated evidence or thing;
 - (d) specifying grounds for believing that the stipulated evidence is likely to be material evidence or, as the case may be, that the stipulated document or thing is likely to be material evidence.
- (4) A copy of the application and the supporting affidavit shall be served on the directed person at the same time as it is served on the appropriate officer of the Crown Court.
- (5) The directed person may, within 7 days of receiving a copy of the application under paragraph (4), inform the appropriate officer of the Crown Court whether or not he wishes to make representations, concerning the issue of the witness summons proposed to be directed to him, at a hearing and may also make written representations to that officer.
- (6) The appropriate officer of the Crown Court shall–
 - (a) if the directed person indicates that he wishes to have the application considered at a hearing, fix a time, date and place for the hearing;
 - (b) if the directed person does not indicate in accordance with paragraph (5) that he wishes to make representations at a hearing, refer the application to a judge of the Crown Court for determination with or without a hearing; and
 - (c) notify the applicant and, where sub-paragraph (a) applies, the directed person of the time, date and place fixed for any hearing of the application.
- (7) Any hearing under this rule shall, unless the judge directs otherwise, take place in private and the proceedings at the hearing shall be recorded.
- (8) In the case of an application for a witness summons which it is proposed shall require the directed person to give evidence but not to produce any document or thing, that application may be made orally to a judge or in writing and, in such a case–
 - (a) paragraphs (3) to (7) shall not have effect; and
 - (b) the application shall, in addition to the matters set out in sub-paragraphs (a) to (c) of paragraph (2), specify–
 - (i) any charge on which the proceedings concerned are based; and
 - (ii) the grounds for believing that the directed person is likely to be able to give the stipulated evidence.
- (9) Subject to paragraph (10), in the case of an application for a witness summons which it is proposed shall require the directed person to produce any document or thing and which is made within 7 days of the date fixed for trial, the appropriate officer shall refer the notice of application to the trial judge, or such other judge as may be available, to determine the application or to give such directions as the judge to whom the notice is referred considers appropriate, and paragraphs (2)(d)(i) and (4) to (6) shall not have effect.
- (10) In the case of an application for a witness summons which it is proposed shall require the directed person to produce any document or thing and which is made during the trial, such application shall be made orally to the trial judge, to determine the application or to give such directions as he considers appropriate, and in such a case–
 - (a) paragraphs (3) to (7) shall not have effect; and
 - (b) the application shall, in addition to the matters set out in sub-paragraphs (a) to (c) of paragraph (2), specify the grounds for believing that the directed person is likely to be able to produce the document or thing.

(11) In this rule and rules 23ZA, 23ZB and 23ZC—

“the 1965 Act” means the Criminal Procedure (Attendance of Witnesses) Act 1965; references to “the directed person” and “the stipulated evidence, document or thing” shall be construed in accordance with section 2(10) of the 1965 Act.

Application that summons be of no further effect

23ZA.—(1) This rule applies to an application under section 2B of the 1965 Act and references in this rule to “the applicant” and “the application” shall be construed accordingly.

(2) The application shall be made in writing to the appropriate officer of the Crown Court as soon as reasonably practicable after the document or thing has been produced for inspection in pursuance of a requirement imposed by the witness summons under section 2A of the 1965 Act.

(3) The application shall state that the applicant concludes that the requirement imposed by the witness summons under section 2(2) of the 1965 Act is no longer needed.

(4) If a direction is given under section 2B of the 1965 Act following the application, the appropriate officer of the court shall notify the person to whom the witness summons is directed as to the effect of the direction.

Application to make summons issued on application ineffective

23ZB.—(1) This rule applies to an application under section 2C of the 1965 Act and in this rule references to “the application” and “the applicant” shall, unless the contrary intention appears, be construed accordingly.

(2) The application shall be made in writing to the appropriate officer of the Crown Court and shall—

- (a) state that the applicant was not served with notice of the application to issue the summons and that he was neither present nor represented at any hearing of that application; and
- (b) set out the reasons why the applicant considers that he cannot give any evidence likely to be material evidence or, as the case may be, produce any document or thing likely to be material evidence.

(3) On receiving the application, the appropriate officer of the court shall serve notice of the application on the person on whose application the witness summons was issued.

(4) The court shall not grant or, as the case may be, refuse the application unless the applicant and the person on whose application the witness summons has been issued have been given an opportunity of making representations, whether at a hearing or (where they agree to do so) in writing without a hearing.

(5) In a case where the witness summons to which the application relates imposed a requirement to produce any document or thing, then if—

- (a) the applicant can produce that document or thing, but
- (b) he seeks to satisfy the court that the document or thing is not likely to be material evidence,

the applicant must, unless the judge directs otherwise, arrange for the document or thing to be available at the hearing of the application.

(6) Any hearing under this rule shall, unless the judge directs otherwise, take place in private and the proceedings at the hearing shall be recorded.

(7) The appropriate officer of the court shall notify the applicant and the person on whose application the witness summons was issued of the decision of the court in relation to the application.

Application to make summons issued of court’s own motion ineffective

23ZC.—(1) Rule 23ZB shall apply to an application under section 2E of the 1965 Act as it applies to an application under section 2C of that Act, subject to the following modifications.

(2) Paragraphs (2)(a) and (3) shall be omitted.

(3) In paragraphs (4) and (7), the words “and the person on whose application the witness summons was issued” shall be omitted.

(4) In paragraph (4), for the words “(where they agree to do so)”, there shall be substituted the words “(where he agrees to do so)”.

The Crown Court (Criminal Procedure and Investigations Act 1996) (Confidentiality) Rules 1997

3.—(1) The Crown Court (Criminal Procedure and Investigations Act 1996) (Confidentiality) Rules 1997**(a)** shall be amended in accordance with the following provisions of this rule.

(2) In rule 6(2)(a), for “(4)” there shall be substituted “(5)”.

(3) In rule 6(4)(a), for the words from “and that” to the end of the paragraph there shall be substituted the words “, that it proposes to make an order under subsection (4) or, as the case may be, (7) of that section and that, if an application is made in accordance with paragraph (5) below, it will before doing so hear any representations made by him, and”.

The Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997

4.—(1) The Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997**(b)** shall be amended in accordance with the following provisions of this rule.

(2) In rules 10(1)(b) and 12(2)(b), for the word “person” there shall be substituted the word “party”.

*Irvine of Lairg, C.
Philip Otton, L.J.
Geoffrey Grigson
Nicholas P. Valios
L.E. Dickinson
V.L. Garner*

Dated 5th March 1999

(a) S.I. 1997/699.
(b) S.I. 1997/1053.

EXPLANATORY NOTE

(This note is not part of the Rules)

Rule 2 of these Rules amends the Crown Court Rules 1982 by substituting new provisions for rule 23 (setting aside witness summons). The substituted rules make provisions concerning applications under sections 2, 2B, 2C and 2E respectively of the Criminal Procedure (Attendance of Witnesses) Act 1965 which were substituted by section 66 of the Criminal Procedure and Investigations Act 1996 (“the 1996 Act”).

Rules 3 and 4 amend, respectively, the Crown Court (Criminal Procedure and Investigations Act 1996) (Confidentiality) Rules 1997 and the Criminal Procedure and Investigations Act 1996 (Preparatory Hearings) (Interlocutory Appeals) Rules 1997. Rules 3(2) and 4(2) correct errors in the Rules concerned and rule 3(3) clarifies the notice which must be given to an interested person for the purposes of making an application under section 18(6) of the 1996 Act.

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