
STATUTORY INSTRUMENTS

2020 No. 759

The Criminal Procedure Rules 2020

PART 44

REOPENING A CASE IN A MAGISTRATES' COURT

Setting aside a conviction or varying a costs, etc. order

44.3.—^{F1}(1) This rule applies where the court can—

- (a) under section 16M of the Magistrates' Courts Act 1980 set aside a conviction under section 16H of the 1980 Act (conviction on accepting the automatic online conviction option); ^{F2}...
- (b) under section 142 of the 1980 Act—
 - (i) set aside a conviction, or
 - (ii) vary or rescind a costs order or an order to which Part 31 applies (Behaviour orders);
^{F3}or]]

^{F4}(c) substitute an order for a purported order that the court had no power to make.]

(2) The court may exercise its power—

- (a) on application by a party, or on its own initiative; and
- (b) at a hearing, in public or in private, or without a hearing.

(3) The court must not exercise its power in a party's absence unless—

- (a) the court makes a decision proposed by that party;
- (b) the court makes a decision to which that party has agreed in writing; or
- (c) that party has had an opportunity to make representations at a hearing (whether or not that party in fact attends).

(4) A party who wants the court to exercise its power must—

- (a) apply in writing as soon as reasonably practicable after the conviction or order that that party wants the court to set aside, vary or rescind;
- (b) serve the application on—
 - (i) the court officer, and
 - (ii) each other party; and
- (c) in the application—
 - (i) explain why, as appropriate, the conviction should be set aside, or the order varied or rescinded,
 - (ii) specify any variation of the order that the applicant proposes,
 - (iii) identify any witness that the defendant wants to call, and any other proposed evidence,

- (iv) say whether the defendant waives legal professional privilege, giving any relevant name and date, and
 - (v) if the application is late, explain why.
- (5) The court may—
- (a) extend (even after it has expired) the time limit under paragraph (4), unless the court’s power to set aside the conviction, or vary the order, can no longer be exercised; and
 - (b) allow an application to be made orally.

[Note. Under section 142 of the Magistrates’ Courts Act 1980—

- (a) where a defendant is convicted by a magistrates’ court, the court may order that the case should be heard again by different justices; and*
- (b) the court may vary or rescind an order which it has made when dealing with a convicted defendant,*

if in either case it appears to the court to be in the interests of justice to do so.

The power cannot be exercised if the Crown Court or the High Court has determined an appeal about that conviction or order.

[^{F5}Under section 16M of the 1980 Act a magistrates’ court can set aside a conviction imposed on a defendant who accepts the automatic online conviction option under section 16H of the Act if the conviction appears to the court to be unjust. Under section 16M(3) the court may comprise a single justice to set aside a conviction but must comprise two or more to refuse to do so.

See also rule 28.4 (Variation of sentence), which applies to an application under (i) section 16M(5) of the 1980 Act to set aside a penalty under section 16I(3), or (ii) section 142 of the Act to vary or rescind a sentence.]]

Textual Amendments

- F1** Rule 44.3(1) substituted (2.10.2023) by [The Criminal Procedure \(Amendment No. 2\) Rules 2023 \(S.I. 2023/786\)](#), [rules 1, 19\(d\)\(i\)](#)
- F2** Word in rule 44.3(1)(a) omitted (1.4.2024) by virtue of [The Criminal Procedure \(Amendment\) Rules 2024 \(S.I. 2024/62\)](#), [rules 1, 10\(a\)](#)
- F3** Word in rule 44.3(1)(b) inserted (1.4.2024) by [The Criminal Procedure \(Amendment\) Rules 2024 \(S.I. 2024/62\)](#), [rules 1, 10\(b\)](#)
- F4** Rule 44.3(1)(c) inserted (1.4.2024) by [The Criminal Procedure \(Amendment\) Rules 2024 \(S.I. 2024/62\)](#), [rules 1, 10\(c\)](#)
- F5** Words in rule 44.3 Note substituted (2.10.2023) by [The Criminal Procedure \(Amendment No. 2\) Rules 2023 \(S.I. 2023/786\)](#), [rules 1, 19\(d\)\(ii\)](#)

Commencement Information

- I1** Rule 44.3 in force at 5.10.2020, see Preamble

Changes to legislation:

There are currently no known outstanding effects for the The Criminal Procedure Rules 2020, Section 44.3.