
STATUTORY INSTRUMENTS

2020 No. 759

The Criminal Procedure Rules 2020

PART 46

REPRESENTATIVES

[^{F1}Application to change legal representative (legal aid): general rules

- 46.3.**—(1) This rule applies in a magistrates’ court, the Crown Court and the Court of Appeal—
- (a) in relation to a defendant who has legal aid for the purposes of a case; and
 - (b) where either—
 - (i) that defendant wants to select a legal representative (the ‘proposed new representative’) in place of the representative named in the legal aid representation order (the ‘current representative’) (see also rule 46.4), or
 - (ii) the current representative considers there to be a duty to withdraw from the case or no longer is able to represent the defendant through circumstances outside the representative’s control (see also rule 46.5).
- (2) The defendant or the current representative, as the case may be, must—
- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
 - (b) serve the application on—
 - (i) the court officer,
 - (ii) the current representative, if the application is made by the defendant, and
 - (iii) the defendant, if the application is made by the current representative; and
 - (c) ask for a hearing, if the applicant wants one, and explain why it is needed.
- (3) The court may determine the application—
- (a) without a hearing, as a general rule; or
 - (b) at a hearing, if that is needed to resolve—
 - (i) matters in dispute, or
 - (ii) other matters unclear to the court.
- (4) Unless the court otherwise directs, any hearing must be in private and in the absence of—
- (a) the prosecutor,
 - (b) any co-defendant, and
 - (c) any legal representative or advocate of the prosecutor or a co-defendant.
- (5) If the court allows the application, as soon as practicable—
- (a) the current representative must make available to any new representative such documents in the current representative’s possession as have been served on the defendant; and
 - (b) a new representative, if any, must serve notice of appointment on each other party.

- (6) Paragraph (7) applies where—
- (a) the court refuses an application under rule 46.4 and in response—
 - (i) the defendant declines further representation by the current representative or asks for legal aid to be withdrawn, or
 - (ii) the current representative declines further to represent the defendant; or
 - (b) the court allows an application under rule 46.5.
- (7) If the court withdraws the defendant’s legal aid—
- (a) the court may specify the date on which that withdrawal will take effect; and
 - (b) the court officer must serve notice of the withdrawal on—
 - (i) the defendant,
 - (ii) the current representative, and
 - (iii) the prosecutor.

[Note. Under sections 16 and 19 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and Part 2 of the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013, a court before which criminal proceedings take place may determine whether an individual qualifies for legal aid representation in accordance with the 2012 Act.

Under regulation 13 of the 2013 Regulations, in relation to any proceedings involving co-defendants a represented person must select a representative who is also instructed by a co-defendant unless there is, or there is likely to be, a conflict of interest between the two defendants.

Under regulation 14 of the 2013 Regulations, once a representative has been selected the person who is represented has no right to select another in the place of the first unless the court so decides, in the circumstances set out in the regulation.

Under regulation 9 of the 2013 Regulations, if a represented person declines to accept representation on the terms offered or requests that legal aid representation is withdrawn, or if the current representative declines to continue to represent that person, the court may withdraw legal aid.

See also regulation 11 of the 2013 Regulations, which requires that an application under regulation 14 (among others) must be made by the represented person, must be in writing and must specify the grounds.]]

Textual Amendments

- F1** Rules 46.3-46.5 substituted for rule 46.3 (2.10.2023) by The Criminal Procedure (Amendment No. 2) Rules 2023 (S.I. 2023/786), rules 1, **20(a)**

Commencement Information

- II** Rule 46.3 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 46.3.