
STATUTORY INSTRUMENTS

2021 No. 849

The Criminal Procedure (Amendment No. 2) Rules 2021

Amendments to the Criminal Procedure Rules

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⁽¹⁾ (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;

(1) 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).

- (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) 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 requestbut 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(2) (section 5 of the Act(3) lists sentences and rehabilitation periods);*
- (d) *section 18 of the Criminal Procedure and Investigations Act 1996(4), which affects the supply of information about material, other than evidence, disclosed by the prosecutor;*
- (e) *Part 3 of the Data Protection Act 2018(5) (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(6), 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
- (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

(2) 1974 c. 53.

(3) 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).

(4) 1996 c. 25.

(5) 2018 c. 12.

(6) 2012 c. 10.

- (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.