
STATUTORY INSTRUMENTS

2023 No. 786

The Criminal Procedure (Amendment No. 2) Rules 2023

Citation, commencement and interpretation

1. These Rules may be cited as the Criminal Procedure (Amendment No. 2) Rules 2023 and come into force on 2nd October 2023.
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(1).

Amendments to the Criminal Procedure Rules

3. In Part 2 (Understanding and applying the rules; powers of authorised court officers)—
 - (a) for the heading to the Part substitute “Understanding and applying the rules; powers and duties of court officers and justices’ legal advisers”;
 - (b) after rule 2.11 (Taking of statutory declarations by court officers) insert—

“JUSTICES’ LEGAL ADVISERS

Duties of justices’ legal adviser

- 2.12.**—(1) This rule applies in relation to a magistrates’ court, including a youth court, that comprises a lay justice or lay justices.
- (2) A justices’ legal adviser—
- (a) must provide the court with any legal advice that it needs to carry out its functions, whether the court asks for that advice or not, including advice about—
 - (i) questions of law,
 - (ii) questions of mixed law and fact,
 - (iii) matters of practice and procedure,
 - (iv) relevant judicial decisions that bind the court,
 - (v) the process to be followed to reach a decision,
 - (vi) the process to be followed when sentencing,
 - (vii) the range of penalties and orders available when sentencing and the matters to be taken into account, in accordance with any sentencing guideline that applies, and
 - (viii) any other matter relevant to the case before the court;
 - (b) must allow the parties, if present, an opportunity to make representations to the court about that advice;

- (c) may ask questions of a party or witness on the court’s behalf to clarify representations and evidence;
 - (d) if necessary must assist the court with the formulation and recording of reasons for its decisions; and
 - (e) may make announcements on the court’s behalf, other than an announcement of—
 - (i) an allocation or sending decision,
 - (ii) an indication of likely sentence, or
 - (iii) a verdict or sentence.
- (3) To provide the legal advice required by paragraph (2)(a) a justices’ legal adviser must—
- (a) if necessary, attend the members of the court outside the courtroom; and
 - (b) in that event, inform the parties, if present, of any such advice given there.
- (4) A justices’ legal adviser must assist a party who has no legal representative—
- (a) to understand what the court requires and why;
 - (b) to provide information required by the court to prepare for trial or to carry out its other functions; and
 - (c) if necessary, to make representations to the court or to give evidence.
- (5) In performing the functions for which these Rules provide a justices’ legal adviser—
- (a) must avoid the appearance of advocacy for a party;
 - (b) must adhere to the same principles that apply to courts of independence, impartiality, integrity, propriety, competence, diligence and ensuring fair treatment; and
 - (c) may consult with other justices’ legal advisers.

[Note. Section 28 of the Courts Act 2003(2) provides for persons authorised by the Lord Chief Justice to give advice to justices of the peace about matters of law. Such a person may be authorised for that purpose only if appointed under section 2(1) of that Act and possessed of such qualifications as may be prescribed. Section 29 of the 2003 Act(3) provides that the Lord Chief Justice may give directions to such a person but that, apart from that, such a person is not subject to the direction of the Lord Chancellor or anyone else when exercising functions under section 28.

See also rule 2.2 (Definitions).

The following rules impose specific duties on a justices’ legal adviser in addition to those listed in this rule—

- (a) *rule 9.4 (duty of justices’ legal adviser during allocation and sending for trial);*
- (b) *rule 14.3 (duty of justices’ legal adviser in proceedings about bail and custody time limits);*
- (c) *rule 24.14 (duty of justices’ legal adviser during trial and sentence in a magistrates’ court);*

(2) [2003 c. 39](#); section 28 was substituted by section 3 of, and paragraphs 25 and 26 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act [2018 \(c. 33\)](#).

(3) [2003 c. 39](#); section 29 was substituted by section 3 of, and paragraphs 25 and 26 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act [2018 \(c. 33\)](#).

- (d) *rule 30.2 ((duty of justices' legal adviser in proceedings about the enforcement of fines and other orders for payment);*
 - (e) *rule 35.4 (duty of justices' legal adviser on an application to a magistrates' court to state a case for the High Court); and*
 - (f) *rule 47.25 (duty of justices' legal adviser on an application to a magistrates' court for a search warrant).J”;* and
- (c) amend the table of contents correspondingly.
4. In Part 3 (Case management)—
- (a) in rule 3.2 (The duty of the court)—
 - (i) after paragraph (4) insert—

“(5) At the first hearing in a case the court must require a defendant who is present—

 - (a) to provide—
 - (i) the defendant's name and date of birth; and
 - (ii) at least one address at which documents may be served on the defendant under rule 4.4 (Service by leaving or posting a document), including any address at which the defendant resides, in order to facilitate effective communication between the court and the defendant; and
 - (b) further to assist communication between the court and the defendant, to provide any—
 - (i) electronic address by means of which written messages may be sent to the defendant, and
 - (ii) telephone number by means of which oral messages may be given to or left for the defendant.

(6) At any hearing after the first in a case the court may require a defendant who is present to provide or confirm the information required under paragraph (5).

(7) Information required under paragraph (5)(a) must be provided in public unless on an application under rule 6.4 (Reporting and access restrictions) the court otherwise directs.

(8) If the defendant fails to comply with a requirement to provide name and date of birth—

 - (a) the court that imposed the requirement—
 - (i) may invite the prosecutor there and then to start a prosecution in respect of that failure, in accordance with the rules in Part 7 (Starting a prosecution in a magistrates' court),
 - (ii) must apply to any such prosecution the rules in Part 24 (Trial and sentence in a magistrates' court), and
 - (iii) in any such prosecution may receive evidence from court staff but must not, as a general rule, receive evidence from the defendant's legal representative (if any) or from a member of the court; and
 - (b) for the purposes of this paragraph the rules in Parts 7 and 24 apply in the Crown Court as well as in a magistrates' court.”, and
 - (ii) at the end of the note to the rule insert—

“Under section 86A of the Courts Act 2003(4), Criminal Procedure Rules must specify stages of proceedings at which the court must require the defendant to provide name and date of birth and may specify other stages of proceedings at which such a requirement may be imposed. Under section 86A(3) 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. Under section 86A(6) the court before which a person is required to provide that information may deal with any suspected such offence at the same time as dealing with the offence for which the person was already before the court.”;

(b) in rule 3.5 (The court’s case management powers)—

(i) after paragraph (6) insert—

“(7) In deciding whether to postpone, cancel or adjourn a hearing the court must take into account—

- (a) the likelihood that delay would be contrary to the court’s duty under rule 1.3 (The application by the court of the overriding objective);
- (b) the court’s duty under rule 3.8 (Case preparation and progression);
- (c) the availability of a substitute hearing date;
- (d) the need for compelling reasons, and especially where an application to postpone, cancel or adjourn is made at or shortly before the hearing;
- (e) the nature and gravity of any failure to comply with a rule or direction, or to take some other step, where that failure prompts the proposed postponement, cancellation or adjournment; and
- (f) the evidence of unfitness to attend, where a participant’s ill-health prompts the proposed postponement, cancellation or adjournment, and in particular the extent to which any medical certificate satisfactorily—
 - (i) identifies the date of the participant’s examination,
 - (ii) describes the participant’s injury, illness or condition, the activity or activities which that ill-health impedes and the likely duration of that impediment, and
 - (iii) explains how that ill-health renders the participant unfit to attend the hearing.” and

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

“The court may require expert evidence in support of an application to postpone, cancel or adjourn a hearing by reason of ill-health, in particular from the medical practitioner who provided a certificate in support of the application. See also Part 19 (Expert evidence).”; and

(c) in each of rules 3.16 (Pre-trial hearings in a magistrates’ court: general rules) and 3.21 (Pre-trial hearings in the Crown Court: general rules)—

- (i) omit paragraph (5), and
- (ii) omit the final paragraph of the note to the rule.

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

(a) in rule 5.1 (Applications, etc. by forms or electronic means), in paragraph (2)(b) for “set out in” substitute “issued under”;

(4) 2003 c. 39; section 86A was inserted by section 162 of the Policing and Crime Act 2017 (c. 3).

- (b) in rule 5.2 (Forms in Welsh), in paragraph (1) for “set out in the Practice Direction, or in the Criminal Costs Practice Direction,” substitute “issued under the Practice Direction or the Criminal Costs Practice Direction”;
- (c) in rule 5.5 (Recording and transcription of proceedings in the Crown Court)—
 - (i) in paragraph (1), after “Court of Appeal,” insert “paragraphs (2) to (4) apply and”,
 - (ii) after paragraph (4) insert—
 - “(5) Where the court exercises at a hearing a power to which Part 47 applies (Investigation orders and warrants)—
 - (a) the court officer must arrange for the recording of that hearing unless the court otherwise directs; and
 - (b) paragraphs (6) to (9) apply.
 - (6) A party or person affected by the exercise of that power who wants to hear such a recording or who wants a transcript of such a recording must—
 - (a) apply in writing to the court officer;
 - (b) explain the reasons for the request; and
 - (c) pay any fee prescribed.
 - (7) On an application under paragraph (6) to hear a recording the court officer may allow the applicant to do so—
 - (a) where the hearing was in public;
 - (b) where the hearing was in private only if the applicant was present at that hearing; and
 - (c) subject to any direction by the court.
 - (8) On an application under paragraph (6) for a transcript of a recording the court officer may arrange for transcription—
 - (a) where the hearing was in public;
 - (b) where the hearing was in private only if the applicant was present at that hearing; and
 - (c) subject to any direction by the court.
 - (9) A person who transcribes such a recording—
 - (a) must supply a transcript of a hearing in public to any applicant under paragraph (6), subject to paragraph (9)(b);
 - (b) if the recording of a hearing in public contains information to which reporting restrictions apply, may only supply a transcript containing that information to a recipient to whom that supply will not contravene those restrictions;
 - (c) may only supply a transcript of a hearing in private to a recipient who was present at that hearing; and
 - (d) must supply any such transcript—
 - (i) in accordance with the transcription arrangements made by the court officer, and
 - (ii) on payment of any fee prescribed.”, and
 - (iii) for the first paragraph of the note to the rule substitute—

“[Note. Under section 32 of the Criminal Appeal Act 1968(5) Criminal Procedure Rules may provide for the making of a record of any proceedings in respect of which an appeal lies to the Court of Appeal and for the making and supply of a transcript of such a record.”;

- (d) in rule 5.8 (Request for information about a case), in paragraph (1)(b) for “(Request for written certificate or extract for use in evidence, etc.)” substitute “(Request for certificate, extract or information under other legislation)”;
 - (e) in rule 5.11 (Publication of information about court hearings)—
 - (i) for the heading to the rule substitute “Publication of information about court hearings, etc.”,
 - (ii) at the end of paragraph (2)(b) omit “and”,
 - (iii) for paragraph (2)(c) substitute—
 - “(c) by notice under paragraph (1)(b)(i), 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, and
 - (iv) any reporting or access restriction that applies; and
 - (d) by arrangements under paragraph (1)(b)(ii), such other information as it may be practicable to publish concerning—
 - (i) the details listed in paragraph (2)(c), and
 - (ii) the offence or offences alleged.”, and
 - (iv) in paragraph (3) for “Where a case is ready to be tried without a hearing” substitute “Where 15 business days have expired after service on the defendant of a written charge and other documents”;
 - (f) in rule 5.12 (Request for written certificate or extract for use in evidence, etc.)—
 - (i) for the heading to the rule substitute “Request for certificate, extract or information under other legislation”, and
 - (ii) in paragraph (1)(b) for “requires” substitute “requires or permits”;
 - (g) in the note to rule 5.12 (Request for written certificate or extract for use in evidence, etc.), in the second paragraph—
 - (i) at the end of sub-paragraph (b) omit “and”,
 - (ii) renumber sub-paragraph (c) as (d), and
 - (iii) after sub-paragraph (b) insert—
 - “(c) section 14 of the Offender Management Act 2007(6), under which information may be supplied to specified persons for offender management purposes; and”; and
 - (h) amend the table of contents correspondingly.
6. In Part 7 (Starting a prosecution in a magistrates’ court)—
- (a) after rule 7.4 (Summons, warrant and requisition) insert—

(5) 1968 c. 19.

(6) 2007 c. 21; section 14 was amended by sections 38 and 39 of, and paragraphs 24 and 26 of Schedule 9 and paragraph 37 of Schedule 10 to, the Criminal Justice and Courts Act 2015 (c. 2).

“Notice of defendant in custody

7.5.—(1) This rule and rule 7.6 (Arrangements for court to receive defendant in custody) apply where—

- (a) a defendant in custody must be brought before a court—
 - (i) under section 46 of the Police and Criminal Evidence Act 1984(7) (Detention after charge), or
 - (ii) after arrest on a warrant issued under section 1 of the Magistrates’ Courts Act 1980 (Issue of summons to accused or warrant for his arrest); and
 - (b) a police custody officer so notifies the court officer.
- (2) The police custody officer must provide the court officer with—
- (a) the defendant’s name and date of birth;
 - (b) the offence charged and confirmation of the date and time of charge;
 - (c) confirmation that the information required by rule 8.3 (Content of initial details) is available and will be served before the defendant’s case is heard;
 - (d) confirmation that the prosecutor has been notified;
 - (e) confirmation that the following have been notified and are available—
 - (i) any interpreter required,
 - (ii) the defendant’s legal representative, if any, and
 - (iii) any local or other authority, including any youth offending team, responsible for the defendant’s care or welfare;
 - (f) the police custody officer’s proposal for the means by which the defendant will be brought before the court, either by live link or in person, and—
 - (i) if the proposal is for the defendant to attend court by live link, details of any material circumstance listed in rule 3.35 (Live link direction: exercise of court’s powers), or
 - (ii) if the proposal is for the defendant to attend court in person, the identity of the authority responsible for transporting the defendant and the expected time of arrival; and
 - (g) details of any disability or other vulnerability of the defendant of which the police custody officer is aware and which is not apparent from other information supplied.

[Note. Under section 46 of the Police and Criminal Evidence Act 1984 a defendant who is charged with an offence and, after being charged, is kept in police or local authority detention must be brought before a magistrates’ court as soon as is practicable that day, or the next day which is not Christmas Day, Good Friday or a Sunday.]

Arrangements for court to receive defendant in custody

7.6.—(1) Subject to paragraph (3), the court officer must arrange for a defendant of whom notice is given under rule 7.5 (Notice of defendant in custody) to be brought before a court in person or by live link as soon as is practicable that day and in any event—

- (a) by 3.30pm if that day is a business day;

- (b) by 12.30pm if that day is a Saturday or a bank holiday; or
 - (c) in either case, later if, but only if, a disability or vulnerability of the defendant so requires.
- (2) In making the arrangements required by paragraph (1) the court officer must—
- (a) consult with those affected including—
 - (i) the police custody officer,
 - (ii) court members,
 - (iii) justices’ legal advisers and other court officers, and
 - (iv) the prosecutor; and
 - (b) as far as is practicable rearrange court business to ensure that the time available will allow all cases heard that day to conclude by 4.30pm (or later if, but only if, a disability or vulnerability of the defendant the subject of this rule so requires).
- (3) If the arrangements otherwise required by paragraph (1) cannot practicably be made then the court officer must arrange for the defendant to be brought before a court as soon as is practicable on the next day which is not Christmas Day, Good Friday or a Sunday.
- (4) When arrangements for the defendant to be brought before a court have been made the court officer promptly must so inform—
- (a) the police custody officer; and
 - (b) as applicable, others consulted under paragraph (2)(a).”; and
- (b) amend the table of contents correspondingly.
7. In Part 9 (Allocation and sending for trial)—
- (a) in rule 9.2 (Exercise of magistrates’ court’s powers)—
 - (i) for paragraph (4) substitute—
 - “(4) The court may exercise its power to adjourn—
 - (a) if either party asks; or
 - (b) on its own initiative.”; and
 - (ii) omit the fifth paragraph of the note to the rule; and
 - (b) in rule 9.4 (Duty of justices’ legal adviser)—
 - (i) at the end of paragraph (2)(a) insert “and”,
 - (ii) at the end of paragraph (2)(b) omit “and”,
 - (iii) omit paragraphs (2)(c) and (3), and
 - (iv) at the end of the note to the rule insert “See also rule 2.12 (Duties of justices’ legal adviser).”.
8. In Part 14 (Bail and custody time limits)—
- (a) in rule 14.3 (Duty of justices’ legal adviser)—
 - (i) for paragraph (2) substitute—
 - “(2) A justices’ legal adviser must ask such questions as may be needed to obtain information sufficient to allow the court to make such decisions as are required.”; and
 - (ii) at the end of the note to the rule insert “See also rule 2.12 (Duties of justices’ legal adviser).”;
 - (b) renumber rules 14.16 (Application to extend a custody time limit) and 14.17 (Appeal against custody time limit decision) as rules 14.21 and 14.22 respectively;

- (c) reposition rules 14.21 and 14.22 as thus renumbered, with the heading “Custody time limits” which precedes those rules, to follow rule 14.20 (extension of bail before charge; application to withhold information from the defendant);
- (d) after rule 14.15 (Forfeiture of a recognizance given by a surety) insert—

“Notice of arrest for breach of bail

14.16.—(1) This rule and rule 14.17 (Arrangements for court to receive defendant arrested for breach of bail) apply where—

- (a) a defendant arrested for breach of bail must be brought before a court under section 7 of the Bail Act 1976⁽⁸⁾ (Liability to arrest for absconding or breaking conditions of bail); and
 - (b) a police custody officer so notifies the court officer.
- (2) The police custody officer must provide the court officer with—
- (a) the defendant’s name and date of birth;
 - (b) details of—
 - (i) the warrant under which the defendant was arrested, or
 - (ii) the reasons for an arrest without a warrant;
 - (c) confirmation that the prosecutor has been notified;
 - (d) confirmation that the following have been notified and are available—
 - (i) any interpreter required,
 - (ii) the defendant’s legal representative, if any, and
 - (iii) any local or other authority, including any youth offending team, responsible for the defendant’s care or welfare;
 - (e) the police custody officer’s proposal for the means by which the defendant will be brought before the court, either by live link or in person, and—
 - (i) if the proposal is for the defendant to attend court by live link, details of any material circumstance listed in rule 3.35 (Live link direction: exercise of court’s powers), or
 - (ii) if the proposal is for the defendant to attend court in person, the identity of the authority responsible for transporting the defendant and the expected time of arrival; and
 - (f) details of any disability or other vulnerability of the defendant of which the police custody officer is aware and which is not apparent from other information supplied.

[Note. The court may issue a warrant for the defendant’s arrest—

- (a) *under section 7(1) of the Bail Act 1976 where the defendant was released on bail under a duty to surrender into the custody of the court and fails to do so when required; or*

⁽⁸⁾ >1976 c. 63; section 7 was amended by section 65 of, and Schedule 12 to, the Criminal Law Act 1977 (c. 45), section 109 of, and paragraph 185 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39), sections 198 and 220 of, and Schedule 4 to, the Extradition Act 2003 (c. 41), section 177 of, and paragraph 74 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25) and sections 90 and 105 of, and paragraphs 1 and 8 of Schedule 11 and paragraphs 14 and 16 of Schedule 12 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

- (b) *under section 7(2) of the Act where the defendant was released on bail, surrenders into the custody of the court, and then leaves without the court's permission before the hearing begins or resumes.*

Under section 7(3) of the 1976 Act a defendant who has been released on bail and is under a duty to surrender into the custody of a court may be arrested and detained without a warrant by a constable—

- (a) *who has reasonable grounds for believing that the defendant is not likely to surrender to custody,*
- (b) *who has reasonable grounds for believing that the defendant is likely to break any of the conditions of bail,*
- (c) *who has reasonable grounds for suspecting that the defendant has broken any of those conditions, or*
- (d) *where a surety for that bail notifies the constable in writing that the defendant is unlikely to surrender to custody and for that reason the surety wishes to be relieved of the obligations of a surety.*

Under section 7(4) of the 1976 Act, subject to the exceptions to which rule 14.17(2) refers a defendant arrested under section 7(3) must be brought before a magistrates' court as soon as practicable and in any event within 24 hours after the arrest, omitting any part of a day which is Christmas Day, Good Friday or a Sunday.

Under section 81(5) of the Senior Courts Act 1981(9) a defendant arrested under a warrant issued by the Crown Court must be brought forthwith before—

- (a) *the Crown Court if the defendant is charged with murder, or with murder and one or more other offences; or*
- (b) *the Crown Court or a magistrates' court in any other case.]*

Arrangements for court to receive defendant arrested for breach of bail

14.17.—(1) The court officer must arrange for a defendant of whose arrest the police custody officer gives notice under rule 14.16 (Notice of arrest for breach of bail)—

- (a) if the arrest was under a Crown Court warrant, to be brought at once before—
 - (i) the Crown Court, if the defendant is charged with murder or with murder and one or more other offences, or
 - (ii) if the defendant is not so charged, the Crown Court as a general rule and otherwise a magistrates' court;
- (b) if the arrest was under a magistrates' court warrant, to be brought as soon as practicable before a magistrates' court; and
- (c) if the arrest was without a warrant, subject to paragraph (2) to be brought as soon as practicable before a magistrates' court—
 - (i) by 3.30pm that day if that day is a business day,

(9) 1981 c. 54; section 81 was amended by sections 29 and 60 of the Criminal Justice Act 1982 (c. 48), section 7 of, and paragraph 6 of Schedule 3 to, the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25), section 168 of, and paragraph 19 of Schedule 9 and paragraph 48 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 48 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 165 of, and paragraph 87 of Schedule 9 and Part I of Schedule 12 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), sections 41, 331 and 332 of, and paragraph 54 of Schedule 3, paragraph 4 of Schedule 36 and Parts 2 and 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), section 58 of, and paragraph 15 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28), articles 2, 3 and 6 of, and paragraphs 12 and 14 of the Schedule to, S.I. 2004/1033 and section 177 of, and paragraph 76 of Schedule 21 to, the Coroners and Justice Act 2009 (c. 25).

- (ii) by 12.30pm that day if that day is a Saturday or a bank holiday,
 - (iii) in either case, later if, but only if, a disability or vulnerability of the defendant so requires, and in any event
 - (iv) within 24 hours after the arrest (but omitting from that period any part of a day which is Christmas Day, Good Friday or a Sunday).
 - (2) Where a defendant of whose arrest the police custody officer gives notice under rule 14.16 was arrested without a warrant—
 - (a) if the arrest was within 24 hours of the time at which that defendant was due to surrender into the custody of a court then the court officer must arrange for the defendant to be brought before that court; and
 - (b) if the defendant is charged with murder or with murder and one or more other offences then—
 - (i) the court officer must arrange for the defendant to be brought before the Crown Court as soon as practicable and in any event within 24 hours after the arrest (but omitting from that period any part of a day which is not a business day), and
 - (ii) in paragraph (3) the reference to justices’ legal advisers is omitted.
 - (3) In making the arrangements required by paragraph (1) the court officer must—
 - (a) consult with those affected including—
 - (i) the police custody officer,
 - (ii) court members,
 - (iii) justices’ legal advisers and other court officers, and
 - (iv) the prosecutor; and
 - (b) as far as is practicable rearrange court business to ensure that the time available will allow all cases heard that day to conclude by 4.30pm (or later if, but only if, a disability or vulnerability of the defendant the subject of this rule so requires).
 - (4) When arrangements for the defendant to be brought before a court have been made the court officer promptly must so inform—
 - (a) the police custody officer; and
 - (b) as applicable, others consulted under paragraph (3)(a).
 - (5) The court before which the defendant is brought under this rule must—
 - (a) deal there and then with the alleged breach of bail; and
 - (b) as far as is practicable take the next steps required in the defendant’s case in accordance with rule 3.8 (Case preparation and progression).”; and
 - (e) amend the table of contents correspondingly.
- 9.** In Part 18 (Measures to help a witness or defendant to give evidence or otherwise participate)—
- (a) in rule 18.8 (special measures directions; exercise of court’s powers)—
 - (i) the text of the rule becomes paragraph (1), and
 - (ii) after paragraph (1) insert—
 - “(2) Where a direction provides for evidence to be admitted under section 28 of the Youth Justice and Criminal Evidence Act 1999⁽¹⁰⁾ (Video recorded cross-examination or re-examination) the court must set a timetable that provides for—

⁽¹⁰⁾ 1999 c. 23; section 8 was amended by section 109 of, and paragraph 384 of Schedule 8 to, the Courts Act 2003 (c. 39).

- (a) the date of any ground rules hearing under rule 3.9;
 - (b) the date on which the cross-examination and any re-examination will be recorded; and
 - (c) the date by which any application under section 28(5) of the 1999 Act must be made for a direction for further cross-examination or re-examination.”; and
- (b) in rule 18.9 (Special measures direction without application), in paragraph (3)(b) omit “or section 28”.
- 10. In Part 24 (Trial and sentence in a magistrates’ court)—**
- (a) in rule 24.1 (When this Part applies), in the fifth paragraph of the note to the rule at the end of sub-paragraph (b) insert “or is a corporation”;
 - (b) in rule 24.9 (Single justice procedure: special rules)—
 - (i) at the end of paragraph (1)(b) insert “or is a corporation”,
 - (ii) renumber paragraph (1)(c)(v) to (vii) as (1)(c)(vi) to (viii) respectively,
 - (iii) in paragraph (1)(c)(vi) as thus renumbered after “plead guilty” insert “and wants to be sentenced by a single justice”,
 - (iv) after paragraph (1)(c)(iv) insert—
 - “(v) a notice explaining the automatic online conviction option, if that will be available to the defendant, including explanations of penalties and liabilities, of where to obtain more details and of how to accept that option,”,
 - (v) renumber paragraph (4)(a) to (c) as (4)(b) to (d) respectively,
 - (vi) in paragraph (4)(b) as thus renumbered after “plead guilty” insert “and wants to be sentenced by a single justice”,
 - (vii) before paragraph (4)(b) as thus renumbered insert—
 - “(a) a defendant who wants to plead guilty and wants to accept the automatic online conviction option, if that is offered, may do so,”,
 - (viii) renumber paragraphs (5) to (10) as (6) to (11) respectively,
 - (ix) in paragraph (6) as thus renumbered for “plead guilty under paragraph (4)(a)” substitute “plead guilty and to be sentenced by a single justice under paragraph (4)(b)”,
 - (x) for paragraph (7) as thus renumbered substitute—
 - “(7) If within 15 business days of service on the defendant of the documents listed in paragraph (1)(c) the defendant wants to withdraw a notice served under paragraph (4)(b) (notice to plead guilty and to be sentenced by a single justice), paragraph (4)(c) (notice to plead guilty at a hearing) or paragraph (4)(d) (notice to plead not guilty), the defendant must either—
 - (a) accept the automatic online conviction option, if that was offered; or
 - (b) serve—
 - (i) notice of that withdrawal on the court officer, and
 - (ii) any substitute notice under paragraph (4).”,
 - (xi) in paragraph (8) as thus renumbered for “Paragraph (8)” substitute “Paragraph (9)”, for “paragraph (4)(b) or (c)” substitute “paragraph (4)(c) or (d)” and after

- “section 16B(2) of the Magistrates’ Courts Act 1980(11)” insert “(notice objecting to single justice procedure trial)”
- (xii) in paragraph (9) as thus renumbered for “paragraph (4)(a)” in each place it occurs substitute “paragraph (4)(b)”
- (xiii) in paragraph (10) as thus renumbered for “Paragraph (10)” substitute “Paragraph (11)”, for “paragraph (4)(b) or (c)” substitute “paragraph (4)(c) or (d)” and for “paragraph (8)” substitute “paragraph (9)”
- (xiv) after paragraph (4) insert—
- “(5) If within 15 business days of service on the defendant of the documents listed in paragraph (1)(c) the defendant accepts the automatic online conviction option (if that is offered) and does not then withdraw that acceptance within the next 5 business days—
- (a) at the end of the fifth business day after acceptance the defendant is convicted of the offence and liable to each penalty and other payment specified for it; and
- (b) paragraphs (6) to (11) do not apply.”
- (xv) in the first paragraph of the note to the rule for “sections 16A to 16D of the Magistrates’ Courts Act 1980(12)” substitute “sections 16A to 16L of the Magistrates’ Courts Act 1980(13)” and for “rule 24.9(9)” substitute “rule 24.9(10)”, and
- (xvi) after the second paragraph of the note to the rule insert—
- “Under section 16K(1) of the Magistrates’ Courts Act 1980 the time when a conviction takes effect after the defendant accepts the automatic online conviction option, if that is offered, is to be determined in accordance with Criminal Procedure Rules.”;*
- (c) in rule 24.11 (Procedure if the court convicts)—
- (i) at the end of paragraph (3)(c) omit “and”,
- (ii) at the of paragraph (3)(d) insert “and”, and
- (iii) after paragraph (3)(d) insert—
- “(e) in a youth court, if the maker of a statement to which paragraph (3)(c) refers wishes to read that statement to the court, apply for a direction to which rule 24.2(1)(c) refers (attendance) and for any other direction that the prosecutor wants—
- (i) when, or as soon as practicable after, the court convicts the defendant, and
- (ii) as a general rule, no later than 5 business days before the hearing at which sentence is due to be passed.”;
- (d) in rule 24.13 (Provision of documents for the court), in paragraph (4)(d) for “rule 24.9(4)(a)” substitute “rule 24.9(4)(b)”;
- (e) in rule 24.14 (Duty of justices’ legal adviser)—
- (i) for paragraph (2)(b) and (c) substitute—
- “(b) assist the court by—

(11) 1980 c. 43; section 16B was inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2).

(12) 1980 c. 43; sections 16A to 16D were inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2).

(13) 1980 c. 43; sections 16E and 16F were inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2). Sections 16G to 16L are inserted by section 3 of the Judicial Review and Courts Act 2022 (c. 35) with effect from a date to be appointed.

- (i) making a note of the substance of any oral evidence or representations, to help the court recall that information, and
 - (ii) if the court rules inadmissible part of a written statement introduced in evidence, marking that statement in such a way as to make that clear.”,
- (ii) for paragraph (3) substitute—
- “(3) Where the defendant has no legal representative and indicates an intention to plead guilty a justices’ legal adviser must, in terms the defendant can understand—
- (a) explain the procedures required by—
 - (i) rule 24.7 (Procedure on plea of guilty), and
 - (ii) rule 24.11 (Procedure if the court convicts); and
 - (b) in particular explain—
 - (i) the right to make representations about the facts alleged by the prosecutor,
 - (ii) the right to offer mitigation, and
 - (iii) the importance of providing information about financial and other personal circumstances so that the court can impose the most appropriate sentence.”, and
 - (iii) in the first paragraph of the note to the rule after “See also” insert “rule 2.12 (Duties of justices’ legal adviser) and”; and
 - (f) in rule 24.15 (Duty of court officer and custodian), in paragraph (1)(g)(ii) for “rule 24.9(b) or (c)” substitute “rule 24.9(4)(c) or (d) (notice of intention to plead guilty at a hearing or notice of intention to plead not guilty)”.
- 11.** In Part 28 (Sentencing procedures in special cases and on committal for sentence, etc.), in rule 28.4 (Variation of sentence)—
- (a) in paragraph (1)(a) for “vary or rescind a sentence or order” substitute “vary, rescind or set aside a sentence, penalty or order”;
 - (b) for paragraph (3)(a)(i) substitute—
 - “(i) the sentence, penalty or order that that party wants the court to vary, rescind or set aside, or”;
 - (c) for paragraph (3)(c)(i) substitute—
 - “(i) explain why the sentence, penalty or order should be varied, rescinded or set aside.”; and
 - (d) after the first paragraph of the note to the rule insert—
 - “*Under section 16M of the 1980 Act(14) a magistrates’ court can set aside a penalty imposed under section 16I of the Act on a defendant who accepts the automatic online conviction option under section 16H if the amount of the penalty appears to the court to be unjust. If the court sets aside such a penalty it may impose any sentence that it could have imposed for the offence if the defendant had pleaded guilty at the first opportunity.*”.
- 12.** In Part 30 (Enforcement of fines and other orders for payment)—
- (a) in rule 30.2 (Exercise of court’s powers)—

(14) 1980 c. 43; section 16M is inserted by section 3 of the Judicial Review and Courts Act 2022 (c. 35) with effect from a date to be appointed.

- (i) for the heading to the rule substitute “Exercise of court’s powers; duty of justices’ legal adviser”,
 - (ii) the text of the rule becomes paragraph (1),
 - (iii) after paragraph (1) insert—
 - “(2) A justices’ legal adviser must ask such questions as may be needed to obtain information sufficient to allow the court to make such decisions as are required.”, and
 - (iv) at the end of the note to the rule insert—
 - “*For the functions of a justices’ legal adviser, see sections 28 and 29 of the Courts Act 2003*(**15**). *See also rule 2.12 (Duties of justices’ legal adviser).*”]; and
 - (b) amend the table of contents correspondingly.
- 13.** In Part 31 (Behaviour orders)—
- (a) in rule 31.1 (When this Part applies) for paragraphs (1) and (2) substitute—
 - “(1) This Part applies where a magistrates’ court or the Crown Court can—
 - (a) make, vary, renew, discharge or revoke a civil order—
 - (i) as well as, or instead of, passing a sentence, or in any other circumstances in which other legislation allows the court to make such an order, and
 - (ii) that requires the defendant to do, or not do, something; or
 - (b) require a person to enter into a recognisance—
 - (i) to keep the peace and be of good behaviour, or
 - (ii) (in the Crown Court only) to come up for judgment if called on.
 - (2) In this Part—
 - (a) ‘behaviour order’ means an order to which paragraph (1)(a) refers; and
 - (b) ‘bind over’ means a requirement to which paragraph (1)(b) refers.”;
 - (b) in the note to rule 31.1 (When this Part applies)—
 - (i) in the opening words after “Acts listed” insert “beneath”,
 - (ii) renumber sub-paragraph (a)(xiii) of the first paragraph as (a)(xiv),
 - (iii) after sub-paragraph (a)(xii) of the first paragraph insert—
 - “(xiii) *section 376 of the 2020 Act*(**16**)(*requirement for parent or guardian of convicted young defendant to take proper care of the defendant and exercise proper control*), ”,
 - (iv) after sub-paragraph (a)(xiv) of the first paragraph, as renumbered by paragraph (b) (ii) of this rule, insert—
 - “(xv) *section 20(2) of the Public Order Act 2023*(**17**)(*serious disruption prevention orders*);”, and
 - (v) after the first paragraph insert—
 - “*Under section 1 of the Justices of the Peace Act 1361*(**18**), *section 1(7) of the Justices of the Peace Act 1968*(**19**)*and the inherent powers recognised by those*

(15) 2003 c. 39; sections 28 and 29 were substituted by section 3 of, and paragraphs 25 and 26 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).

(16) 2020 c. 17.

(17) 2023 c. 15; section 20 comes into force on a date to be appointed.

(18) 1361 c. 1.

(19) 1968 c. 69.

provisions a magistrates' court or the Crown Court can bind over to keep the peace and be of good behaviour a person who or whose case is before the court, by requiring that person to enter into a recognisance (a formal undertaking to pay a specified sum in the event of failure to comply), or to give a surety, or both.

Under section 79 of the Senior Courts Act 1981(20)the Crown Court can release a convicted defendant pending sentence on a recognisance to come up for judgment if called on and meanwhile to be of good behaviour.”;

- (c) in rule 31.2 (Behaviour orders: general rules)—
- (i) for the heading to the rule substitute “Behaviour orders and bind overs: general rules”,
 - (ii) in paragraph (1) after “make a behaviour order” insert “or impose a bind over”, and
 - (iii) in paragraph (2)(a)(ii) for “7 days” substitute “5 business days”;
- (d) in rule 31.3 (Application for behaviour order and notice of terms of proposed order: special rules)—
- (i) at the end of paragraph (1)(a)(v) omit “or”,
 - (ii) at the end of paragraph (1)(a)(vi) insert “or”,
 - (iii) after paragraph (1)(a)(vi) insert—
 - “(vii) a serious disruption prevention order;”, and
 - (iv) at the end of paragraph (1)(c) for “and” substitute “or”;
- (e) in rule 31.5 (Application to vary, renew, discharge or revoke behaviour order)—
- (i) for paragraph (2)(a) substitute—
 - “(a) apply as soon as practicable after becoming aware of the grounds for doing so, explaining—
 - (i) why the order should be varied, renewed, discharged or revoked, as the case may be, by reference to the legislation under which it was made, and
 - (ii) what, if any, material circumstances have changed since the court made the order or last determined an application to vary, renew, discharge or revoke it;”
 - (ii) renumber paragraph (2)(b) to (d) as (2)(c) to (e) respectively,
 - (iii) after paragraph (2)(a) insert—
 - “(b) where the application is a second or subsequent application by the applicant in respect of the same order—
 - (i) give details of each previous application, and
 - (ii) if the applicant wants the court to decide the application at a hearing, explain why;”,
 - (iv) for paragraph (4)(b) substitute—
 - “(b) without a hearing, if—
 - (i) the legislation under which the order was made so allows, or
 - (ii) the court considers the application to be an abuse of the court’s process.”;

- (v) in paragraph (5)(a) omit “at a hearing (whether or not the applicant in fact attends)”, and
- (vi) in paragraph (5)(b) omit “if none is otherwise required”;
- (f) renumber rule 31.9 (Court’s power to vary requirements under this Part) as rule 31.12;
- (g) renumber rule 31.10 (Notice to supervisor of requirement for supervision or monitoring) as rule 31.9;
- (h) in rule 31.9 as thus renumbered, in the second paragraph of the note to the rule after the first sentence insert “Under section 23 of the Public Order Act 2023(21) a serious disruption prevention order which imposes a requirement other than a notification requirement under section 24 of that Act(22) must similarly specify a supervisor.”;
- (i) after rule 31.9 as thus renumbered insert—

“Bind over: exercise of court’s powers

31.10.—(1) Where the court can impose a bind over—

- (a) the court must decide, in this sequence—
 - (i) whether or not to do so and if so in what terms, and then
 - (ii) the amount of the recognisance to require; and
- (b) the court may exercise its powers—
 - (i) on application or on the court’s own initiative, and
 - (ii) at a hearing in public, as a general rule, or, in exceptional circumstances, in private.

(2) Before imposing a bind over the court must—

- (a) take into account, as well as any representations under rule 31.2 (Behaviour orders and bind overs: general rules)—
 - (i) any evidence introduced, and
 - (ii) any admission made; and
- (b) satisfy itself so that it is sure that the criteria for the bind over are met.

(3) Before deciding the amount of any recognisance to require the court must take into account, as well as any representations under rule 31.2, such information as is readily available about the financial circumstances of the person to be bound over.

(4) As a general rule the court must not impose a bind over for more than 12 months.

(5) If the court decides to impose a bind over—

- (a) the court must explain, in terms the person to be bound over can understand (with help if necessary)—
 - (i) the effect of the court’s decision,
 - (ii) the consequences of refusing to enter into a recognisance,
 - (iii) the consequences of breaching the bind over, and
 - (iv) the possibility of appeal; and
- (b) the court must announce its decision and reasons at a hearing in public.

(6) A bind over must be in writing and must—

(21) 2023 c. 15; section 23 comes into force on a date to be appointed.

(22) 2023 c. 15; section 24 comes into force on a date to be appointed.

- (a) describe in ordinary language the conduct from which the person to be bound over must refrain;
 - (b) specify the amount of the recognisance;
 - (c) specify the duration of the bind over; and
 - (d) identify any surety who is not the person to be bound over.
- (7) If the Crown Court requires the person to be bound over to come up for judgment, the bind over also must specify—
- (a) any date on which, and place and time at which, that person must attend court; or
 - (b) the means by which that person will be given notice of such a date, place and time.
- (8) The court officer must serve the bind over as soon as practicable—
- (a) in every case, on the person bound by it; and
 - (b) as applicable, on each party or other party.

[Note. Under section 1 of the Justices of the Peace Act 1361, section 1(7) of the Justices of the Peace Act 1968 and the inherent powers recognised by those provisions, before imposing a bind over the court must be satisfied that—

- (a) *a breach of the peace involving violence or a threat of immediate violence has occurred; or*
- (b) *there is a real risk of violence in the future perpetrated by—*
 - (i) *the person to be bound over, or*
 - (ii) *another person as a natural consequence of the conduct of the person to be bound over.]*

Bind over: refusal or breach

31.11.—(1) Where a person to be bound over refuses to enter into a recognisance, the court must—

- (a) consider such other steps as may be available, for example continuing or starting a prosecution; and
- (b) treat committal to custody as a last resort.

(2) Where a person bound over is alleged to have breached a requirement, before the court forfeits the recognisance it must satisfy itself on the balance of probabilities that a breach has occurred.

(3) In addition to paragraph (1) or (2), as applicable, before committing to custody or forfeiting a recognisance the court must follow the procedure required by rule 48.8 (contempt of court by obstruction, disruption, etc.; procedure on enquiry) as if—

- (a) the refusal or breach were a contempt of court; and
- (b) the committal or forfeiture were a punishment for such a contempt.

[Note. Under section 1(7) of the Justices of the Peace Act 1968 if a person whom the court decides to bind over refuses to enter into a recognisance the court can commit that person to custody.

Payment of the sum due under a recognisance that is forfeit can be enforced under section 58 of the Magistrates' Courts Act 1980(23).]"; and

(j) amend the table of contents correspondingly.

14. In Part 35 (Appeal to the High Court by case stated), in rule 35.4 (Duty of justices' legal adviser)—

(a) for paragraph (2) substitute—

“(2) A justices' legal adviser must assist the court by—

(a) preparing and amending the draft case, and

(b) completing the case stated.”; and

(b) at the end of the rule insert—

“[Note. For the functions of a justices' legal adviser, see sections 28 and 29 of the Courts Act 2003(24). See also rule 2.12 (Duties of justices' legal adviser).]”

15. In Part 37 (Appeal to the Court of Appeal against ruling at preparatory hearing)—

(a) in rule 37.3 (Form of appeal notice) for paragraph (2)(h) substitute—

“(h) unless an authority identified by the grounds of appeal (see paragraph (2)(d)) is published by the Registrar as one frequently cited, include or attach—

(i) an electronic copy of each authority so identified, or

(ii) if two or more such authorities not so published are identified, electronic copies of each together in a single electronic document.”; and

(b) in rule 37.5 (Respondent's notice) for paragraph (5)(g) substitute—

“(g) unless an authority identified under paragraph (5)(d) is published by the Registrar as one frequently cited, include or attach—

(i) an electronic copy of each authority so identified, or

(ii) if two or more such authorities not so published are identified, electronic copies of each together in a single electronic document.”.

16. In Part 38 (Appeal to the Court of Appeal against ruling adverse to prosecution)—

(a) in rule 38.4 (Form of appeal notice) for paragraph (2)(h) substitute—

“(h) unless an authority identified by the grounds of appeal (see paragraph (2)(d)) is published by the Registrar as one frequently cited, include or attach—

(i) an electronic copy of each authority so identified, or

(ii) if two or more such authorities not so published are identified, electronic copies of each together in a single electronic document; and”; and

(b) in rule 38.7 (Respondent's notice) for paragraph (5)(g) substitute—

“(g) unless an authority identified under paragraph (5)(d) is published by the Registrar as one frequently cited, include or attach—

(i) an electronic copy of each authority so identified, or

(ii) if two or more such authorities not so published are identified, electronic copies of each together in a single electronic document.”.

(23) 1980 c. 43; section 58 was amended by section 17 of, and paragraphs 39 and 40 of Schedule 10 to, the Crime and Courts Act 2013 (c. 22).

(24) 2003 c. 39; sections 28 and 29 were substituted by section 3 of, and paragraphs 25 and 26 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).

- 17.** In Part 39 (Appeal to the Court of Appeal about conviction or sentence)—
- (a) in rule 39.3 (Form of appeal notice) for paragraph (1)(g) substitute—
- “(g) unless an authority identified by the grounds of appeal (see paragraph (2)(f)) is published by the Registrar as one frequently cited, include or attach—
- (i) an electronic copy of each authority so identified, or
- (ii) if two or more such authorities not so published are identified, electronic copies of each together in a single electronic document; and”;
- (b) in rule 39.6 (Respondent’s notice) for paragraph (6)(h) substitute—
- “(h) unless an authority identified under paragraph (6)(e) is published by the Registrar as one frequently cited, include or attach—
- (i) an electronic copy of each authority so identified, or
- (ii) if two or more such authorities not so published are identified, electronic copies of each together in a single electronic document.”
- 18.** In Part 41 (Reference to the Court of Appeal of point of law or unduly lenient sentencing)—
- (a) in rule 41.3 (Form of notice of reference and application for permission) for paragraph (6)(b) substitute—
- “(b) unless an authority identified under paragraph (2)(e) or 4(c) is published by the Registrar as one frequently cited—
- (i) an electronic copy of each authority so identified, or
- (ii) if two or more such authorities not so published are identified then electronic copies of each together in a single electronic document.”;
- (b) in rule 41.4 (Respondent’s notice) for paragraph (6)(b) substitute—
- “(b) unless an authority identified under paragraph 4(d) is published by the Registrar as one frequently cited—
- (i) an electronic copy of each authority so identified, or
- (ii) if two or more such authorities not so published are identified then electronic copies of each together in a single electronic document.”
- 19.** In Part 44 (Reopening a case in a magistrates’ court)—
- (a) after the table of contents insert—
- “*[Note. See also Part 24 (Trial and sentence in a magistrates’ court).]*”;
- (b) in rule 44.1 (When this Part applies)—
- (i) at the end of paragraph (1)(a) omit “or”,
- (ii) renumber paragraph (1)(b) as (1)(c), and
- (iii) after paragraph (1)(a) insert—
- “(b) under section 16M of the 1980 Act the court can set aside a conviction; or”;
- (c) in rule 44.2 (Statutory declaration of ignorance of proceedings)—
- (i) in paragraph (2)(b)(i) for “rule 24.9(4)(a) (notice of guilty plea)” substitute “rule 24.9(4)(b) (notice to plead guilty and be sentenced by a single justice)”,
- (ii) in paragraph (2)(b)(ii) for “rule 24.9(4)(b)” substitute “rule 24.9(4)(c)”,
- (iii) in paragraph (2)(b)(iii) for “rule 24.9(4)(c)” substitute “rule 24.9(4)(d)”, and

- (iv) in paragraph (5)(c) for the references to rule 24.9(4)(b) and to rule 24.9(4)(c) substitute references to rule 24.9(4)(c) and to rule 24.9(4)(d) respectively; and
- (d) in rule 44.3 (Setting aside a conviction or varying a costs, etc. order)—

- (i) for paragraph (1) substitute—

“(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); or

- (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).”, and

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

“Under section 16M of the 1980 Act(25) 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(26) 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(27), or (ii) section 142 of the Act to vary or rescind a sentence.]”

- 20. In Part 46 (Representatives)—

- (a) for rule 46.3 (Application to change legal representative: legal aid) substitute—

“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—

(25) 1980 c. 43; section 16M is inserted by section 3 of the Judicial Review and Courts Act 2022 (c. 35) with effect from a date to be appointed.

(26) 1980 c. 43; section 16H is inserted by section 3 of the Judicial Review and Courts Act 2022 (c. 35) with effect from a date to be appointed.

(27) 1980 c. 43; section 16I is inserted by section 3 of the Judicial Review and Courts Act 2022 (c. 35) with effect from a date to be appointed.

- (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(28) and Part 2 of the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013(29), 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.]

Application by defendant to change legal representative (legal aid)

46.4.—(1) An application by a defendant with legal aid to select a new representative in place of the current representative must—

- (a) explain what the case is about, including what offences are alleged, what stage it has reached and what is likely to be in issue at trial;
- (b) explain how and why the defendant chose the current representative;
- (c) if an advocate other than the current representative has been instructed for the defendant, explain whether the defendant wishes to replace that advocate;
- (d) explain, giving relevant facts and dates—
 - (i) in what way, in the defendant’s opinion, there has been a breakdown in the relationship between the defendant and the current representative such that neither that representative nor any colleague of theirs any longer can provide effective representation, or
 - (ii) what other compelling reason, in the defendant’s opinion, means that neither the current representative nor any such colleague any longer can provide effective representation;
- (e) give details of any previous application by the defendant to replace a legal representative named in the legal aid representation order;
- (f) state whether the defendant—
 - (i) waives the legal professional privilege attaching to the defendant’s communications with the current representative, to the extent required to allow that representative to respond to the matters set out in the application, or
 - (ii) declines to waive that privilege and acknowledges that the court may draw such inferences as it thinks fit in consequence;
- (g) explain how and why the defendant has chosen the proposed new representative;
- (h) include or attach a statement by the proposed new representative which—
 - (i) confirms that the proposed new representative is eligible and willing to conduct the case for the defendant,
 - (ii) confirms that the proposed new representative can and will meet the current timetable for the case, including any hearing date or dates that have been set, if the application succeeds,

- (iii) explains what, if any, dealings the proposed new representative has had with the defendant before the present case,
 - (iv) confirms that the proposed new representative has informed the current representative of the defendant's wish to select a new representative,
 - (v) confirms that the proposed new representative has discussed the defendant's grounds for the proposed application with the current representative, and
 - (vi) confirms that the proposed new representative has explained to the defendant what it means to waive the legal professional privilege attaching to the defendant's communications with the current representative and the potential consequences of not doing so; and
 - (i) ask for a hearing, if the defendant wants one, and explain why it is needed.
- (2) The current representative must—
- (a) respond in writing no more than 5 business days after service of the application; and
 - (b) serve the response on—
 - (i) the court officer,
 - (ii) the defendant, and
 - (iii) the proposed new representative.
- (3) The response must—
- (a) if applicable, explain why the current representative—
 - (i) considers there to be a duty to withdraw from the case in accordance with professional rules of conduct, giving details of the nature of that duty, or
 - (ii) no longer is able to represent the defendant through circumstances outside the representative's control, giving details of the particular circumstances that render the representative unable to do so; or
 - (b) otherwise—
 - (i) identify those matters, if any, set out in the application with which the current representative disagrees, and
 - (ii) include any comments that the current representative thinks may assist the court.

[Note. There are forms of application and response for use in connection with this rule issued under the Practice Direction.]

Application by legal representative to withdraw (legal aid)

- 46.5.** An application by a current representative to withdraw from the case must—
- (a) explain what the case is about, including what offences are alleged, what stage it has reached and what is likely to be in issue at trial; and
 - (b) explain why the current representative—
 - (i) considers there to be a duty to withdraw from the case in accordance with professional rules of conduct, giving details of the nature of that duty, or
 - (ii) no longer is able to represent the defendant through circumstances outside the representative's control, giving details of the particular circumstances that render the representative unable to do so.”; and

- (b) amend the table of contents correspondingly.
- 21.** In Part 47 (Investigation orders and warrants)—
- (a) in rule 47.3 (Documents served on the court officer)—
- (i) for the heading to the rule substitute “Documents and recordings held by the court officer”,
- (ii) in paragraph (1)(a) after “keep a written application” insert “, and a recording of any hearing of an application,”, and
- (iii) in paragraph (1)(b) after “keeps an application” insert “or recording”;
- (b) in rule 47.25 (investigation warrants; exercise of court’s powers)—
- (i) for paragraph (9) substitute—
- “(9) A justices’ legal adviser must assist the court by completing the preparation of any warrant to be issued.”, and
- (ii) at the end of the note to the rule insert—
- “For the functions of a justices’ legal adviser, see sections 28 and 29 of the Courts Act 2003(30). See also rule 2.12 (Duties of justices’ legal adviser).]”;* and
- (c) amend the table of contents correspondingly.
- 22.** In Part 48 (Contempt of court)—
- (a) in rule 48.8 (contempt of court by obstruction, disruption, etc.; procedure on enquiry)—
- (i) in paragraph (4)(a) after “make representations relevant to punishment” insert “and a final opportunity to apologise”,
- (ii) renumber paragraph (4)(b) and (c) as (4)(d) and (e) respectively, and
- (iii) after paragraph (4)(a) insert—
- “(b) in deciding how to deal with the respondent take into account—
- (i) the gravity of the contempt,
- (ii) the extent of any admission of the conduct and the stage at which that admission was made,
- (iii) any apology and the stage at which that apology was offered, and
- (iv) any period during which the respondent was detained pending the enquiry;
- (c) if imprisonment is imposed, impose the shortest period that is commensurate with the preservation of good order in the administration of justice;”;
- (b) in rule 48.10 (contempt of court by failure to comply with court order, etc.; procedure on hearing)—
- (i) in paragraph (4)(a) after “make representations relevant to punishment” insert “and a final opportunity to apologise”,
- (ii) renumber paragraph (4)(b) and (c) as (4)(d) and (e) respectively,
- (iii) in paragraph (4)(e) as thus renumbered for “in” substitute “if”, and
- (iv) after paragraph (4)(a) insert—
- “(b) in deciding how to deal with the respondent take into account—

(30) 2003 c. 39; sections 28 and 29 were substituted by section 3 of, and paragraphs 25 and 26 of the Schedule to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (i) the gravity of the contempt,
 - (ii) the extent of any admission of the conduct and the stage at which that admission was made, and
 - (iii) any apology and the stage at which that apology was offered;
- (c) if imprisonment is imposed, impose the shortest period that is commensurate with the preservation of good order in the administration of justice;”.

Amendments to references to forms in the Criminal Procedure Rules

23. The Schedule to these Rules, which makes amendments in consequence of those made by rule 5(a) and (b) of these Rules, has effect.

Amendment to the preamble to the Criminal Procedure Rules

24. In the preamble to the Criminal Procedure Rules 2020, in sub-paragraph (b), in the first column, headed “Rule”, immediately after the entry for Part 23 insert “24.9” and in the second column, headed “Power”, in the corresponding position insert “Section 16K(1) of the Magistrates’ Courts Act 1980(31)”.

Burnett of Maldon, C.J.
Holroyde, L.J.
William Davis, L.J.
Foster, J.
Patrick Field
Heather Norton
Michael Snow
Louise Bryant
Ed Lidington
Max Hill
Alison Pople
Paul Jarvis
Folashade Abiodun
Edmund Smyth

I allow these Rules, which shall come into force on 2nd October 2023.

11th July 2023

Alex Chalk
Lord Chancellor
Ministry of Justice

(31) 1980 c. 43; section 16K is inserted by section 3 of the Judicial Review and Courts Act 2022 (c. 35) with effect from a date to be appointed.