
STATUTORY INSTRUMENTS

2023 No. 786

The Criminal Procedure (Amendment No. 2) Rules 2023

Amendments to the Criminal Procedure Rules

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—

(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 - (i) the defendant declines further representation by the current representative or asks for legal aid to be withdrawn, or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(1) and Part 2 of the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013(2), 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;

(1) 2012 c. 10.
 (2) S.I. 2013/614.

- (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.