

CRIMINAL PROCEDURE RULE COMMITTEE

MEETING ON FRIDAY 11th NOVEMBER, 2022 at 1.30 p.m.

**MINISTRY OF JUSTICE
CONFERENCE ROOMS 1A & B, LOWER GROUND FLOOR
102 PETTY FRANCE, LONDON SW1
and by video conference**

DRAFT MINUTES

Present

Committee members

Lord Justice Holroyde (chairman of the meeting)
Lord Justice William Davis
Mrs Justice Foster
HH Judge Field KC
HH Judge Norton
District Judge (Magistrates' Courts) Snow
Louise Bryant
The Director of Public Prosecutions, Max Hill KC
Alison Pople KC
Paul Jarvis
Shade Abiodun
Edmund Smyth
Assistant Commissioner Nick Ephgrave

Also attending

Senior District Judge Goldspring, Chief Magistrate
Professor David Ormerod KC, University College, London
Hanna van den Berg, Lord Chief Justice's office
Sophie Marlow, Attorney General's Office
Michelle Crotty, Serious Fraud Office
Liz Powell, HM Courts and Tribunals Service
Ian Matthews, HM Courts and Tribunals Service
David Barnes, JC Service & HM Courts and Tribunals Service
Andrew Staples, HM Courts and Tribunals Service
Bhupinder Dillon, HM Courts and Tribunals Service
Fiona Visser, Ministry of Justice
Julie Clouder, Ministry of Justice
Richard Chown, Ministry of Justice
Hannah Henderson, Ministry of Justice
Richard Sampson, Health and Safety Executive
Cathy Dilks, Criminal Cases Review Commission
Jonathan Solly, Committee secretary

Apologies are offered to anyone taking part whose name was missed.

1. Welcome, apologies for absence and announcements

Chairing the meeting, Lord Justice Holroyde welcomed those members attending, in person or by video conference, and all those others who usually attended. He welcomed in particular Liz Powell, of HM Courts and Tribunals Service, attending for the discussion of item 4. He drew attention to the publication on 9th November of the Law Commission's report on confiscation of the proceeds of crime, which would be the subject of a paper for the next Committee meeting.

The chairman reported apologies for absence from, among others usually attending, Claire-Louise Manning, Siân Jones and Nigel Gibbs.

2. Draft minutes of the meeting held on 7th October, 2022

The minutes were adopted, subject to any corrections to be notified by members to the secretary.

3. Case management group report

Mrs Justice Foster reported that the group had discussed:

- (i) amendments to the form of application to extend pre-charge bail and to the form of response, which now were settled. The judge thanked David Barnes of HM Courts and Tribunals Service for his work on, and amendments to, those documents, and for identifying a necessary further amendment to the rules.
- (ii) amendments to a draft form of application for a live link direction. Further discussion would be required, of the application form itself and of guidance for courts and parties on how to seek the permission of overseas authorities for the use of live links from other jurisdictions and how then to demonstrate that that permission had been given, if required. The judge thanked Louise van der Straeten of the Serious Fraud Office for the draft guidance that the group had received.

4. Part 4 (Service of documents): service of documents on the court

CrimPRC(22)76

CrimPRC(22)87

The chairman introduced the papers for the Committee. He observed that it would be essential to distinguish carefully between documents of which court staff needed notice and documents of which no notice to staff was required. He proposed the convening of a working group for that purpose. The Committee:

- (a) directed the convening of a working group to help HM Courts and Tribunals Service to identify documents to the service of which court staff need not be alerted; and
- (b) directed the adjustment of the proposed rule amendments, in terms to be circulated after the meeting.

5. Part 5 (Forms and court records): open justice

CrimPRC(22)77

The chairman introduced the papers for the Committee, drawing attention to the continuing interest in this subject of the Parliamentary Justice Committee.

District Judge (Magistrates' Courts) Snow expressed concern about the progressive erosion of publicity for criminal proceedings, already in the single justice procedure and in future in allocation and sending conducted online, without a hearing and without the same information available to the public as would be the case at a hearing. The proposed rule amendment offered no effective substitute.

The Chief Magistrate shared Judge Snow's concerns.

The chairman acknowledged the force of those views. He suggested that they should be kept in mind and that the Committee should await the emergence of plans for the implementation of online allocation and sending before further reviewing the proposed rule amendments. The Committee agreed.

6. Part 14 (Custody and bail): statutory amendments to pre-charge bail

CrimPRC(22)78

CrimPRC(16)76

CrimPRC(16)82

The chairman introduced the paper for the Committee, noting the complexity occasioned by the operation now of two distinct regimes, one for arrests before 28th October and the other for arrests on and after that date.

The secretary explained that a transitional provision within the rules would be required to accommodate the relevant statutory transitional provision.

David Barnes drew attention to the further amendment to the rules to which Mrs Justice Foster had referred at agenda item 3. He explained that guidance for magistrates' legal advisers would be issued to explain the new time limits and bail extension provisions. He suggested that the potential problem of service on a defendant who had changed postal address would be avoided by taking an email address.

The Committee:

- (a) approved the proposed rule amendments, subject to:
 - (i) an adjustment to rule 14.18(2)(a) to align the rule properly with section 47ZI(2) of the Police and Criminal Evidence Act 1984, and
 - (ii) the addition of a transitional provision; and
- (b) agreed that no additional rule amendment was required to allow for service of an application where the defendant since being bailed had left the address first given to the police without providing the new address.

7. Part 17 (Witness summonses, warrants and orders): application to withdraw summons, etc.

CrimPRC(22)79

The chairman introduced the paper for the Committee, observing that the purpose was to free magistrates' courts of a procedural requirement that was not necessary albeit imposed by statute in the Crown Court.

The Committee approved the proposed rule amendments.

8. Part 18 (Measures to help a witness or defendant to give evidence or otherwise participate): McKenzie friend (defendant's assistant)

CrimPRC(22)80

The chairman introduced the paper for the Committee, explaining that the Lord Chief Justice had asked for the proposed rules not to be made for the time being while further consideration was given by others to corresponding civil and family court rules. He reported that the Lord Chief Justice was content in principle to authorise the use of the proposed application form.

Mrs Justice Foster observed that the rules proposed corresponded closely with the existing civil and family practice. She agreed that the Lord Chief Justice should be asked to authorise the use of the form.

District Judge (Magistrates' Courts) Snow also agreed. He asked whether it was known by when the civil and family court discussions might conclude. The chairman reported that it was not, but that the Lord Chief Justice was willing to authorise use of the form without awaiting the outcome of those discussions.

The Committee agreed to postpone the making of the proposed rules, and directed the submission for authorisation of the application form.

9. Part 21 (Evidence of bad character): categories of offence **CrimPRC(22)81**

The chairman introduced the paper for the Committee. He asked whether the anomalies to which it referred mattered in practice.

Mr Jarvis considered that the 2004 Order served no useful purpose and would favour its review. HH Judge Field KC observed that it caused no practical problems. Lord Justice William Davis agreed that the anomalies in the Order did not impede the introduction of evidence which met the statutory criteria.

The chairman agreed that although it was strange that the Order had not been amended before there was no pressing need now to amend it. He pointed out that amendment lay beyond the Committee's own powers anyway. In summary, the Committee saw no contemporary practical purpose in the Criminal Justice Act 2003 (Categories of Offences) Order 2004, but if that Order were to be retained then the Committee recommended that it be reviewed and amended to remove all the anomalies that it now contained.

10. Part 33 (Confiscation and related proceedings) and Part 47 (Investigation orders and warrants): rule amendments to accommodate the Economic Crime and Corporate Transparency Bill **CrimPRC(22)82**

The chairman introduced the paper for the Committee, observing that no action yet was required and that what was submitted was for information, but any preliminary comments would be welcome.

District Judge (Magistrates' Courts) Snow found nothing of concern in the provisional draft rules.

David Barnes reported that the Bill and the draft rules were being examined carefully by the National Enforcement Service.

The Director of Public Prosecutions and Assistant Commissioner Ephgrave described some of the difficulties of seizing and dealing with cryptoassets, and the financial risks for public authorities of their seizure and detention occasioned by large fluctuations in their value.

The Committee approved the proposed rule amendments in principle, pending the Bill's further progress.

11. Part 47 (Investigation orders and warrants): rule amendments to accommodate the National Security Bill **CrimPRC(22)83**
CrimPRC(22)71

The chairman introduced the paper for the Committee, observing that here again no action yet was required and that what was submitted was for information; but any preliminary comments would be welcome.

The Committee again approved the proposed rule amendments in principle, pending the Bill's further progress.

12. Part 50 (Extradition): directions in extradition appeal proceedings

CrimPRC(22)84

The chairman introduced the paper for the Committee, observing that the judgments to which it referred were of interest but that no action was proposed.

Lord Justice William Davis considered the judgment in the *Bristol Magistrates' Court* case to have been elegantly expressed. He noted that the draft new Criminal Practice Directions omitted the present paragraphs cited in that judgment and suggested that that guidance should be maintained. The chairman directed that the Criminal Practice Directions review group should be alerted to the case.

13. Criminal Procedure (Amendment No. 2) Rules 2022: criticism by the Parliamentary Joint Committee on Statutory Instruments

CrimPRC(22)85

The chairman introduced the paper for the Committee and invited comments. After discussion, the Committee declined to amend the impugned rule 3.5(2)(d) or rules 34.1 and 39.1, and suggested that the Joint Committee should be asked to issue draft reports for comment instead of merely posing questions.

14. Content of December 2022 statutory instrument

CrimPRC(22)86

The Committee agreed that the content of the next Amendment Rules should be as described in the paper, except for:

- (a) adjustments to the rules about service on the court officer, the subject of agenda item 4;
- (b) the further amendment to rule 14.18 and the inclusion of a transitional provision in respect of the rule amendments about pre-charge bail, the subject of agenda item 6; and
- (c) omission of the proposed rule about McKenzie friends, the subject of agenda item 8.

15. Any other business

No other business was raised.

**16. Dates of next meetings: Friday 9th December, 2022, and
Friday 3rd February, 2023**

The meeting closed at 2.45 pm.