

## **AMENDMENTS TO THE CRIMINAL PRACTICE DIRECTIONS MARCH 2018**

### **SUMMARY OF KEY CHANGES**

This is the sixth amendment to the Criminal Practice Directions 2015<sup>1</sup>. It is issued by the Lord Chief Justice on 21<sup>st</sup> March 2018 and comes into force on 2<sup>nd</sup> April 2018.

This update provides amendments to existing Criminal Practice Directions and supplements the Criminal Procedure (Amendment) Rules 2018 SI 2018/132 that come into force on 2<sup>nd</sup> April 2018. The Table of Content is amended accordingly.

#### **1. CPD I General matters 3C: ABUSE OF PROCESS STAY APPLICATIONS**

This paragraph is amended to include an additional sentence at the beginning to ensure that new paragraphs about the composition of skeleton arguments are followed when grounds for an abuse of process are being prepared for consideration by the court.

#### **2. CPD I General matters 5B: ACCESS TO INFORMATION HELD BY THE COURT**

There are minor amendments to paragraphs 5B.1, 5B.4, 5B.5, 5B.6, 5B.7, 5B.13 and 5B.25 to update the practice direction in relation to corresponding rule changes. The hyper-links have also been updated. The new sections compliment rule changes that will govern access to transcripts of court proceedings. They provide guidance to the courts in the approach they should take when there are reporting restrictions imposed in a case, which is then the subject of a request for a transcript. The text for a suggested warning that should be included on a transcript when such reporting restrictions are in place is also provided in the new practice directions.

#### **3. CPD II Preliminary proceedings 10A: PREPARATION AND CONTENT OF THE INDICTMENT**

This amended section seeks to reflect the changes made to the Criminal Procedure Rules that now allow for the court to order separate trials for offences that are on the same indictment, but that which may not be said to be founded on the same facts, or part of a series of offences of the same or similar character. When the court is faced with such a situation the practice direction gives guidance as to what the court should consider when deciding how to proceed in exercising its discretion to order separate trials.

#### **4. CPD V Evidence 18C: VISUALLY RECORDED INTERVIEWS: MEMORY REFRESHING AND WATCHING AT A DIFFERENT TIME FROM THE TRIAL COURT**

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<sup>1</sup> [2015] EWCA Crim 1567. Amendment Number 1 [2016] EWCA Crim 97 was handed down by the Lord Chief Justice on 23<sup>rd</sup> March 2016 and came into force on the 4<sup>th</sup> April 2016. Amendment Number 2 [2016] EWCA Crim 1714 was handed down by the Lord Chief Justice on 16<sup>th</sup> November 2016 and came into force on 16<sup>th</sup> November 2016. Amendment Number 3 [2017] EWCA Crim 30 was handed down by the Lord Chief Justice and came into force on the 31<sup>st</sup> January 2017. Amendment Number 4 [2017] EWCA Crim 310 was handed down by the Lord Chief Justice on 28<sup>th</sup> March 2017 and came into force on 3<sup>rd</sup> April 2017. Amendment Number 5 [2017] EWCA Crim 1076 was handed down by the Lord Chief Justice on 27<sup>th</sup> July 2017 and came into force on 2<sup>nd</sup> October 2017.

This is updated to reflect operational practice in this area. It allows the judge, if the judge directs, or the prosecutor to ask the witness if there is anything else that the witness would like to explain before the cross-examination commences, rather than asking the witness to confirm if the statement is true. It is acknowledged that asking a young or vulnerable witness if the evidence they gave in their ABE is true could be confusing for them, so the practice direction has been amended to support this practice.

**5. CPD V Evidence 22A: USE OF GROUND RULES HEARING WHEN DEALING WITH S.41 YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999 (YJCEA 1999) EVIDENCE OF COMPLAINANT'S PREVIOUS SEXUAL BEHAVIOUR**

This is a new practice direction that complements the updated Criminal Procedure Rules and provides practical guidance to the courts as to how to approach applications made under s.41 Youth Justice Criminal Evidence Act 1999. The amended Part 22 rules update the time frame for service of applications to bring them in line with other similar types of applications. The practice direction gives more guidance as to how these applications should be dealt with, making explicit the timeframe that must be adhered to and the form in which the application must be made. It provides guidance to ensure that judges deal with these applications robustly so that only those meeting the very high statutory threshold are granted. It seeks to encourage judges to stop unnecessary, repetitive or aggressive questioning and to ensure that when an application has not been made or leave has not been granted then the judge should prevent such questions from being asked, where they should have formed the basis of an application under s.41 YJCEA 1999.

**6. CPD V Evidence 23A: CROSS-EXAMINATION ADVOCATES**

This new section supplements the amendments to the rules in Part 23 to include more detail as to what an advocate appointed under s.38 Youth Justice and Criminal Evidence Act 1999 should receive when they have been appointed to conduct the cross-examination of the witness by the defendant. Guidance is given in terms of the steps that the court should take in making the appointment, contingent upon any outstanding applications for legal aid; and in the event that such an appointment is made, guidance is given as to what the advocate is to be provided with to ensure that they can conduct the hearing properly; how the advocate may be appraised of the matters that are in issue; and the consequences that may follow if the advocate decides to represent the defendant fully at the trial.

**7. CPD IX Appeal 39C: APPEAL NOTICES CONTAINING GROUNDS OF APPEAL**

These minor amendments in paragraphs 39C.2 and 39C.3 reflect the changes that have been made in the Criminal Procedure Rules; namely to specify that rule 39.3 must be followed and emphasize how grounds of appeal should be submitted and the consequences of serving prolix grounds of appeal.

**8. CPD IX Appeal 39F: SKELETON ARGUMENTS**

This minor amendment to 39F.3 signposts the appellant to the new sections appearing later in the practice direction that detail the form, format and content of an acceptable skeleton argument.

**9. CPD XII General Application D: CITATION OF AUTHORITY, AND PROVISION OF COPIES OF JUDGMENTS TO THE COURT AND SKELETON ARGUMENTS**

These new paragraphs make very clear how skeleton arguments are to be composed for them to be acceptable in all levels of criminal courts.

**10. CPDXIII Listing Annex 1 GENERAL PRINCIPLES FOR THE DEPLOYMENT OF THE JUDICIARY IN THE MAGISTRATES' COURT**

This addition at Annex 1 seeks to clarify in clear terms the cases that are captured by the term the "Special Jurisdiction of the Senior District Judge (Chief Magistrate)".

**11. The Table of Content is amended accordingly.**

**Lord Chief Justice  
21<sup>st</sup> March 2018**