

AMENDMENT NO. 10 TO THE CRIMINAL PRACTICE DIRECTIONS 2015

Introduction

This is the tenth amendment to the Criminal Practice Directions 2015.¹ It is issued by the Lord Chief Justice on 12th May 2020 and comes into force on the 13th May 2020.

In this amendment:

1. In CPD I General matters add new sections:

CPD I General matters 3Q: FAILURE TO COMPLY WITH REQUIREMENT TO GIVE NAME, DATE OF BIRTH AND NATIONALITY

- 3Q.1 Section 86A of the Courts Act 2003 requires a magistrates' court and the Crown Court to require a defendant to provide his or her name, date of birth and nationality in the circumstances and at the times set out in CrimPR 3.13(5) and 3.27(5). Section 86A(3) of the Act makes it an offence for the defendant without reasonable excuse to fail to comply with such a requirement, whether by providing false or incomplete information or by providing no information. A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 6 months, or to a fine, or both. It follows that a prosecution for failure to comply with a section 86A requirement may be brought by any of the procedures for which CrimPR Part 7 provides (Starting a prosecution in a magistrates' court) in the same way as any other allegation of a summary offence.
- 3Q.2 It does not follow, however, that every such allegation first must be reported to the police. Where the defendant's conduct evinces guilt, especially if the defendant refuses altogether to give the information required, such conduct undermines the administration of justice and the authority of the court. In principle, it should be dealt with at once. Section 86A(6) of the Act provides that, "The criminal court before which a person is required to provide his or her name, date of birth and

¹ [2015] EWCA Crim 1567. Amendment Number 1 [2016] EWCA Crim 97 was issued by the Lord Chief Justice on 23rd March 2016 and came into force on the 4th April 2016. Amendment Number 2 [2016] EWCA Crim 1714 was issued by the Lord Chief Justice on 16th November 2016 and came into force on 16th November 2016. Amendment Number 3 [2017] EWCA Crim 30 was issued by the Lord Chief Justice on 31st January 2017 and came into force on 31st January 2017. Amendment Number 4 [2017] EWCA Crim 310 was issued by the Lord Chief Justice on 28th March 2017 and came into force on 3rd April 2017. Amendment Number 5 [2017] EWCA Crim 1076 was issued by the Lord Chief Justice on 27th July 2017 and came into force on 2nd October 2017. Amendment Number 6 [2018] EWCA Crim 516 was issued by the Lord Chief Justice on 21st March 2018 and came into force on 2nd April 2018. Amendment Number 7 [2018] EWCA Crim 1760 was issued by the Lord Chief Justice on 26th July 2018 and came into force on the 1st October 2018. Amendment Number 8 EWCA [2019] Crim 495 was issued by the Lord Chief Justice on 28th March 2019 and came into force on the 1st April 2019; Amendment Number 9 [2019] EWCA Crim 1603 was issued by the Lord Chief Justice on 10th October 2019 and comes into force on 14th October 2019.

nationality may deal with any suspected offence under subsection (3) at the same time as dealing with the offence for which the person was already before the court'. In such a case, therefore, a magistrates' court may invite the prosecutor to institute proceedings orally, there and then, pursuant to section 1 of the Magistrates' Courts Act 1980 and CrimPR Part 7, and may there and then try the alleged offence in accordance with the rules in CrimPR Part 24 (Trial and sentence in a magistrates' court). A defendant should be allowed a reasonable opportunity to reflect and to take legal advice, from a duty solicitor if the defendant has no legal representative in the prosecution for the main offence. After that, unless the defendant then pleads guilty the prosecutor must call such evidence as may be convenient and sufficient, in the prosecutor's view, formally to prove the allegation; and the defendant may present evidence, for example of reasonable excuse, and may make representations in accordance with those rules.

- 3Q.3 Given that the Act expressly contemplates a prompt determination by the court before which there occurs an ostensible failure to comply with a section 86A requirement, rarely will it be necessary or appropriate to adjourn the trial of that allegation to a differently constituted court unless there emerges such a dispute of fact about what has occurred in the sight and hearing of the court as to disqualify the first bench from determining that dispute with perceived impartiality. In that rare event the trial of the allegation must be heard, the same day, by a different bench.² In any other event the constitution before whom the alleged offence under section 86A(3) has occurred usually should try the allegation, usually the same day.
- 3Q.4 If in the circumstances contemplated in the preceding paragraph a different bench convicts the defendant of the section 86A(3) offence, and if the defendant is convicted by the first bench of the offence for which the defendant was already before the court, then the court which passes sentence for that main offence should pass sentence also under section 86A(3). However, an offence under section 86A(3) is one that stands apart from the proceedings in the course of which it was committed the seriousness of which can be reflected by an appropriate and, generally, separate penalty.
- 3Q.5 Whether an alleged contravention of a section 86A requirement is dealt with the same day or later, after investigation by the police, no member of the court before whom the alleged contravention occurs should participate in the proceedings as the complainant or as a witness. Nor

² The risk is that a constitution which witnesses a defendant's refusal to give the information required will not be perceived to adjudicate impartially on a contention that, as a matter of fact, and against the prosecution evidence, the defendant was not asked for the information or did not refuse to give it. If that were the defence then the court would, of course, offer the defendant a renewed opportunity to comply with the requirement and only if that further opportunity were declined would the prosecution for the section 86A(3) offence be adjourned to a different bench. Such circumstances may be expected to arise only wholly exceptionally.

will it be appropriate to invite the defendant's representative, if any, to give evidence of what that representative may have witnessed in the court room. It is unexceptionable for court staff, including a legal adviser in a magistrates' court, to be asked to give evidence of what has taken place.

- 3Q.6 The offence contrary to section 86A(3) of the 2003 Act is one to which the time limit imposed by section 127 of the Magistrates' Courts Act 1980 applies, namely that a magistrates' court may not try an information unless that information was laid within 6 months from the time when the offence was committed. Where the court does not adopt the procedure described in paragraphs 3Q.2 and 3Q.3 above the alleged offence must be reported promptly to allow it to be investigated and, if appropriate, prosecuted in time.

2. In CPD I General matters add new sections:

CPD I General matters 3R: HEARING TO INFORM THE COURT OF SENSITIVE MATERIAL

- 3R.1 CrimPR 3.29 (Hearing to inform the court of sensitive material) governs the procedure that must be followed where a prosecutor has, or is aware of, sensitive material to which the prosecutor does not think the obligation to disclose applies but of the existence of which the prosecutor thinks it necessary to inform the court in order to mitigate the risks listed in that rule.
- 3R.2 Examples of such material were given by the Court of Appeal in *R v Ali* [2019] EWCA Crim 1527. Examples include information about the activities of a defendant or witness, or about a person to whom the evidence in the case refers, or information to the effect that the prosecution evidence omits matters irrelevant to the trial, derived from observations, for example, which is of sensitivity in some other respect. These are, however, only examples and other material may come within the scope of the rule.
- 3R.3 In the Crown Court a hearing to which rule 3.29 applies must be recorded: CrimPR 5.5 (Recording and transcription of proceedings in the Crown Court). It is very likely that the hearing will be conducted in private (see CrimPR 3.29(4)) and very likely that it will take place in a private room rather than in the courtroom. The recording therefore should be made using a suitable and suitably secure device, and it should be stored securely. In some circumstances that may require arrangements for the storage of the recording to be dealt with in accordance with CrimPR 3.29(4)(c)(ii) (storage by an appropriate person other than the court officer). Such storage arrangements are likely also to apply to any written material provided to the court under CrimPR 3.29(3)(c).

3. In CPD II PRELIMINARY PROCEEDINGS add new section:

CPD II Preliminary proceedings 7A: FIRST COURT ATTENDANCE AFTER CHARGE AND DETENTION

- 7A.1 A defendant who has been kept in police detention after being charged with an offence must be brought before a magistrates' court as soon as practicable and in any event no later than the first subsequent court sitting: section 46 of the Police and Criminal Evidence Act 1984. If no magistrates' court is due to sit on the day on which the defendant is charged, or on the next day which is not a Sunday, Christmas Day or Good Friday, then the Act requires the police custody officer to inform the court's designated officer of the defendant's detention, and requires the designated officer to arrange for a magistrates' court to sit.
- 7A.2 The 1984 Act thus imposes duties on the police and on HM Courts and Tribunals Service. In *R (on the application of H (A Child)) v Clerk to Teesside Justices* [2000] 10 WLUK 532 the High Court observed, "it is incumbent on justices and their clerks, however busy their courts may be, to ensure that they are able to receive persons in custody up to the end of normal court hours, at least, in order to comply with section 46 ..., unless some exceptional circumstance intervenes to make that impossible in any particular case".
- 7A.3 To comply with those duties arrangements must be made to allow courts to receive such defendants during the course of a sitting day if the available time allows for the hearing of all cases to be concluded by 4.30pm, or later if, and only if, some disability or vulnerability of the defendant so requires. In practice, to allow sufficient time for consultation with a legal representative and for the subsequent hearing, the defendant must have been brought to the court building, or given access to a live link to the court, by no later than 3.30pm. To that end, Judicial Business Groups must ensure that effective practical arrangements have been made between police forces, HMCTS, the Crown Prosecution Service and prisoner escort contractors for the prompt transmission of information about defendants held for production before the court.
- 7A.4 On a Saturday or bank holiday normal court hours may differ from court to court based on likely caseload. Those hours must be determined by the HMCTS Head of Legal Operations in consultation with the judiciary and other agencies. In accordance with the court's observations in the *Teesside Justices' Clerk* case, all magistrates' courts should sit until at least 11.30 a.m. to receive defendants to whom these directions apply unless arrangements have been made for such defendants to be dealt with by another court, either by attendance in person or by live link.
- 7A.5 For the purposes of section 46 of the 1984 Act the designated officer is the HMCTS Director of Operations, by whom the exercise of that statutory function is delegated to members of court staff. When informing such a delegate of a defendant's detention the police custody officer must at the same time supply the following, usually by electronic means:
(a) confirmation that:

- (i) the defendant has been charged,
 - (ii) the case file is complete and available,
 - (iii) any interpreter required is available,
 - (iv) any required appropriate adult or local authority officer has been notified and is available,
 - (v) the defendant's legal representative has been notified and is available, and
 - (vi) the CPS or other relevant prosecuting authority has been notified;
- (b) the custody officer's proposal for the means by which the defendant should attend court, whether by live link or in person, and, if the latter, then whether by police transport or by prisoner escort contractor transport; and
- (c) details of:
- (i) any physical or mental disability or other vulnerability (whether by reason of age or other circumstance) of the defendant of which police officers are aware, in particular where any such might be thought to make the use of live link inappropriate, and
 - (ii) the expected time of arrival at court, if the defendant is to be brought to court in person.

No court should be expected to hear a case in respect of which such information is missing or incomplete, or in respect of which such arrangements have not been made.

7A.6 The designated officer's delegates must liaise with staff at the court buildings to which defendants in police detention may be brought. Each such delegate must be sufficiently experienced to be able to assess, swiftly and accurately, the availability of courts sitting in those buildings, and of sufficient seniority to take the decisions required by these directions. Each must be in a position to assess (i) the availability of court members, of legal advisers, of prosecutors and of the other staff needed to deal with an unexpected case, (ii) the potential effect of an unexpected case on other cases awaiting hearing that day, including the risk of a less urgent case being adjourned, perhaps not for the first time, in consequence of accommodating the unexpected hearing, (iii) the likely length of the unexpected hearing, and (iv) the significance of the age and any disability or other vulnerability of the unexpected defendant.

7A.7 The delegate to whom a police custody officer reports a defendant's detention must decide whether, and if so how, when and where, to accommodate that defendant's case within the period to which paragraph 7A.3 or 7A.4 refers, having regard to the availability and content of the information to which paragraph 7A.5 refers and to the considerations listed in paragraph 7A.6. The decision must be informed by the views of those court members and legal advisers who may be affected, as listing is a judicial responsibility and function. It may be necessary for the delegate to take such steps as arranging for the unexpected case to be heard by live link; reorganising courts sitting in the court building to which the defendant is due to be brought; adjourning other cases; calling upon

additional resources; or making arrangements with the delegate at another court building for the unexpected case to be heard by a court sitting there, by live link if appropriate. It may be necessary for the court that hears the unexpected case to impose a timetable for representations or to restrict the decisions that will be taken immediately. If it will not be possible to hear within the period to which paragraph 7A.3 or 7A.4 refers every case due to be heard that day at the court building to which the defendant is to be brought then every effort must be made to ensure that the cases of all defendants in custody, whether in that court building or attending by live link, still can be heard within that period. The delegate for that building must ensure that the police, the staff responsible for the court's own cells and the relevant prisoner escort contractor all are aware of the arrangements that have been made. If the prosecuting authority is not the CPS then that delegate must ensure that that other authority will arrange for a representative to attend, in person or by live link, to assist the court.

7A.8 If after conducting the assessment required by paragraph 7A.6 and taking the steps to which paragraph 7A.7 refers the designated officer's delegate finds it impossible to accommodate an unexpected case within the period to which paragraph 7A.3 or 7A.4 refers then arrangements must be made to hear the case on the next sitting day and the police custody officer must promptly be so informed.

4. In the heading CPD III CUSTODY AND BAIL 14C PENALTIES FOR FAILURE TO SURRENDER delete the words "PENALTIES FOR" and after the word "SURRENDER" add in "TO BAIL: CONSEQUENCES AND PENALTIES".

5. In CPD III CUSTODY AND BAIL add new sections:

Arrest for breach of bail

14C.11 A defendant who has been released on bail but subsequently arrested for breach of a bail condition, or for failure to surrender to the court, actual or anticipated, must be brought before a magistrates' court (or a Crown Court judge, if the defendant is charged with murder) as soon as practicable and in any event within 24 hours of arrest. This does not apply to a defendant who is arrested within 24 hours of the next court hearing which that defendant is due to attend: such a defendant must be produced at that hearing instead. The period of 24 hours does not include Sunday, Christmas Day or Good Friday: see section 7 of the Bail Act 1976.

14C.12 Paragraphs II 7A.2 to 7A.8 of these Practice Directions apply to such a defendant as they do to one charged and brought before the court under section 46 of the Police and Criminal Evidence Act 1984, except for the requirements listed at paragraph II 7A.5(a)(i) and (ii) (requirements for confirmation of charge and preparation of case file), which must be read as if they required confirmation that (i) the allegation or allegations of breach of bail have been reduced to writing, and (ii) that allegation or those

allegations, and any supporting documents, are complete and available. If the requirements of paragraph 7A.5, as thus read, are met, then the court before which the defendant is brought should take all the appropriate next steps in the case, including the taking of the defendant's plea; allocation and sending for trial, if applicable; and, if possible, sentencing; and should do so even if the defendant had been released on bail by a different court.

Voluntary attendance at a court after failure to attend

14C.13 The court may consider taking any of the following courses of action where (i) a defendant has failed to attend a court at the appointed time, (ii) a warrant has been issued for the defendant's arrest for that failure, and (iii) the defendant subsequently attends voluntarily at some other time, or indicates a wish to do so, for example by making telephone enquiries of court staff:

- (a) if the defendant is present, the court may arrange for the execution there and then of the warrant;
- (b) if the defendant is present, the court may deal there and then with the case as if consequent on the execution of the warrant;
- (c) the court may arrange a resumed hearing in the defendant's case at the next convenient opportunity, while warning the defendant that the warrant remains liable to be executed in the meantime; and
- (d) the court may withdraw the warrant and arrange a resumed hearing in the defendant's case at the next convenient opportunity. The court should not withdraw an outstanding warrant unless the defendant provides evidence of an established current residential address, a telephone number and, if available, an email or other established electronic address.

14C.14 If an outstanding warrant is executed there and then, or if the court decides to deal at once with the defendant as if consequent on arrest, then paragraphs 14C.11 and 14C.12 apply and, consequently, paragraphs II 7A.2 to 7A.8 of these Practice Directions. However, if the defendant has not been arrested then the designated officer's delegate is under no such statutory duty as otherwise would apply to make efforts to accommodate the defendant's case and no step should be taken that disadvantages other cases awaiting hearing that day. In particular, it is only in exceptional circumstances that efforts should be made to accommodate a defendant who attends voluntarily and unexpectedly at a court building on any day other than a weekday on which a court is sitting at that building, or later than 12 noon on any such day.

14C.15 If an outstanding warrant for the defendant's arrest for failure to attend is either executed or withdrawn, court staff must ensure that this is recorded promptly in national police records.

6. In CPD XIII Listing G: LISTING OF HEARINGS OTHER THAN TRIALS, paragraph G.3:

- (a) At subparagraph v replace “Pre Trial and Preparation Hearing” with “Preparation for trial hearings, plea and trial preparation hearings, and other pre-trial case management hearings”.
- (b) In subparagraph xi, after “Appeals from the magistrates’ court: it is essential in all cases where witnesses are likely to be needed on the appeal to check availability before a date is fixed” insert:
“(and see paragraphs G.13 to G.15 beneath);”
- (c) Renumber subparagraphs xi and xii as xii and xiii respectively; and
- (d) After subparagraph x, insert:
“xi. Breach proceedings (and see paragraph G.12 beneath);”

7. In CPD XIII Listing G: LISTING OF HEARINGS OTHER THAN TRIALS add in new sections:

Breach proceedings

G.12 As a general rule, proceedings to which CrimPR Part 32 applies (breach of community and other orders) should be brought in the court, and in case of the Crown Court at the Crown Court centre, at which the sentence was imposed, or in the magistrates’ court at which the breach of a Crown Court order ordinarily would be dealt with. An exception to that general rule should be made, however, to reflect the application of CrimPR Part 1, the overriding objective, and the key listing principles at A above, where the defendant’s home is significantly closer to another court with jurisdiction to determine the proceedings, in which case those proceedings should be brought in that court. If the court in which the breach proceedings are brought was not the sentencing court, or the magistrates’ court for the Crown Court centre at which the sentence was passed, then the authority by which the proceedings are instituted must explain the reasons for choosing it. Any dispute over the proper venue for should be determined by the relevant Presiding Judges.

Appeals from magistrates’ courts

G.13 As a general rule, the hearing in the Crown Court of an appeal to which CrimPR Part 34 applies (appeal against conviction or sentence from a magistrates’ court) should take place at the Crown Court centre to which that magistrates’ court ordinarily sends cases for trial or commits for sentence. This general rule applies irrespective of the location of the magistrates’ court at which the case first began, if that was not the court at which the defendant was convicted, or sentenced, or both, because the reasons that led to the case being dealt with at a different magistrates’ court may apply equally to the hearing of the appeal.

G.14 There are two exceptions to that general rule, however, each of which reflects the application of CrimPR Part 1, the overriding objective, and the key listing principles at A above. First, if on an appeal against conviction witnesses are required to give evidence in person then the appeal should be heard at the Crown Court centre which is the most conveniently situated for the majority of those witnesses. This exception is likely to apply where the defendant’s conviction and sentence have been imposed at a

magistrates' court distant from the place at which the offence occurred, perhaps because the defendant had failed to attend a hearing at the court for that area and subsequently was arrested for breach of bail and convicted and sentenced at another court. The information required of the parties to the appeal by CrimPR 34.3 and by the associated appeal forms will be essential to determining the most appropriate venue for the appeal. Second, where the appeal is against sentence only, or if, exceptionally, on an appeal against conviction no witnesses are required to give evidence in person, then the appeal should be heard at the Crown Court centre which is the closest to the defendant's home. This exception is likely to apply where the defendant has been convicted and sentenced at a magistrates' court for the area in which the offence occurred but at a distance from the defendant's usual or present residence. This exception must not, however, be allowed to operate to the disadvantage of any victim of the offence who is expected to attend the sentencing in the Crown Court.

- G.15 Once an appeal is submitted to the Crown Court, arrangements for its hearing, at that or at another Crown Court centre if appropriate, must be made by Crown Court staff under the direction of the Resident judge or Resident judges concerned. Any dispute over the proper venue for the appeal should be determined by the relevant Presiding Judges.

6. The table of content and CPD I General matters A.2 is amended accordingly.

**Lord Chief Justice
12th May 2020**