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STATUTORY INSTRUMENTS

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**2018 No. 132**

**The Criminal Procedure (Amendment) Rules 2018**

**Amendments to the Criminal Procedure Rules 2015**

**11. In Part 23 (Restriction on cross-examination by a defendant)—**

**(a) in rule 23.2 (Appointment of advocate to cross-examine witness)—**

**(i) for paragraph (2)(b) substitute—**

“(b) that if the defendant will not be represented by a lawyer with a right of audience in the court for the purposes of the case then the defendant is entitled to arrange for such a lawyer to cross-examine the witness on his or her behalf;”

**(ii) in paragraph (2)(d)(i), for “for the defendant” substitute “in the defendant’s interests”,**

**(iii) in paragraph (2)(d)(ii), after “a lawyer chosen by the court” insert “who will not be responsible to the defendant”, and**

**(iv) for paragraphs (4) to (6) substitute—**

“(4) The court may give the explanations and ask the questions required by this rule—

(a) at a hearing, in public or in private; or

(b) without a hearing, by written notice to the defendant.

(5) The court may extend (even after it has expired) the time limit that it sets under paragraph (3)(a)—

(a) on application by the defendant; or

(b) on its own initiative.

(6) Paragraphs (7), (8), (9) and (10) apply where the court appoints an advocate.

(7) The directions that the court gives under paragraph (3)(b)(ii) must provide for the supply to the advocate of a copy of—

(a) all material served by one party on the other, whether before or after the advocate’s appointment, to which applies—

(i) Part 8 (Initial details of the prosecution case),

(ii) in the Crown Court, rule 9.15 (service of prosecution evidence in a case sent for trial),

(iii) Part 16 (Written witness statements),

(iv) Part 19 (Expert evidence),

(v) Part 20 (Hearsay evidence),

(vi) Part 21 (Evidence of bad character),

(vii) Part 22 (Evidence of a complainant’s previous sexual behaviour);

- (b) any material disclosed, given or served, whether before or after the advocate’s appointment, which is—
    - (i) prosecution material disclosed to the defendant under section 3 (Initial duty of prosecutor to disclose) or section 7A (Continuing duty of prosecutor to disclose) of the Criminal Procedure and Investigations Act 1996<sup>(1)</sup>,
    - (ii) a defence statement given by the defendant under section 5 (Compulsory disclosure by accused) or section 6 (Voluntary disclosure by accused) of the 1996 Act<sup>(2)</sup>,
    - (iii) a defence witness notice given by the defendant under section 6C of that Act<sup>(3)</sup> (Notification of intention to call defence witnesses), or
    - (iv) an application by the defendant under section 8 of that Act<sup>(4)</sup> (Application by accused for disclosure);
  - (c) any case management questionnaire prepared for the purposes of the trial or, as the case may be, the appeal; and
  - (d) all case management directions given by the court for the purposes of the trial or the appeal.
- (8) Where the defendant has given a defence statement—
- (a) section 8(2) of the Criminal Procedure and Investigations Act 1996 is modified to allow the advocate, as well as the defendant, to apply for an order for prosecution disclosure under that subsection if the advocate has reasonable cause to believe that there is prosecution material concerning the witness which is required by section 7A of the Act to be disclosed to the defendant and has not been; and
  - (b) rule 15.5 (Defendant’s application for prosecution disclosure) applies to an application by the advocate as it does to an application by the defendant.
- (9) Before receiving evidence the court must establish, with the active assistance of the parties and of the advocate, and in the absence of any jury in the Crown Court—
- (a) what issues will be the subject of the advocate’s cross-examination; and
  - (b) whether the court’s permission is required for any proposed question, for example where Part 21 or Part 22 applies.
- (10) The appointment terminates at the conclusion of the cross-examination of the witness.”, and
- (v) at the end of the note to the rule insert—

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(1) 1996 c. 25; section 3 was amended by section 82 of, and paragraph 7 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23) and section 32 of, and paragraphs 20 and 21 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44). It is further amended by section 271 of, and paragraph 39 of Schedule 10 to, the Investigatory Powers Act 2016 (c. 25), with effect from a date to be appointed. Section 7A was inserted by section 37 of the Criminal Justice Act 2003 (c. 44). It, too, is amended by section 271 of, and paragraph 39 of Schedule 10 to, the Investigatory Powers Act 2016 (c. 25), with effect from a date to be appointed.

(2) 1996 c. 25; section 5 was amended by section 119 of, and paragraph 126 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), in respect of certain proceedings only, and by section 33 of, and paragraph 66 of Schedule 3, paragraphs 20 and 23 of Schedule 36 and Parts 3 and 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44). Section 6 was amended by paragraphs 20 and 24 of Schedule 36 and Part 3 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).) For transitional provisions and savings see paragraph (2) of Schedule 2 to S.I. 2005/950.

(3) 1996 c. 25; section 6C was inserted by section 34 of the Criminal Justice Act 2003 (c. 44).

(4) 1996 c. 25; section 8 was amended by section 82 of, and paragraph 7 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23) and section 38 of the Criminal Justice Act 2003 (c. 44). It is further amended by section 271 of, and paragraph 39 of Schedule 10 to, the Investigatory Powers Act 2016 (c. 25), with effect from a date to be appointed.

*“Under section 38(7) of the 1999 Act<sup>(5)</sup>, where the court appoints an advocate Criminal Procedure Rules may apply with modifications any of the provisions of Part I of the Criminal Procedure and Investigations Act 1996. A summary of the disclosure requirements of the 1996 Act is at the end of Part 15 (Disclosure). Under section 5 of that Act, in the Crown Court the defendant must give a defence statement. Under section 6, in a magistrates’ court the defendant may give such a statement but need not do so. Under section 6C, in the Crown Court and in magistrates’ courts the defendant must give a defence witness notice indicating whether he or she intends to call any witnesses (other than him or herself) and, if so, identifying them. Under section 8 a defendant may apply for prosecution disclosure only if the defendant has given a defence statement.”; and*

- (b) in the note to rule 23.5 (Application to discharge prohibition imposed by the court), omit “The Practice Direction sets out a form of application for use in connection with this rule.”.

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(5) 1999 c. 23; section 38(7) was amended by section 109 of, and paragraph 384(f) of Schedule 8 to, the Courts Act 2003 (c. 39).