AMENDMENT NO. 9 TO THE CRIMINAL PRACTICE DIRECTONS 2015

Introduction

This is the ninth amendment to the Criminal Practice Directions 2015.[1] It is issued by the Lord Chief Justice on 10th October 2019 and comes into force on 14th October 2019.

In this amendment:

1. **In CPD I General matters add new section:**

CPD I General matters 6E: ACCESS TO COURTS

Proceedings before the Crown Court

6E.1 The right of the public to access court rooms to observe proceedings is a fundamental part of open justice, and good practice will ensure that the public are able to view proceedings quietly, and without causing interruption, as far as is possible.

6E.2 However, as observed in *R (O'Connor) v Aldershot Magistrates' Court* [2017] 1 WLR 2833 "The right to attend a public court hearing and to enter the court building for that purpose is not unqualified." The court has an inherent power to restrict public access to the courtroom where it is necessary to do so in the interests of justice, for example to prevent disorder.

6E.3 During criminal proceedings in a Crown Court there are some specific parts of proceedings whereby it may be appropriate for a judge to restrict movement in the public gallery. As observed by Bean LJ in *R (on the application of Ewing) v Isleworth Crown Court [2019] EWHC 288 (Admin)* this is to ensure that during "these sensitive moments, generally of brief duration, it is necessary for the court to be still so that the process can take place without distraction and in a manner which preserves the dignity and solemnity of the proceedings". It is expected that during the

[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.

following parts of the proceedings, access may be restricted to prevent comings and goings in the public gallery:

I. Arraignment;
II. Empanelling and swearing in of the jury;
III. Oath taking or affirmation;
IV. Return of verdict by a jury;
V. Passing of sentence by a Judge.

6E.4 In the *Ewing* judgment the Administrative Court made clear that it would be unlawful to issue a blanket policy that restricted access during other parts of the proceedings. Unless the judge has specifically directed restrictions to access to the public gallery for good reason in a particular case, then at all other times, it is expected that the public can enter and leave the courtroom as they require, provided they do so quietly and without disrupting proceedings.

2. In CPD VI Trial 26P delete the current text at 26P.5 which outlines the warning that the defendant should be given at the conclusion of the prosecution case in a trial where they are not represented and replace it with the below:

CPD VI Trial 26P: DEFENDANT'S RIGHT TO GIVE OR NOT TO GIVE EVIDENCE

26P.5 When appropriate, and in the presence of the jury, the judge should say to the defendant:

'Now is your chance to give evidence if you choose to do so. If you do give evidence it will be on oath [or affirmation], and you will be cross-examined like any other witness. If you do not give evidence the jury may hold it against you. If you do give evidence but refuse without good reason to answer the questions the jury may, as I have just explained, hold that against you. Do you now intend to give evidence?'

3. In CPD VII Sentencing, add new section

CPD VII Sentencing S: VARIATION OF SENTENCE

S.1 Under section 142 of the Magistrates' Courts Act 1980, in some circumstances a magistrates' court may vary or rescind a sentence or other order that it has imposed or made if that appears to be in the interests of justice. Under section 155 of the Powers of Criminal Courts (Sentencing) Act 2000 the Crown Court may vary or rescind a sentence or order which it has imposed or made, within a period of 56 days beginning with the date of that sentence or order, or beginning with the date of

another defendant's acquittal or sentencing in some circumstances (see CrimPR 28.4(1)(b)).

S.2 CrimPR 28.4(2) allows the court to exercise those powers at a hearing, in public or in private, or without a hearing. However, rule 28.4(4) confines the court's discretion to dispense with a hearing by requiring the defendant's presence, necessarily at a hearing, unless the variation is one proposed by the defendant, or the effect of the variation is such that the defendant is no more severely dealt with under the sentence as varied than before; or, if neither of those conditions is satisfied, where a hearing has been convened at which the defendant has had an opportunity to make representations, whether or not he or she in fact attends. Moreover, rule 28.4 requires service on the other party of any application to vary a sentence or order, in response to which that other party may wish to make such representations as general principles of law require to be heard. It follows that the circumstances in which a variation of sentence properly may be made without a hearing, consistently with the rule, will be confined to cases in which neither party objects to what is proposed and in which the consequences for the defendant of the variation will be neutral or benign.

S.3 In such a case usually there will be no other objection to the making of the variation without a hearing. Even in such a case, however, the court retains a discretion to convene a hearing, in the exercise of which discretion due regard must be had to the overriding objective and to the importance of dealing with criminal cases in public, in accordance with the principle of open justice. The application of that latter principle was described in *R v Cox* [2019] EWCA Crim 71; [2019] 4 WLR 88 at paragraphs 18 – 19 in these terms:

"As stated in cases such as *R v Pinkerton* [2017] 1 Cr App R(S) 47 at [8] (a case where there in fact was a downward adjustment of a concurrent custodial sentence which did not impact on the overall sentence) such alterations should be done openly "so that justice may be seen to be done". Likewise, in *R v Warren* [2017] 2 Cr App R(S) 5, the general desirability of re-sentencing taking place in the presence of the defendant and in court was stressed.

Accordingly, whilst it is easy to understand the attractions of administrative convenience … and particularly perhaps where the sentencing judge is not a full-time judge based at a particular court centre, those administrative attractions should not be permitted routinely to prevail over the delivery of open justice."

In reaching its decision the court therefore will take into account each of the relevant factors listed in CrimPR 1.1, and will be astute to distinguish between, on the one hand, the completion of details or the correction of errors of a quasi-administrative character and, on the other, a variation of sentence in which the determination will be a matter of legitimate public interest.

S.4 In any event, the making of the decision and the reasons for that decision always must be announced at a public hearing, even if only briefly and even if the parties are absent on that occasion: CrimPR 28.4(2)(b). While the decision itself must be made, and the reasons for that decision formulated, by the sentencing court itself (section 142(1) of the 1980 Act; section 155(4) of the 2000 Act), the public announcement may be made by a differently constituted court if it would be impracticable for the sentencing court to sit in public for the purpose within a reasonable time.

4. In CPD IX Appeal 39F: SKELETON ARGUMENTS add new paragraph 39F.4

39F.4 A skeleton argument must comply with the requirements of these Practice Directions and, if applicable, of the court. The Criminal Appeal Office may refuse to accept service of a document that fails to comply and instead return that document to the advocate for amendment.

5. In CPD IX Appeal add new sections:

39H: CRIMINAL APPEAL OFFICE BUNDLES & INDEXES FOR FULL COURT HEARINGS

39H.1 To assist the full Court, the Criminal Appeal Office will, in most instances, prepare indexed bundles containing the documents and material which the Registrar considers necessary to understand and determine the appeal for each member of the constitution.

39H.2 The Registrar will not provide bundles where a party or the parties have been directed to prepare and lodge indexed bundles, or where an advocate has lodged indexed bundles of their own volition. Where an appellant who is not privately represented is directed to lodge indexed bundles, a Representation Order will usually be granted by the Court or the Registrar for this purpose.

39H.3 Where bundles are prepared by the Criminal Appeal Office, a copy of the index will be provided to the appellant, or if the appellant is represented, to the advocate. If the advocate or appellant considers that there is additional material which it is necessary to include in the bundle, they must notify the Registrar of this in writing.

39H.4 Where indexed bundles are lodged in response to a direction to do so, or of an advocate's own volition, unless otherwise directed, four copies of the indexed bundle should be lodged with the Registrar in good time before the hearing and in accordance with any direction as to the time by which they should be lodged. The bundles should contain only documents and material which are necessary for the proper understanding of, and determination of, the issues involved in the appeal. The index and order of documents / material in the bundles should follow the order of the

Registrar's template *Index to Judge's Bundles* available from the Registrar on request.

6. In CPD XI Other proceedings 50A: EXTRADITION: GENERAL MATTERS AND CASE MANAGEMENT add new subparagraph (v) to 50A.1.

(v) any skeleton argument must comply with the requirements of these Practice Directions and, if applicable, of the court. (Paragraphs XII D.17 to D.23 set out the general requirements for skeleton arguments. Paragraphs XI 50E.1 to 50E.7 set out some special requirements that apply in an extradition appeal to the High Court.)

7. In CPD XII General Application D: CITATION OF AUTHORITY AND PROVISION OF COPIES OF JUDGMENTS TO THE COURT AND SKELETON ARGUMENTS substitute current paragraph D.22 with the below:

D.22 At the hearing the court may refuse to hear argument on a point unless it is included in a skeleton argument which (i) is served within the required time, and (ii) complies with the requirements of these Practice Directions (as varied, if applicable, by direction of the court). Any application for a variation, or further variation, of those requirements must give reasons, and such an application must accompany any skeleton argument that does not comply.

8. In CPD XIII Listing Annex 3 remove the requirement for the Presiding Judges to be notified by removing following sentences from paragraphs 4 and 5 as detailed below:

CASES INVOLVING VERY LARGE FINES IN THE MAGISTRATES' COURT

4. The justices' clerk shall contact the Office of the Chief Magistrate to ensure that an authorised DJ (MC) can be assigned to deal with such a case if there is not such a person available in the courthouse. ~~The justices' clerk shall also notify a Presiding Judge of the Circuit that such a case has been listed~~.

5. Where an authorised DJ (MC) is not appointed at the first hearing the court shall adjourn the case. The court shall ask the accused for an indication of his plea, but shall not allocate the case nor, if the accused indicates a guilty plea, sentence him, commit him for sentence, ask for a pre-sentence report or give any indication as to likely sentence that will be imposed. The justices' clerk shall ensure an authorised DJ (MC) is appointed for the following hearing. ~~and notify the Presiding Judge of the Circuit that the case has been listed.~~

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

Lord Chief Justice
10th October 2019