

EXPLANATORY DOCUMENT TO
THE PUBLIC BODIES (ABOLITION OF CROWN COURT RULE
COMMITTEE AND MAGISTRATES' COURTS RULE COMMITTEE)
ORDER 2012

2012 No. DRAFT

1. This explanatory document has been prepared by the Ministry of Justice and is laid before Parliament under section 11(1) of the Public Bodies Act 2011.
2. **Purpose of the instrument**
 - 2.1 The purpose of this instrument is to abolish the Crown Court Rule Committee (hereafter "CCRC") and Magistrates' Courts Rule Committee (hereafter "MCRC").
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 The Committee will note that Articles 2(4) and 3(3) of the instrument repeal the entries relating to the CCRC and the MCRC, respectively, in Schedule 1 to the Public Bodies Act 2011 ('the Act'). This is permitted by section 6(5) of the Act, and this section is cited as one of the enabling powers in the instrument.
4. **Legislative Context**
 - 4.1 The CCRC is an advisory non-departmental public body established under the Senior Courts Act (formerly the Supreme Court Act) 1981 to examine any proposed amendments to Crown Court rules and, together with the Lord Chancellor, to make the necessary rules of this court. The committee's role in making criminal rules has been superseded by the Criminal Procedure Rule Committee (CrimPRC), leaving it with a role only in relation to civil rules. Crown Court Rules are now very rarely amended (the last such rules having been made in 2009) and the committee is accordingly very rarely used. The proposal is that this almost defunct body be discontinued and its limited functions transferred to the Lord Chief Justice, who may act in consultation with other rule committees. The Lord Chief Justice agrees in principle with the proposal.
 - 4.2 The MCRC is an advisory body, established under the Magistrates' Courts Act 1980. The MCRC is consulted by the Lord Chief Justice before he makes rules under section 144 of the Magistrates' Courts Act 1980. The scope of rules made under section 144 has been much reduced following the creation of the Criminal Procedure and Family Procedure Rule Committees under the Courts Act 2003, severely

- 4.3 The Government announced planned reforms to its public bodies on 14 October 2010, updating the proposals in March 2011, with a view to increasing transparency and accountability, cutting out duplication of activity, and discontinuing activities which are no longer needed. In conducting the review of public bodies, the Ministry of Justice first addressed the overarching question of whether a body needed to exist and its functions needed to be carried out at all. It was considered that the functions of the CCRC and MCRC needed to be carried out, but that these could be effectively carried out by, or in consultation with, other rule committees. The two bodies were therefore included in Schedule 1 to the Act, which allows abolition of the listed bodies.
- 4.4 The Ministry of Justice took the decision to group bodies, for the sake of efficiency of preparation and scrutiny, into omnibus orders where possible. The proposed abolitions of the CCRC and MCRC have been grouped into an omnibus order for the following reasons: the bodies were both listed in Schedule 1 to the Bill and therefore subject to the same closure proposal; the policy rationale for, and impact of, abolishing the two bodies was similar; abolishing the two bodies was of equal priority for the Ministry of Justice; and the proposal to abolish the bodies could be subject to Parliamentary scrutiny along similar timescales.

5. Territorial Extent and Application

- 5.1 This instrument extends to England and Wales (save that some consequential amendments are made to legislation of wider extent, and although the amendments relate only to functions performed in relation to England and Wales, in principle they have the same extent as the provisions they amend).

6. European Convention on Human Rights

- 6.1 The Secretary of State for Justice has made the following statement regarding Human Rights:

“In my view the provisions of the Public Bodies (Abolition of Crown Court Rule Committee and Magistrates’ Courts Rule Committee) Order 2012 are compatible with the European Convention on Human Rights.”

7. Policy background

- 7.1 The MCRC was established under the Magistrates' Courts Act 1980 to be consulted by the Lord Chief Justice before he makes rules under section 144 of the Magistrates' Courts Act 1980. The MCRC is also consulted, along with the Criminal Procedure Rule Committee and the Family Procedure Rule Committee, before certain rules are made under the Courts Act 2003 relating to justices of the peace and justices' clerks. The Committee does not itself make rules: it exists as a consultative body alone.
- 7.2 The Courts Act 2003 established (i) the Criminal Procedure Rule Committee to make rules governing the practice and procedure in the criminal courts and (ii) the Family Procedure Rule Committee to make rules governing the practice and procedure in family proceedings in the High Court, county courts and magistrates' courts.
- 7.3 The remit of the MCRC has been greatly reduced as a result of the creation of these committees. The primary function of the committee is now to be consulted on rules relating to civil non-family proceedings in the magistrates' courts. There are relatively few such proceedings, and the need for amendments to the rules is very infrequent: the committee was called upon twice in 2009, not at all in 2010 and twice in 2011. This does not justify the maintenance of a dedicated Committee.
- 7.4 To the extent that its functions remain, they are still necessary, and are both technical and require a degree of impartiality. By these measures, these functions should continue to be performed by a public body; however, they do not need to be performed by the MCRC specifically, but may be transferred to or performed by other existing bodies/persons with the requisite technical expertise and impartiality.
- 7.5 This order makes no provision for the transfer of the MCRC's functions to other rule committees. After abolition, the Lord Chief Justice will continue to make the rules upon which the MCRC is presently consulted; before making rules he will be able to consult the Criminal Procedure Rule Committee, the Family Procedure Rule Committee and the Civil Procedure Rule Committee as appropriate. The Lord Chief Justice has agreed in principle to this approach. Providing for the Lord Chief Justice to make rules without prescribing a specific body with which he must consult is a constitutionally proper model, having been agreed in the Concordat for a variety of rules, in particular those which only infrequently require amendment, as embodied in Schedule 1 to the Constitutional Reform Act 2005.
- 7.6 Members of the MCRC are appointed by the Lord Chancellor in consultation with the Lord Chief Justice: membership usually consists of one district judge (magistrates' courts), one justices' clerk, one barrister and one solicitor, with the Lord Chief Justice an *ex officio*

The three remaining members' appointments ended on 1 April 2012. In order for the Lord Chief Justice to fulfil his statutory obligation to consult the Committee before making rules while the MCRC remains open, these three members' appointments were extended until the 31 July 2012. This approach was agreed by the Office of the Commissioner for Public Appointments and the members themselves.

- 7.7 The CCRC was created under section 86 of the Supreme Court Act 1981, which confers the power to make Crown Court Rules for the purpose of regulating and prescribing the practice and procedure to be followed by the Crown Court. The function of the CCRC is to examine any proposed amendments to those rules and make such amendments as are necessary.
- 7.8 The CCRC was historically made up of three *ex officio* members, two judges of the Supreme Court, two circuit judges, a justice of the peace, two practising barristers and two practising solicitors. Members can serve a maximum of two, three-year terms. Current membership (until such time as the body is abolished) is two judges of the Supreme Court, two circuit judges, one practising barrister and one *ex officio* member (the Lord Chief Justice).
- 7.9 Following the 2001 Auld Review, which recommended the codification of criminal procedure, the Criminal Procedure Rule Committee (CrimPRC) was set up under section 69 of the Courts Act 2003, with the power to make rules governing the practice and procedure to be followed in the criminal courts. The CCRC thereby lost its remit in relation to criminal matters, although it retained the function of making Crown Court Rules for any non-criminal matters (which are very few).
- 7.10 The CCRC at present therefore co-exists with the CrimPRC, but with greatly reduced functions. To the extent that those functions remain, they are still necessary, and are both technical and require a degree of impartiality. By these measures, these functions should continue to be performed by a public body; however, they do not need to be performed by the CCRC specifically, but may be transferred to and performed by other existing bodies/persons which have the requisite technical expertise and impartiality. The CCRC has amended the rules only once in the last six years (in 2009). This does not justify the maintenance of a dedicated Committee. The Lord Chief Justice agrees in principle to the abolition of the Committee.
- 7.11 This Order provides for the remaining rule-making functions of the CCRC to be transferred to the Lord Chief Justice, with agreement that any of the three main procedure rule committees (the Civil Procedure

Rule Committee, Criminal Procedure Rule Committee and Family Procedure Rule Committee) could be called on for advisory purposes in relation to the function. These committees have corresponding functions in relation to the vast majority of rules of court (including most of the previous functions of the CCRC and MCRC) and, like the Lord Chief Justice, clearly meet the criteria of technical expertise and impartiality. Providing for the Lord Chief Justice to make rules without prescribing a specific body with which he must consult is a constitutionally proper model, having been agreed in the Concordat for a variety of rules, in particular those which only infrequently require amendment, as embodied in Schedule 1 to the Constitutional Reform Act 2005.

7.12 The Minister considers that this order serves the purpose in section 8(1) of the Act for the following reasons:

i **Efficiency:** In respect of the MCRC, following the implementation of the Courts Act 2003 the Lord Chief Justice no longer makes rules relating to criminal and family proceedings in the magistrates' courts; such rules are now made by the Criminal Procedure Rule Committee (CrimPRC) and Family Procedure Rule Committee (FPRC) respectively.

The only rules of court made under the powers of the Magistrates' Courts Act 1980 upon which the MCRC is now consulted are rules relating to the limited category of civil non-family proceedings dealt with in the magistrates' courts. While its remaining functions are technical and require a degree of impartiality, and therefore should be carried out by a public body, it is inefficient to retain a committee with such reduced functions when these functions can be absorbed by the CrimPRC and FPRC if and when – rarely – required by the Lord Chief Justice. This absorption of functions by other rule committees improves efficiency because it will remove the need to maintain a separate committee for a very small workload.

In respect of the CCRC, this body's functions have been even more greatly reduced since the creation of the CrimPRC. While its remaining functions are technical and require a degree of impartiality, and therefore should be carried out by a public body, they can be performed by the Lord Chief Justice, who will be able to call as necessary on the Civil Procedure Rule Committee, Criminal Procedure Rule Committee and Family Procedure Rule Committee for assistance in the exercise of his rule-making function. This transfer of functions improves efficiency because it will remove the need to maintain a separate committee for a very small workload.

ii **Effectiveness:** in respect of the MCRC, the CrimPRC and the FPRC are statutory rule-making bodies which meet regularly to consider amendments to the Criminal Procedure Rules and the Family

Procedure Rules. The MCRC, by contrast, is a consultative body which does not meet, but is consulted on an ad hoc basis as and when the Lord Chief Justice proposes to make rules in the limited range of civil proceedings to which the MCRC's powers extend.

Proposals from the Lord Chief Justice for amendments to rules relating to civil proceedings in the magistrates' courts can more effectively be considered at meetings of the CrimPRC and FPRC whose memberships statutorily include district judges (magistrates' courts), lay justices, justices' clerks and practitioners with experience of practising in the magistrates' courts. These committees have experience of rule-making and are well placed to advise the Lord Chief Justice on rules he proposes to make.

In respect of the CCRC, the remaining functions of this body are to be transferred to the Lord Chief Justice, who will be able to consult the Crim PRC, the CPRC or the FPRC (and any other persons or bodies as he thinks fit) before making rules. As these committees all have rule-making expertise (and the CrimPRC already makes rules for criminal cases in the Crown Court), a greater range of expertise will be available to the Lord Chief Justice; this is a more effective way to make court rules.

iii **Economy:** The MCRC does not hold a budget and membership is not remunerated. The costs of running the committee are limited to routine postal charges and the administrative time for Ministry of Justice officials to recruit members to the committee. As rules upon which the MCRC is currently consulted by post will instead be considered at scheduled meetings of the CrimPRC and FPRC, and as the cost of administrative time is absorbed into departmental running costs, savings from abolition of this body will be marginal only.

Equally, there will be no direct financial savings as a result of abolishing the CCRC, as it does not hold a budget, membership is not remunerated and it does not meet in person but is consulted by post. Administrative overheads are therefore limited to routine mail and telephone charges, which are absorbed into departmental running costs.

iv **Securing appropriate accountability to Ministers:** In respect of the MCRC, rules under the Magistrates' Courts Act 1980 are made with the concurrence of the Lord Chancellor and this provision remains unchanged.

In relation to the CCRC, rules under the Supreme Court Act 1981 are made with the concurrence of the Lord Chancellor and this provision remains unchanged.

7.13 The Minister considers that the conditions in section 8(2) of the Act are satisfied, in respect of both the CCRC and the MCRC. Abolition of

these two bodies will not remove any level of protection or assurance where rule-making in the courts service is concerned; nor does it affect the exercise of any legal rights or freedoms either directly or indirectly.

- 7.14 During the passage of the Public Bodies Act 2011, amendments to remove the CCRC and MCRC from Schedule 1 to the Bill were moved by Lords Bach, Hunt and Ramsbotham and Baroness Hayter of Kentish Town at Lords Committee stage on 11 January 2011¹. Lord McNally, Minister of State (Ministry of Justice) answered for the government in debate. Both amendments were withdrawn.

8. Consultation outcome

- 8.1 A public consultation covering the bodies the Ministry of Justice proposed to reform through the Public Bodies Bill, including the CCRC and MCRC, was launched on 12th July 2011 and closed on 11th October 2011. A response was published on 15th December 2011.
- 8.2 Nine responses were received regarding the proposal to abolish the CCRC. A minority of respondents opposed the proposal to abolish this committee, although few reasons were given for opposition, and no common theme emerged from them. A minority of respondents also thought that the proposals to transfer the CCRC's rule-making function to the Lord Chief Justice would not ensure that the Committee's existing remit could be taken forward. The chief concern in this respect was that abolition would lead to a loss of people with appropriate expertise whom the Lord Chief Justice could consult before making rules.
- 8.3 Under the Government's proposals, before making rules the Lord Chief Justice would be able to consult the CrimPRC, the CPRC or the FPRC (and any other persons or bodies) as he thinks fit. All these committees have rule-making expertise and the Criminal Procedure Rule Committee already makes rules for criminal cases in the Crown Court. Expertise, and indeed a greater range of expertise, will be available to the Lord Chief Justice.
- 8.4 The responses did not reveal any new features or unforeseen impact to closing the committee. Having considered all responses to the consultation and having had regard to the arguments put forward by the minority of respondents opposed to the proposal, the Government confirmed its intention at the time of response to abolish the CCRC, stating its view that the body no longer has a remit broad enough to justify its retention and that its functions can be performed effectively

¹ Hansard reference: HoL debates 11 January 2011 Column 1296
<http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110111-0001.htm#11011158000502>

by the Lord Chief Justice in the same way as is done under the Constitutional Reform Act 2005 for other infrequently amended rules.

- 8.5 A total of 10 responses were received on the proposed abolition of the MCRC. The proposal was supported by five of those who responded; two respondents were opposed to the proposal, with the remainder neither supporting nor opposing but raising some concerns regarding the transfer of the MCRC's functions. Those favouring the proposal argued that the reduced remit of the MCRC justified its abolition and that it would remove duplication of work, whereas there was no common theme among the responses from those opposed to the proposal.
- 8.6 The main concern expressed by those who thought the proposals would not ensure the MCRC's remit could be taken forward was the lack of magistrates' expertise that would be available to the Lord Chief Justice before he made rules. One respondent thought a consequence of the loss of expertise would be a reduction in the confidence of the courts. However, this was balanced by the Magistrates' Association who said other existing rule committees were well placed to advise the Lord Chief Justice and had the necessary expertise to be consulted on the limited range of rules made under the Magistrates' Courts Act 1980. The Law Society considered that the remaining civil non-family proceedings in the magistrates' courts were very narrow and rules are rarely made. The Law Society therefore had no objection to the abolition of the Magistrates' Courts Rule Committee.
- 8.7 Under the proposal, before making rules the Lord Chief Justice would be able to consult the Criminal Procedure Rule Committee, the Civil Procedure Rule Committee or the Family Procedure Rule Committee (and any other persons or bodies) as he thinks fit. All these committees have rule-making expertise and the memberships of the Criminal Procedure Rule Committee and the Family Procedure Rule Committee each include a district judge (magistrates' courts), a magistrate and a justices' clerk. These committees already make rules for criminal causes in the magistrates' courts and family proceedings in the magistrates' courts respectively.
- 8.8 Having considered all responses to the consultation and having had regard to the arguments put forward by the minority of respondents opposed to the proposal, the Government confirmed its intention at the time of response to implement the abolition of the MCRC, stating its view that this body no longer has a remit broad enough to justify its retention and that its functions could be performed effectively by other existing rule committees.
- 8.9 Note was taken of the concerns expressed by some respondents about the transfer of the MCRC's functions. Although the Lord Chief Justice will be able to consult the other court rule committees, it is not intended that he should be restricted over whom he consults before

making rules under section 144 of the Magistrates' Courts Act 1980 and, as with other classes of rules, he will be able to consult as he considers appropriate.

- 8.10 A copy of all responses has been placed in the library of both houses. The Government's response to the consultation on proposals for reform of its bodies included in the Public Bodies Bill can be found on the Ministry of Justice website at:

https://consult.justice.gov.uk/digital-communications/public_bodies_bill/results/consultation-response-public-bodies.pdf

9. Guidance

- 9.1 The nature of this order makes it unnecessary to publish guidance in relation to it.
- 9.2 With regard to both the CCRC and MCRC, the Lord Chancellor will write to the Lord Chief Justice. Members of both committees are aware of impending abolition and will be notified officially by the relevant secretariat. An announcement will be made on the Ministry of Justice website.

10. Impact

- 10.1 An impact assessment was not required on either rule committee at the time of consultation because: the abolition proposal does not impact on business, civil society or on regulatory matters; there is no impact on staff; and costs/benefits to the public sector will not exceed £5 million per annum. However, an initial equality impact assessment (EIA) screening was completed for each committee, and provided alongside the consultation paper. These assessments have been updated and are available at:

https://consult.justice.gov.uk/digital-communications/public_bodies_bill/results/public-bodies-bill-ccrc-eia.pdf

https://consult.justice.gov.uk/digital-communications/public_bodies_bill/results/public-bodies-bill-mcrc-eia.pdf

- 10.2 Neither EIA initial screening showed evidence of an equality impact resulting from abolishing the CCRC or MCRC.
- 10.3 The financial impact of the abolitions, which are marginal, are set out under "Economy" in section 7 above.

11. Regulating small businesses

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 Cabinet Office will carry out a post-legislative scrutiny review after the passage of the Public Bodies Bill and Ministry of Justice will monitor the outcome of that.

13. Contact

13.1 Regarding the CCRC, contact Caroline Grabazs at the Ministry of Justice Tel: 0203 334 6292 or e-mail: caroline.grabazs@hmcts.gsi.gov.uk.

Regarding the MCRC, contact Clive Buckley at the Ministry of Justice Tel: 0203 334 3181 or e-mail: clive.buckley@justice.gsi.gov.uk.