

**EXPLANATORY MEMORANDUM TO**  
**THE CRIMINAL PROCEDURE (AMENDMENT No. 2) RULES 2006**  
**2006 No. 2636 (L.9)**

1. This Explanatory Memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 These Rules amend the Criminal Procedure Rules 2005. They replace some existing rules with simpler and shorter ones. They introduce rules to support some criminal justice legislation recently, or soon to be, brought into force. They introduce new rules about expert evidence.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Background**

4.1 Sections 68 – 72 of the Courts Act 2003 provide for a Criminal Procedure Rule Committee to make rules that govern the practice and procedure of the criminal courts. Section 69 requires the Committee to make rules that are simple and simply expressed, and that help make the criminal justice system accessible, fair and efficient. These Rules contain the second set of amendments to the Criminal Procedure Rules 2005.

4.2 The Rules accommodate three pieces of criminal justice legislation that:

(a) when brought into force, will allow public prosecutors to start criminal proceedings by sending the accused a document (a “requisition”) that has the same effect as a magistrates’ court summons (the Criminal Justice Act 2003, sections 29 and 30);

(b) when brought into force, where a defendant is charged with large numbers of related offences will allow the Crown Court to try specimen offences with a jury and if they convict then to try related offences by judge alone (the Domestic Violence, Crime and Victims Act 2004, sections 17 to 21); and

(c) give rights of appeal where a defendant who has helped investigators (for example, by informing on other criminals) has his or her sentence reviewed after conviction (the Serious Organised Crime and Police Act 2005, section 74).

**5. Extent**

5.1 This instrument applies to England and Wales.

**6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

7.1 Members of the Criminal Procedure Rule Committee are drawn from among all the groups involved in the criminal justice system – the judiciary, the magistracy, legal practitioners, prosecutors, the police, voluntary organisations and government departments. The first rules made by the Committee were the Criminal Procedure Rules 2005 (S.I. 2005 No. 384). In those rules the Committee consolidated, organised and began to simplify rules of criminal procedure that before then had been contained in nearly 50 separate statutory instruments, and added notes that cross-referred to other relevant criminal justice legislation. Since making the Criminal Procedure Rules 2005 the Committee has continued to scrutinise the rules with a view to gradually improving and simplifying them. Part of that objective is to make rules as far as possible capable of accommodating whatever new criminal justice legislation Parliament may enact without the need for ever-increasing numbers of new procedure rules. The Committee hopes to avoid making sporadic changes to the Criminal Procedure Rules and to make rules only twice a year, ordinarily in December and in June, to come into force ordinarily in April and October, wherever appropriate making any rules needed to supplement new legislation even where that new legislation has not yet been brought into force. The Committee intends to consolidate these changes at 5 yearly intervals (so first in 2010). Meanwhile, an informal consolidated text is available to the public on the Department's website, with a 'plain English' description of the effect of the Rules.

7.2 This memorandum explains first the major amendments to the Criminal Procedure Rules 2005 introduced by Rules 19 and 20 of these Amendment Rules, and then explains the smaller amendments made to accommodate the legislation described in paragraph 4.2.

### *Expert evidence*

7.3 The Criminal Procedure Rules 2005 contained nothing explicit about how the overriding objective in Part 1 of those Rules (to deal with cases justly) should be applied to an expert witness. Nor did they contain anything about the form in which expert evidence should be introduced, or about the use of the courts case management powers to identify exactly what was in issue between experts. When the Criminal Procedure Rules first were made the Committee anticipated that explicit Rules about expert evidence would be made fairly soon and the Rules were arranged accordingly, setting aside part 33 for those provisions. The new rules now inserted in that Part 33 deal with the duty of an expert to the court and with the content of an expert's report. They provide explicitly for pre-trial discussion between experts and they allow the court to order that expert evidence for the defence should be given by a single joint defence expert.

7.4 The Criminal Procedure Rule Committee consulted widely on these rules between October, 2005 and January, 2006. It invited comments from participants in the criminal justice system, from bodies representing non-legal professions, many of whose members give expert evidence, and from the various bodies formed specifically to represent the views of expert witnesses. The rules take account of the numerous responses received. They are consistent with guidance for prosecution experts issued by the Crown Prosecution Service. As far as lies within the power of the Criminal Procedure Rule Committee, they satisfy the recommendations made in the report "Forensic Science on Trial" published on 29<sup>th</sup> March, 2005 by the House of Commons Science and Technology Committee (HC 96-I).

### *Evidence about a complainant's sexual behaviour*

7.5 The new Part 36 Rules are shorter and clearer than those they replace. During preparation of the government consultation paper "Convicting Rapists and Protecting Victims – Justice for Victims of Rape" that was published by the Office for Criminal Justice Reform in March 2006, it was noted that some applications for permission to cross examine rape complainants about previous sexual experience were made late, sometimes not until the trial. Because that gave the complainant no time to prepare for the ordeal of being cross-examined, it tended to aggravate that person's distress.

7.6 The government asked the Committee to review the existing rules. (The request is mentioned at page 11 of the consultation paper.) The new rules discourage late applications, especially if made at trial. They require every application, including a late one, to be in writing explaining properly the reasons for making it and the legal grounds on which it is made. If an application succeeds, the new rules require the court to give the prosecutor an adequate opportunity to consider what special measures may be needed to support the complainant in giving evidence.

### *Other amendments*

7.7 A requisition issued by a public prosecutor will have the same effect as a summons issued by a magistrate or by a justices' clerk: both require an accused to attend the court. So the existing rules about the form, content and service of summonses will apply to requisitions as well. The Committee has taken the opportunity to remove what has become an unnecessary administrative burden for magistrates and their clerks, who now are required to sign every summons they issue. The new rules will require that a summons or requisition must state the name of the magistrate, justices' clerk or prosecutor responsible for issuing it, so that that person will be personally accountable, but they will not be required to sign every one of those documents.

7.8 The law that will allow part of a trial to be heard by a judge alone in cases of multiple offending was based on a recommendation by the Law Commission. An application for such a trial has to be made at a "preparatory hearing", which is a case management hearing in a serious fraud or other complex case at which the court has power to make certain orders for the preparation of the case from which in certain circumstances the parties can appeal at once to the Court of Appeal. The rules that govern applications for preparatory hearings are contained in Part 15 of the Criminal Procedure Rules. The new rules amend those rules so that they extend to applications for this particular sort of non-jury trial. They do not change the existing procedures under Part 15.

7.9 Section 74 of the Serious Organised Crime and Police Act 2005 created a new right of appeal by either a defendant or a prosecutor against a sentence review decision in the Crown Court where a defendant has helped the police or other investigators, or where a defendant has promised to help but in fact has not done so. The Committee has amended the appeal rules in Part 68 of the Criminal Procedure Rules so that the procedure they describe applies to these new types of appeal as well as to other rights of appeal.

7.10 Amendments to the Criminal Procedure Rules are drawn to the attention of participants in the criminal justice system by correspondence addressed by the Committee secretariat to all relevant bodies and to the editors of relevant legal journals, as well as by publicity within Her Majesty's Courts Service.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

## **9. Contact**

Jonathan Solly at the Department for Constitutional Affairs tel: 020 7210 8083 or e-mail: jonathan.solly@dca.gsi.gov.uk can answer any queries regarding the instrument.