

EXPLANATORY MEMORANDUM TO
THE CRIMINAL PROCEDURE (AMENDMENT No. 2) RULES 2007

2007 No. 2317 (L.23)

1. This Explanatory Memorandum has been prepared by the Ministry of Justice 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 about appeals to the Court of Appeal with rules that are consolidated, revised and simplified. They introduce new rules about the procedure on changing a plea of guilty. They make some other changes to accommodate those new rules and to accommodate some new primary legislation.

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

3.1 These Rules have been allowed by the Lord Chancellor and Secretary of State for Justice in the exercise by the one office holder, the Rt. Hon. Jack Straw MP, of separate powers conferred on each office held by him. The legal considerations applicable are set out in a separate Memorandum submitted to the Joint Committee on Statutory Instruments.

4. Legislative Background

4.1 Sections 68 to 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 fourth set of amendments to the Criminal Procedure Rules 2005.

4.2 The Committee has taken the opportunity to accommodate a recently implemented piece of criminal justice legislation that gives a prosecutor an opportunity to appeal against a failure to make a football banning order (section 14A(5A) of the Football Spectators Act 1989, inserted by section 52 of, and Schedule 3 to, the Violent Crime Reduction Act 2006).

5. Territorial extent and application

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 Ministry website at http://www.justice.gov.uk/criminal/procrules_fin/index.htm.

7.2 This memorandum explains first the substantial amendments to Parts 65 to 70 of the Criminal Procedure Rules 2005 made by these Amendment Rules, and then explains the smaller amendments to Parts 2, 37, 39, 63 and 74.

Appeal to the Court of Appeal: Parts 65 to 70 of the Criminal Procedure Rules

7.3 At the request of the Registrar of Criminal Appeals, the Criminal Procedure Rule Committee undertook a comprehensive revision and simplification of the rules about appeals from the Crown Court to the criminal division of the Court of Appeal contained in Parts 65 to 70 of the Criminal Procedure Rules 2005. Some of those rules no longer corresponded with the preferred modern practice of the court and some were hard to understand. The new rules are shorter and clearer than those that they replace. They have been rewritten in the style of other new criminal procedure rules and, like those other new rules, they include notes to cross-refer the reader to other relevant provisions. They substantially maintain the principal existing procedures of the Court of Appeal, on the ground that those procedures are familiar and serve well those who have recourse to them. The new rules incorporate procedures presently set out in case law (variation of the outcome of a sentence appeal heard in a party's absence - new rule 68.12) and others established by the practice of the Registrar (notification of potential respondents - new rule 68.6). They accommodate new legislation that gives the prosecutor an opportunity to appeal against a failure by the Crown Court to make a football banning order, under section 14A(5A) of the Football Spectators Act 1989.

7.4 The new rules deal first with general matters (Part 65) and then with the five categories of appeal and reference to the Court of Appeal: (i) appeals against rulings at preparatory hearings (Part 66), (ii) prosecution appeals against adverse rulings (Part 67), (iii) appeals about conviction or sentence (Part 68 - these are the overwhelming majority of appeals), (iv) appeals against reporting or access restrictions (Part 69) and (v) references to the court by the Attorney General of points of law or of unduly lenient sentences (Part 70). Part 65 introduces into the Court of Appeal duties and powers of case management under Part 3 of the Criminal Procedure Rules 2005 that

have not formerly applied in that court. In each of Parts 66 to 70 the same procedural framework has been used, with the unique requirements of each type of appeal accommodated by variations within that framework.

7.5 The new rules were formulated in close consultation with the Registrar of Criminal Appeals and staff of the Criminal Appeal Office (who have to apply them), and the Criminal Procedure Rule Committee consulted generally about its proposals between April and June 2007, inviting comments from participants in the criminal justice system including the various professional bodies involved. The rules take account of the observations received.

7.6 The new rules are introduced by rules 27 to 32 of these Amendment Rules and by Schedules 1 to 6.

Changing a plea of guilty: Parts 37 and 39 of the Criminal Procedure Rules

7.7 The Criminal Procedure Rules 2005 contained no rules governing the procedure by which a defendant who has entered a guilty plea may apply to the court for permission to withdraw that plea (for example, where it emerges that she or he had misunderstood the prosecution case). That procedure was set out only in case law. The Committee received reports that the absence of clear procedure rules contributed to confusion over the circumstances in which a court might consider an application to withdraw a guilty plea, and an article published in a legal journal (*Criminal Law Review*, February 2007) invited the Committee to make such rules.

7.8 The new rules are introduced by rule 9 of these Amendment Rules, for trial in a magistrates' court, and by rule 10 for Crown Court trial.

Other amendments

7.9 The rules about appeal from a magistrates' court to the Crown Court in Part 63 of the Criminal Procedure Rules 2005 are amended by rules 15 to 25 of these Amendment Rules for two purposes. First, to accommodate a prosecutor's appeal under section 14A(5A) of the Football Spectators Act 1989 against a failure to make a football banning order. Second, to make clear that any appeal to the Crown Court can be heard with only one magistrate as well as a Crown Court judge, instead of the usual two magistrates, if to wait for a second magistrate would cause unreasonable delay. The amendment reinstates a former Crown Court rule that by oversight was adopted in the Criminal Procedure Rules 2005 in terms that applied ostensibly only where the appeal was from a youth court.

7.10 The rules about appeal to the House of Lords in Part 74 of the Criminal Procedure Rules 2005 are amended by rules 34 to 36 of these Amendment Rules to extend the scope of that Part to all appeals to the House of Lords from the criminal division of the Court of Appeal. These consequential amendments complete the revision and consolidation of the rules in Parts 65 to 70. Provisions that now are in Part 74 formerly were contained in rule 66.16 (concerning prosecution appeals) and in rule 69.5 (concerning sentencing references by the Attorney General), those being among the rules that have been revised as explained at paragraph 7.3 and 7.4 of this Memorandum.

7.11 Rule 4 of these Amendment Rules adds to rule 2.2(1) of the Criminal Procedure Rules 2005 three definitions, those being respectively of 'business day',

'live link' and 'public interest ruling'. All three are relevant to the new appeal rules in Parts 65 to 70, but by placing them in Part 2 they have a useful general effect.

7.12 The Committee has taken the opportunity to make a number of minor editorial amendments, primarily to the tables of contents of various Parts of the Criminal Procedure Rules 2005, so as to accommodate rule changes made by these and former Amendment Rules: see rules 5 to 8, 11 to 13, 26 and 33 of these Amendment Rules.

Bringing the new rules into force

7.13 The new rules about changing a guilty plea (in Parts 37 and 39) and about appeal to the Crown Court and to the House of Lords (in Parts 63 and 74) will apply as soon as these Amendment Rules themselves come into force on 1st October, 2007. But it could be confusing and unfair to those involved in an appeal, application or reference to the Court of Appeal if the revised rules in Parts 65 to 70 were to apply straightaway in every case on that date. So rule 3 of these Amendment Rules adds a paragraph to rule 2.1 of the Criminal Procedure Rules 2005 providing that the new appeal rules will apply only where an appeal, application or reference to the court is made on or after 1st October, 2007.

7.14 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 relevant members of the judiciary, to other relevant bodies and to the editors of relevant legal journals, as well as by publicity within Her Majesty's Courts Service. In addition, news of changes to the Rules and a 'plain English' description of the effect of those changes is published on the Ministry's website: see 'Further background to the Criminal Procedure Rules' at <http://www.justice.gov.uk/about/criminal-proc-rule-committee.htm>.

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

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