

EXPLANATORY MEMORANDUM TO
THE CRIMINAL PROCEDURE (AMENDMENT) RULES 2008
2008 No. 2076 (L. 9)

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 and have been produced following comprehensive engagement by the Criminal Procedure Rule Committee with partners in the criminal justice system. They introduce a new rule about representatives and 'supporting adults'. They replace with revised and simplified rules existing procedure rules about starting a prosecution in a magistrates' court and about appeal to the Crown Court. They make other changes to accommodate those new rules and to accommodate some new primary legislation. They alter the rule about service by leaving or posting a document to clarify the way this works when a company to be served with a document is registered in Scotland or Northern Ireland.

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

3.1 None.

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 that 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 sixth set of amendments to the Criminal Procedure Rules 2005.

4.2 The Rule Committee has taken the opportunity to accommodate provisions of (a) The Serious Crime Act 2007 (Appeals under section 24) Order 2008 (appeal against a decision of the Crown Court in relation to a serious crime prevention order); and (b) the Criminal Justice and Immigration Act 2008 (which removes the right of appeal to the Court of Appeal from a procedural direction of a single judge of that court).

5. Territorial extent and application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 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 or July, to come into force ordinarily on the first Monday in April and on the first Monday in 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 of Justice website at —
http://www.justice.gov.uk/criminal/procrules_fin/index.htm.

7.2 This memorandum explains first the revision of Parts 7 and 63 of the Criminal Procedure Rules 2005; then the amendments to Parts 2, 4, 37, 44, 55, 65, 66, 68 and 78 that accommodate the new rules, clarify a service rule, accommodate provision in the Serious Crime Act 2007 (Appeals under section 24) Order 2008 and the Criminal Justice and Immigration Act 2008, and make some other minor corrections.

Starting a prosecution in a magistrates' court: Part 7 of the Criminal Procedure Rules

7.3 The new Part 7 rules are expressed in simpler terms than the existing rules. They have been rewritten in the style of other new criminal procedure rules and, like those other new rules, they include notes that refer the reader to other relevant provisions. They were formulated in consultation with the principal prosecuting agencies and with the Home Office, the Ministry of Justice, the office of the Attorney General and others. Respondents to the consultation paper included members of the judiciary, judicial bodies and the legal professions, the providers of information technology for case management in magistrates' courts, magistrates' courts legal advisers and a legal publisher.

7.4 The new rules are introduced by rule 8 of these Amendment Rules and by Schedule 1.

Appeal to the Crown Court: Part 63 of the Criminal Procedure Rules

7.5 In the fourth set of amendments to the Criminal Procedure Rules 2005 (the Criminal Procedure (Amendment No. 2) Rules 2007: S.I. 2007 No. 2317) the Rule Committee revised and simplified the rules in Parts 65 to 70 about appeals from the Crown Court to the criminal division of the Court of Appeal. Modelled on that earlier revision, the revised Part 63 simplifies the rules whilst maintaining and setting out explicitly the existing procedures of the Crown Court that are familiar to court users and that have been found to work well. The new rules are 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 that refer the reader to other relevant provisions (including the legislation that confers the rights of appeal).

7.6 The new rules were formulated in consultation with the principal prosecuting agencies and with the Her Majesty's Courts' Service, the Home Office, the Ministry of Justice, the office of the Attorney General and others. Respondents to the consultation paper included solicitors and solicitor advocates; justices of the peace; members of the judiciary and of professional associations; editors of practitioners' texts and an academic.

7.7 The new Part 63 rules are introduced by rule 14 of these Amendment Rules and by Schedule 2.

Other amendments

7.8 Rule 5 of these Amendment Rules inserts in Part 2 of the Criminal Procedure Rules 2005 a new rule about representatives and 'supporting adults' who may act on behalf of a party to proceedings.

7.9 The rule about service of a document by leaving it at the appropriate address or posting it there (rule 4.4(2)(b) of the Criminal Procedure Rules 2005) is amended by rule 6. The note to that rule is amended by rule 7. These amendments remove any uncertainty about the requirements for service on a company registered in Scotland or Northern Ireland. The need for revision was identified when users sought clarification from the secretariat about the operation of this rule.

7.10 By rule 10, three rules are moved from Part 7 of the Criminal Procedure Rules 2005 into Part 37 of the Criminal Procedure Rules 2005 (Summary trial). They have been moved because they are relevant to the trial itself, rather than to the starting of a prosecution, with which Part 7 is concerned. This has been done as part of the Committee's drive to simplify and streamline the rules, in accordance with their statutory duty.

7.11 Rule 11 amends rule 44.1(2)(d) of the Criminal Procedure Rules 2005. This is to remove a redundant reference to "local education authority", as the existing reference to "local authority" in this rule is sufficient. The rule lists those whose written reports may be considered by the court without being read aloud.

7.12 Rule 7.6 of the Criminal Procedure Rules 2005 is moved into Part 55 (Road

traffic penalties) by rule 12 of these Amendment Rules. This is because it relates to road traffic penalties, rather than to starting a prosecution, with which Part 7 is concerned.

7.13 The note to rule 65.1 of the Criminal Procedure Rules 2005 about the powers of the Court of Appeal that may be exercised by one judge of that court is amended by rule 15, to include reference to the Serious Crime Act 2007 (Appeals under Section 24) Order 2008.

7.14 Rule 65.5(1) and the note to rule 65.5 of the Criminal Procedure Rules 2005 are amended by rules 16 and 17 of these Amendment Rules. This is to take account of the amendment to section 31C of the Criminal Appeal Act 1968 effected by the Criminal Justice and Immigration Act 2008; removing the right of appeal to the Court of Appeal from a procedural direction of a single judge of that court. This amendment also makes the note to rule 65.5 comprehensive.

7.15 Rule 18 of these Amendment Rules substitutes a replacement rule 65.11 of the Criminal Procedure Rules 2005 (Registrar's duty to provide copy documents for appeal or reference) to amend the typographical arrangement of that rule.

7.16 The note to rule 66.6 of the Criminal Procedure Rules 2005 is amended by rule 19. This takes into account the Criminal Justice and Immigration Act 2008 amendments to section 31 of the Criminal Appeal Act 1968.

7.17 Part 68 of the Criminal Procedure Rules 2005 is amended by rules 17 to 21. These amendments incorporate reference to rights of appeal to the Court of Appeal (i) against wasted costs orders and third party costs orders, and (ii) against a serious crime prevention order, where a case is certified fit for appeal. Also, the existing notes have been expanded.

7.18 Rule 25 of these Amendment Rules amends rule 78.1 of the Criminal Procedure Rules 2005. It allows for the Crown Court to make a costs order against someone who starts but who then abandons an appeal from a magistrates' court. The purpose of this amendment is to remove a limitation on the Crown Court's jurisdiction to award costs on appeal. The limitation is no longer appropriate because the new Part 63 rules do not specify a three-day time limit.

Bringing the new rules into force

7.19 The changes made by these Amendment Rules come into force on 6th October 2008, the first Monday in that month, following the Rule Committee's established convention. However, to avoid confusion and potential unfairness to those involved in cases that have started before that date, rule 4 of these Amendment Rules adds two new paragraphs to rule 2.1 of the Criminal Procedure Rules dealing with the transitional period. The new rules in Part 7 will apply in cases in which a prosecution starts on or after 6 October 2008; and the new rules in Part 63 will apply when the decision that is the subject of appeal, or reference, is made on or after that date. In other cases under those two Parts, the rules replaced by these Amendment Rules continue to apply.

7.20 Amendments to the Criminal Procedure Rules 2005 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 criminal justice departments, 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. For the most recent of these, see 'Changes to the Criminal Procedure Rules' at —

<http://www.justice.gov.uk/news/announcement070408b.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

Jonathan Solly at the Ministry of Justice can answer any queries regarding the instrument. Telephone: 020 7210 8083, or e-mail: jonathan.solly@justice.gsi.gov.uk