

**EXPLANATORY MEMORANDUM TO
THE CRIMINAL PROCEDURE (AMENDMENT) RULES 2010**

2010 No. 1921 (L.12)

1. This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Rules amend the Criminal Procedure Rules 2010, S.I. 2010 No. 60. They introduce new procedure rules about applications for witnesses to give evidence by live link. They replace the current rules about warrants for arrest, detention or imprisonment; the current rules about sentencing procedures in various special cases; the current rules about the enforcement of fines and other orders for payment; and some of the current rules about road traffic penalties. They amend the current rules about case management; forms of summons and other magistrates' court documents; bail; breach of community and other orders; civil behaviour orders; and proceedings under the Proceeds of Crime Act 2002.

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

3.1 None.

4. Legislative Context

4.1 Sections 68 to 72 of the Courts Act 2003 provide for a Criminal Procedure Rule Committee of 18 members to make rules that govern the practice and procedure of the criminal courts, that is, magistrates' courts, the Crown Court and the Court of Appeal, Criminal Division. 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. Members of the Rule Committee are drawn from among all the groups involved in the criminal justice system: the judiciary, including the magistracy, the legal professions, prosecutors, the police, voluntary organisations and government departments.

4.2 The first rules made by the Rule 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 then, the Committee has continued to revise and simplify those procedure rules in accordance with its statutory objective, while at the same time providing for new government initiatives, and for developments in legislation and in case law. Unless rule changes are needed urgently, the Committee revises Criminal Procedure Rules only twice a year, in June or July and again in December or January. The revisions come into force ordinarily on the first Monday in October and on the first Monday in April of each year.

4.3 These Amendment Rules accommodate, by new Criminal Procedure Rules, by rule amendments, or by notes to rules, as appropriate: amendments to the Street Offences Act 1959 made by the Policing and Crime Act 2009, which provide for the supervision of those convicted of certain offences; amendments to the Powers of Criminal Courts (Sentencing) Act 2000, made by the Criminal Justice Act 2003 and by the Criminal Justice and Immigration Act 2008, which deal with certain types of community order; amendments to the Proceeds of Crime Act 2002, made by the Serious Crime Act 2007 and by the Policing and Crime Act 2009, which deal with the appointment of receivers and with matters affecting them; section 51 of the Criminal Justice Act 2003, which allows a witness to give evidence by live link; section 13 of the Legal Services Act 2007, which provides for rights of representation in legal proceedings; Part 1 of the Criminal Justice and Immigration Act 2008, which provides for youth rehabilitation orders; and sections 120 and 125 of the Coroners and Justice Act 2009, which provide for sentencing guidelines issued by the Sentencing Council.

4.4 The Rule Committee has for the first time exercised the power conferred by section 155(7) of the Powers of Criminal Courts (Sentencing) Act 2000, to extend the time within which the Crown Court may vary or rescind a sentence or order if another defendant is later tried on the same or related facts.

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

- *What is being done and why*

Case management

7.1 Rule 3.10 of the Criminal Procedure Rules (Conduct of a trial or an appeal) is amended to make explicit the courts' powers to impose a timetable for the conduct of proceedings.

7.2 The rules in Part 3 of the Criminal Procedure Rules place courts under a general duty, and give them explicit powers, to manage the preparation and trial of criminal cases, and the conduct of appeals, in accordance with the overriding objective in Part 1 of the Rules. Senior judges suggested to the Committee that it would be helpful to dispel any possible doubts about a court's power to impose a timetable, or to limit the examination of a witness or any other stage of the hearing, and the Committee agreed.

7.3 Rule 4 of these Amendment Rules gives effect to this amendment.

Forms of summons and other magistrates' court documents

7.4 A new rule 5.3 of the Criminal Procedure Rules (Signature of magistrates' court forms) is substituted for the current rule to provide that, where a magistrates' court form requires signature, then that signature need not be by the conventional application of pen to paper by the signatory but may be by other means of written or

electronic authentication. Rule 7.4(3) of the Criminal Procedure Rules is amended to provide that a summons need not identify the court that issued it if that information is recorded elsewhere. ('Court' is defined by Criminal Procedure Rule 2.2 to mean, in this context, a District Judge (Magistrates' Courts), a justice, or justices, or a justices' legal adviser when exercising the powers of a justice.)

7.5 Justices' clerks pointed out to the Committee that rules requiring the conventional signature of magistrates' court documents no longer were needed where reliable and permanent records existed anyway of the identity of the person by whom the document had been issued or otherwise authorised. Moreover, a requirement for conventional signature could impede efficiency. The issue of a document might be validly authorised by email or other electronic means, yet it could not be despatched until the signatory had in effect repeated the authorisation by signing it in the conventional way. The Committee agreed. The same principle applies to ordinary forms that require a signature, and to the special cases of summonses and warrants: the latter now dealt with by new Criminal Procedure Rules 18.4 and 52.7 respectively, dealt with at paragraphs 7.8 and 7.26 below.

7.6 Rules 5 and 6 of these Amendment Rules give effect to these amendments.

Warrants for arrest, detention or imprisonment

7.7 A new Part 18 of the Criminal Procedure Rules (Warrants for arrest, detention or imprisonment) is substituted for the rules currently in that Part. It revises and abbreviates the current rules and, unlike the current rules, applies to warrants issued by the Crown Court and Court of Appeal as well as to those issued by magistrates' courts.

7.8 Justices' clerks pointed out to the Committee that the current rules imposed requirements that information technology has rendered unnecessary, for much the same reasons as are explained at paragraph 7.5 above. The Committee agreed; and in making amendments to give effect to those proposed changes took the opportunity further to simplify the current rules and to apply them in all the criminal courts.

7.9 Rule 7 of these Amendment Rules and Schedule 1 introduce the new rules.

Bail

7.10 Rule 19.17 of the Criminal Procedure Rules (Crown Court procedure on appeal against grant of bail by a magistrates' court) is amended to provide that, on a prosecution appeal against the grant of bail, the defendant has a right to be present. The current rule allows the defendant to be present only in an exceptional case, if the judge allows.

7.11 Although the national courts had found the current rule compatible with the European Convention on Human Rights, in a judgment given on 30th March, 2010, in the case of *Allen v UK*, the European Court of Human Rights disagreed. The court decided that in such a case the defendant should be entitled to be present. The Committee has amended the rule accordingly.

7.12 Rule 8 of these Amendment Rules gives effect to this amendment.

Giving evidence by live link

7.13 A new Section 6 is added to Part 29 of the Criminal Procedure Rules (Measures to assist a witness or defendant to give evidence), to provide the procedure on an application for a witness to give evidence by live link, where that is not part of a special measures direction given for the benefit of a young or otherwise vulnerable witness.

7.14 On 26th April, 2010, section 51 of the Criminal Justice Act 2003 came into force. It provides for the admissibility of evidence given by closed circuit television 'live link' from anywhere in the U.K. that is outside the court building, if the court decides that that would be in the interests of the efficient or effective administration of justice. The new rules are modelled on others in Part 29 which deal with comparable provisions, including the rules about applications for special measures directions under the Youth Justice and Criminal Evidence Act 1999 (which can include a direction that a young or vulnerable witness should give evidence by live link). The Committee took the opportunity to consolidate with the new rules those currently in Part 30, which supply the procedure on an application under section 32 of the Criminal Justice Act 1988 for a witness to give evidence by live link from abroad.

7.15 Rule 9 of these Amendment Rules introduces the new rules.

Sentencing procedures in special cases

7.16 A new Part 42 of the Criminal Procedure Rules (Sentencing procedures in special cases) is substituted for the rules currently in that Part, and in the current Parts 43, 45, 47, 48, 49, 53 and 54.

7.17 As part of its programme of progressive revision and simplification of the Criminal Procedure Rules, the Committee decided to rewrite the current rules about miscellaneous procedures associated with sentencing currently contained in all the Parts listed above; to consolidate them in a single Part of the Rules; and to include rules that codify procedures hitherto laid down by common law, or widely adopted in practice. In codifying the practice on an application to the court to vary or rescind a sentence or order, set out in new rule 42.4, the Committee decided to exercise a power conferred by section 155 of the Powers of Criminal Courts (Sentencing) Act 2000. That power allows Criminal Procedure Rules to extend the statutory time limit within which the Crown Court can vary a sentence or order if another defendant is later tried on the same or related facts.

7.18 Rule 14 of these Amendment Rules and Schedule 2 introduce the new rules.

Breach, revocation and amendment of community and other orders

7.19 Part 44 of the Criminal Procedure Rules (Breach, revocation and amendment of community and other orders) is amended to accommodate legislative amendments made by the Criminal Justice Act 2003, the Criminal Justice and Immigration Act 2008 and the Policing and Crime Act 2009; and to apply the rules to proceedings in the Crown Court as well as to proceedings in magistrates' courts. Instead of making separately the numerous small amendments to the rules, and the notes to rules, required by these legislative changes, the Committee decided to consolidate them by remaking Part 44 with those amendments included. There are no other changes to the rules.

7.20 Rule 15 of these Amendment Rules and Schedule 3 introduce the new rules.

Civil behaviour orders after verdict or finding

7.21 Rule 50.2 of the Criminal Procedure Rules (Behaviour orders: general rules) is amended so as to list the occasions on which the court is required to explain why it has not made such an order, even though the conditions for doing so are met. Rule 50.5 is amended so as to allow the court to decide whether, and if so how, an application to vary or revoke a civil behaviour order should be served.

7.22 The Committee decided that it would be convenient for users of the rules if rule 50.2 were to list the occasions when statute requires a court, as well as explaining a sentence or order that it has passed, to explain why it has decided not to make an order that is available. There is a corresponding provision about certain other orders, ones defined by statute as part of the sentence itself, in the new rule 42.1.

7.23 It was reported to the Committee that the repeated service, on the person protected by a behaviour order, of applications to vary or revoke that order could itself amount to the sort of behaviour that the order had been made to restrain: in a case of domestic violence or harassment, for example. Rule 50.5 already allowed for a vexatious or abusive application to be dismissed without calling on the respondent. The Committee decided to amend the rule so as to confer on the court the responsibility of deciding whether the application should be served at all, and if so to allow for service by court staff instead of by the applicant.

7.24 Rule 16 of these Amendment Rules gives effect to these amendments.

Enforcement of fines and other orders for payment

7.25 A new Part 52 of the Criminal Procedure Rules (Enforcement of fines and other orders for payment) is substituted for the rules currently in that Part.

7.26 Again as part of its programme of progressive revision and simplification of the Criminal Procedure Rules, the Committee decided to revise and simplify the current rules about the enforcement of fines; and to incorporate procedures for which the current rules do not provide associated with the fines collection regime that is contained in Schedule 5 to the Courts Act 2003 and in The Fines Collection Regulations 2006. The rules about warrants to take control of goods and sell them include the same provisions as do the new rules about summonses and warrants for arrest, etc., for the same reasons as are explained above at paragraphs 7.5 and 7.8.

7.27 Rule 17 of these Amendment Rules and Schedule 4 introduce the new rules.

Road traffic penalties

7.28 A new Part 55 of the Criminal Procedure Rules (Road traffic penalties) is substituted for the rules currently in that Part: though rule 55.5 (Appeal against recognition of foreign driving disqualification), which the Committee made recently, remains unchanged.

7.29 These rules, too, have been made as part of the Committee's programme of progressive revision and simplification of the Criminal Procedure Rules.

7.30 Rule 18 of these Amendment Rules and Schedule 5 introduce the new rules.

Proceedings under the Proceeds of Crime Act 2002

7.31 Rules in Part 57 (Proceeds of Crime Act 2002: rules applicable to all proceedings), Part 58 (Proceeds of Crime Act 2002: rules applicable only to confiscation proceedings) and Part 60 (Proceeds of Crime Act 2002: rules applicable only to receivership proceedings) of the Criminal Procedure Rules all are amended to accommodate amendments to the Proceeds of Crime Act 2002 itself.

7.32 Rules 19, 20 and 21 of these Amendment Rules give effect to these amendments.

Other amendments

7.33 Part 2 of the Criminal Procedure Rules (Understanding and applying the Rules) is amended to provide a definition of the ‘Criminal Costs Practice Direction’, by which the Lord Chief Justice gives guidance connected with the rules in Part 76 (Costs) and other matters; and to bring up to date references in the note to rule 2.5 to the legislation under which a person may be entitled to act as a legal representative. The notes to Criminal Procedure Rules 35.3 and 35.4 are corrected and brought up to date. Criminal Procedure Rule 37.10, and the note to that rule, are amended to bring up to date the references to sentencing guidelines that they contain. Parts 30, 43, 45, 47, 48, 49, 53 and 54 are omitted, in consequence of the consolidation of rules made by the other changes described in the preceding paragraphs. The preamble to the Criminal Procedure Rules 2010, and the Arrangement of Rules they contain, are corrected and brought up to date.

Bringing the new rules into force

7.34 The changes made by these Amendment Rules come into force on Monday 4th October, 2010, following the convention explained at paragraph 4.2 above.

• ***Consolidation***

7.35 When it made the Criminal Procedure Rules 2005, the Committee declared its intention to effect after 5 years a legislative consolidation of those Rules with such amendments as had been made by then; and did so, by the Criminal Procedure Rules 2010. The Committee intends to effect further such consolidations at regular intervals in future. An informal consolidated text continues to be available to the public free of charge on the Ministry of Justice website at:

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

8. Consultation outcome

8.1 On the new and revised rules about case management, forms, summonses and warrants, and on those rules about the various sentencing and enforcement procedures that are replaced by these Amendment Rules, the Committee consulted with the courts, authorities and agencies most likely to use them; and took account of all views expressed.

9. Guidance

9.1 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 members of the judiciary, to other relevant representative bodies (for example, the Law Society and the Bar Council) and to the editors of

relevant legal journals; as well as by publicity within Her Majesty's Courts Service, within the principal prosecuting authorities, and among local criminal justice boards.

9.2 In addition, news of changes to the Rules and a 'plain English' description of the effect of those changes is published on the Ministry of Justice website. See the website links at <http://www.justice.gov.uk/about/criminal-proc-rule-committee.htm>.

10. Impact

10.1 These rules have no impact on business, charities or voluntary bodies.

10.2 These rules have no impact of themselves on the public sector, because they reproduce rules and procedures that are already current, and they introduce new rules and procedures that supplement legislation already made.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring and review

12.1 The making of Criminal Procedure Rules attracts independent academic and other comment. From time to time the Rules are in issue in cases in which the judgment is reported. The Committee secretariat draws members' attention to such comment and reports. Observations arising from judicial, institutional and commercial training courses on the Rules are monitored by Committee members. Twice a year the Committee receives and considers statistical information about criminal case management gathered by Her Majesty's Courts Service.

12.2 Each judge and lawyer member of the Criminal Procedure Rule Committee practises regularly in the criminal courts, and each other member deals regularly with matters that affect or arise from the business of those courts. Each therefore draws upon his or her experience of the operation of the courts and of the Rules. Although members participate in an individual capacity, each is able also to reflect the views of the professional or other 'constituency' from which each comes.

12.3 Representatives of Her Majesty's Courts Service, and of the criminal justice departments of government, attend Rule Committee meetings as observers. They, too, draw to the Committee's attention, as they arise, matters affecting the operation of the Rules.

13. Contact

Jonathan Solly at the Ministry of Justice can answer any queries regarding the instrument. Telephone: 020 3334 4031, or e-mail: jonathan.solly@justice.gsi.gov.uk.