

**EXPLANATORY MEMORANDUM TO
THE CRIMINAL PROCEDURE RULES 2010**

2010 No. 60 (L.2)

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 In accordance with the programme adopted by the Criminal Procedure Rule Committee when it first was appointed, these Rules replace with consolidated rules the Criminal Procedure Rules 2005 and subsequent amendments. They introduce new procedure rules about investigation anonymity orders, witness anonymity orders and appeal against recognition of a foreign driving disqualification. They substitute amended rules about objecting to the reading of committal statements at trial in the Crown Court; about measures to assist a witness or defendant to give evidence; about introducing hearsay evidence, and evidence of bad character; about final representations at trial in a magistrates' court; and about requests to the Court of Justice of the European Union for preliminary rulings. They incorporate cross-references to relevant legislation recently, or likely soon to be, brought into force. Otherwise, they reproduce the rules that they supersede.

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. Subsequently, 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. These Rules supersede the rules made to date.

4.3 The Rules accommodate, by new rules, by rule amendments, or by cross-reference, as appropriate: sections 74 to 85 of the Coroners and Justice Act 2009, about investigation anonymity orders; sections 86 to 97 of that Act, about witness anonymity orders; amendments to section 34B of the Road Traffic Offenders Act 1988, about courses for those disqualified from driving; section 59 of the Crime (International Co-operation) Act 2003, which provides for appeal to a magistrates' court against the recognition of a driving disqualification imposed in another European Union state; section 10 of the Violent Crime Reduction Act 2006, which provides for appeal against a drinking banning order made on conviction under section 6 of that Act; and section 42 of the Counter Terrorism Act 2008, which provides for appeal against a decision, under section 30 of that Act, that an offence has a terrorist connection.

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*

Consolidation

7.1 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. This is that consolidation. The Committee intends to effect further such consolidations at regular intervals in future. In response to representations that it received (see paragraph 8.1 below), the Committee decided for the time being not to renumber the constituent Parts of the Rules, leaving some empty.

Investigation anonymity orders

7.2 A new Section 5 is added to Part 6 (Investigation orders). The new rules provide for an application for an investigation anonymity order, for any subsequent application to discharge the order, and for any associated appeal, under sections 74 to 85 of the Coroners and Justice Act 2009. (Those provisions allow for the making of an order prohibiting the disclosure of information that identifies, or might identify, a person who assists the investigation of a murder or manslaughter committed in the circumstances specified in the Act.)

7.3 The new rules supply the associated procedures, which for the most part involve only the investigator. The rules allow the court to determine an application for an order, and an appeal from the refusal of an order, without a hearing, consistently with sections 77(4) and 79(5) of the Act. However, the rules do not allow the court to determine an application to discharge an order without a hearing. The court must have

concluded before making the order that the person to whom it relates is at risk of intimidation or harm. To discharge the order, therefore, might put that person in peril. The Committee concluded that any application for the order's discharge ought to be considered at a hearing. The time limit for appeal to the Crown Court is the same as that which applies to other appeals to that court, under Part 63 of the Rules.

Objecting to the reading of committal statements at trial in the Crown Court

7.4 A revised rule 10.4 (Objection to committal statements being read at trial) is substituted for the old rule to make clear that the period to which that rule refers (14 days) is the time within which a party must exercise his or her right to object to the admission, at trial, of a written statement that has been admitted in evidence in committal proceedings.

7.5 Where a written statement is admitted in evidence in committal proceedings in a magistrates' court, that written statement can be read in evidence at trial in the Crown Court, without calling the witness, if certain statutory conditions are met: section 68 and Schedule 2, Criminal Procedure and Investigations Act 1996. One such condition is that no party objects within a time prescribed by Criminal Procedure Rules. Prior to an earlier revision of Part 27 (Witness statements), there were contained both in Parts 10 and 27 rules to supplement Schedule 2 to the 1996 Act. Since that revision, the only relevant rule has been rule 10.4. Although the Committee had taken the view that that rule clearly imposed the relevant time limit, it was reported that the removal from Part 27 of its counterpart had caused some confusion. This revision is to dispel that confusion.

Measures to assist a witness or a defendant to give evidence

7.6 A new Part 29 (Measures to assist a witness or defendant to give evidence) is substituted for the old rules in that Part. The new Part contains (a) revised and simplified rules about applications for special measures directions for witnesses under the Youth Justice and Criminal Evidence Act 1999, including rules that accommodate amendments to the 1999 Act made by the Coroners and Justice Act 2009; (b) analogous rules about applications for directions for the benefit of vulnerable defendants giving evidence; and (c) rules about applications for, and for the variation or discharge of, witness anonymity orders under the 2009 Act.

7.7 It was reported to the Committee that the rules in Part 29 required revision, in order to clarify, simplify and bring them up to date, and in order to introduce greater flexibility in the preparation and presentation of applications for such measures, the better to suit the circumstances of the individual case, or witness. The time limits under the new rules now are contingent on the entry of a not guilty plea by the defendant, because the measures with which the rules are concerned are not needed if the defendant pleads guilty. Procedural requirements about applications for witness anonymity orders up to now have been contained in the Consolidated Criminal Practice Direction. The new rules adopt substantially the same requirements, adapted in the light of experience of operation of the Criminal Evidence (Witness Anonymity) Act 2008 that the 2009 Act replaces. To make it easier for users of the rules to understand the context, the Committee has supplemented them with a short summary of the relevant provisions of the 1999 and 2009 Acts.

Hearsay evidence and evidence of bad character

7.8 New Parts 34 (Hearsay evidence) and 35 (Evidence of bad character) are substituted for the old rules in those two Parts.

7.9 Experience of the operation of the law on hearsay and bad character that is contained in the Criminal Justice Act 2003 persuaded the Committee to refine the procedures for introducing such evidence, and for objecting to its introduction. The new rules require that those who wish to introduce such evidence must identify the grounds on which they rely, and the facts that they assert, in any case in which that will not be obvious from the context (as it would be where business records were introduced, for example). A single, simple procedure for objection is prescribed. As under the new Part 29, because the procedures for which the rules provide are not needed if the defendant pleads guilty, the time limits under these new rules, too, now are contingent on the entry of a not guilty plea by the defendant.

Final representations at trial in a magistrates' court

7.10 Rule 37.3 (Procedure on plea of not guilty) is revised the better to correspond with the provisions of section 2 of the Criminal Procedure Act 1865 and of section 3 of the Criminal Evidence Act 1898.

7.11 In its *Thematic review of the quality of prosecution advocacy and case presentation* published in July, 2009, HM Crown Prosecution Service Inspectorate commented on what it considered to be prosecutors' too frequent failure to make a closing speech at trial in a youth or magistrates' court where that would have assisted the court, especially in what had been a complex case. The Inspectorate asked that the clarity of the relevant rule should be reviewed. In response to that request, the Committee reviewed the rule concerned and concluded that it did not adequately reflect the position at common law, as amended by statute in the 19th century and followed in the Crown Court. Though in most cases what a magistrates' court would require of a prosecutor would be brief by comparison with the usual requirements of the Crown Court, the Committee concluded that it would assist to revise the rule.

Appeal against recognition of a foreign driving disqualification

7.12 A new rule 55.5 (Appeal against recognition of foreign driving disqualification) is added to accommodate sections 56 to 60 of the Crime (International Co-operation) Act 2003.

7.13 Part 3 of the Crime (International Co-operation) Act 2003, which contains, among others, sections 56 to 60, implements the Convention on Driving Disqualification of 17th June 1998, drawn up on the basis of Article K.3 of the Treaty on European Union. It provides for the recognition and enforcement in the United Kingdom of a driving disqualification imposed in another state party to the Convention. Section 59 confers on the person concerned a right of appeal against recognition, to a magistrates' court. The new rule supplies the procedure on such an appeal. It is modelled on the analogous rules in Part 63 (Appeal to the Crown Court) and Part 68 (Appeal to the Court of Appeal about conviction or sentence).

Requests to the European Court for preliminary rulings

7.14 A new Part 75 (Request to the European Court for a preliminary ruling) is substituted for the old rules in that Part.

7.15 The Treaty of Lisbon effected amendments to the Treaty on European Union, and to the Treaty on the Functioning of the European Union, which among other things relocated and amended the provisions for inviting a preliminary ruling of the Court of Justice of the European Union on a question of EU law. The new rules re-title

Part 75 consistently with the language of those treaties, and bring up to date the treaty citations that are contained in the rules. They incorporate an up to date list of what a request should contain that is consistent with the practice direction supplementing the corresponding Civil Procedure Rules.

Other amendments

7.16 In Part 3, rule 3.5 is amended to include the expression ‘justices’ legal adviser’ that, by a previous amendment, is defined now by rule 2.2; and rules 3.9 and 3.10 are amended to apply them to all appeals, not just appeal to the Crown Court, now that appeal to a magistrates’ court is possible under the new rule 55.5. Rule 4.10 is amended to omit the definition of ‘business day’ that, by a previous amendment, is defined now by rule 2.2. Rule 15.5(2) is amended, to cross-refer to Part 33 (which, by a previous amendment, now incorporates the rules about service of expert evidence). Rules 52.6 to 52.14 are renumbered 52.5 to 52.13, to accommodate an earlier revocation of a rule that had become superfluous. Rule 56.4 is amended to omit provision about production orders under the Proceeds of Crime Act 2002 that, by a previous amendment, now is contained in Part 6. Rule 60.6(4) is amended, to correct the cross-reference that it contains (now to rules 76.11 to 76.14). Rule 63.1 is amended to include references to section 10 of the Violent Crime Reduction Act 2006 and section 42 of the Counter Terrorism Act 2008, for the reason given at paragraph 4.3 above. Rules 64.6 and 64.7 are renumbered 64.5 and 64.6, to accommodate an earlier revocation of a rule that had become superfluous. Rule 68.1 is amended to include a reference to section 42 of the Counter Terrorism Act 2008, for the reason given at paragraph 4.3 above. Rule 71.6(1) is amended, to correct the cross-reference that it contains (now to rule 65.6(5)). There are amended, to cross-refer to relevant statutes and other rules, the notes to rules 3.5, 3.11, 4.4, 14.1, 16.11, 19.11, 30.1, 32.9, 37.3, 37.15, 40.4, 40.5, 40.7, 47.1, 47.2, 50.1, 52.12, 54.1, 63.1, 63.7 and 68.1. There are amended, to correct discrepancies, the lists of rule names in the tables of contents of Parts 10, 11, 13, 16, 19, 20, 31, 32, 40, 41, 52, 54, 55, 56, 57, 59, 64, 65 and 73. Some Glossary entries have been amended, the better to correspond with the use in the Rules of the expressions glossed.

Bringing the new rules into force

7.17 These Rules come into force on Monday 5th April, 2010, following the convention explained at paragraph 4.2 above. To effect the transition from the Criminal Procedure Rules 2005, rule 2.1(3)(a) preserves any right or duty at that date existing under those rules. By rule 2.1(3)(b), to avoid any possible confusion or unfairness for those involved in a case in which, before that date, an application or notice has been served under one of Parts 29, 34 or 35 (that are replaced by these Rules), the rules in the old Part concerned will continue to apply, unless the court otherwise directs.

• *Consolidation*

7.18 See paragraph 7.1 above. An informal consolidated text will continue 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 desirability of making consolidated rules, and in particular on the possibility of doing so again at intervals in future, the Rule Committee consulted with members of the judiciary, with bodies representing the legal professions, with

commercial publishers of the text of the Criminal Procedure Rules, with the Parliamentary Committees charged with their scrutiny, and with relevant government departments and agencies. No opposition was expressed to consolidation in principle. Several of those consulted endorsed the Rule Committee's view that it would be important to identify in what respect, if any, consolidated rules amended the rules that they replaced; and that it would be appropriate to use for that purpose the Explanatory Note and the Explanatory Memorandum published with the consolidated Rules. Some publishers cautioned against any significant re-arrangement of the Rules, for example by renumbering the constituent Parts to accommodate the omission of those that had become redundant.

8.2 On the new rules about investigation anonymity orders, witness anonymity orders and appeal against recognition of a foreign driving disqualification, the Committee consulted with those authorities and agencies most likely to use those rules. The rules about witness anonymity orders are based on the established provisions of the Consolidated Criminal Practice Direction.

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.