

**EXPLANATORY MEMORANDUM TO**  
**THE CRIMINAL PROCEDURE (AMENDMENT No. 2) RULES 2015**  
**2015 No. 646 (L. 8)**

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 2014, S.I. 2014 No. 1610. They add rules to supplement the provisions of the Criminal Justice and Courts Act 2015 about trial by a single justice.

**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 the Ministry of Justice.

4.2 The first rules made by the Rule Committee were the Criminal Procedure Rules 2005. 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 rules now are consolidated annually, in June, and amended if necessary in December, with those revisions coming into force ordinarily on the first Monday in October and on the first Monday in April, respectively, of each year.

4.3 These Rules accommodate new sections 16A to 16F of the Magistrates' Courts Act 1980 and other statutory amendments made by sections 46 to 50 of the Criminal Justice and Courts Act 2015 (trial by single justice on the papers).

**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*

### *Trial by a single justice on the papers*

7.1 Part 37 of the Criminal Procedure Rules provides for trial and sentence in a magistrates' court. Rule 37.8 makes special provision for the procedure under section 12 of the Magistrates' Courts Act 1980, which allows a defendant to plead guilty in writing, without attending court, where (i) the offence alleged can only be tried in a magistrates' court (and so is not one serious enough to be sent to the Crown Court for trial), and (ii) documents setting out the facts of the offence, and explaining the procedure, have been sent to the defendant by the prosecutor.

7.2 Sections 46 to 50 of the Criminal Justice and Courts Act 2015 make amendments to the Magistrates' Courts Act 1980, the Criminal Justice Act 2003 and some other Acts. The new statutory provisions apply to offences alleged against an adult (not someone under 18), if the alleged offence can only be tried in a magistrates' court and if, in the event of conviction, the sentence for the offence cannot be imprisonment. Where the new provisions apply, the defendant can be tried by a single justice of the peace, on the basis of written material only, in the parties' absence and without a hearing. The new provisions require the Criminal Procedure Rules to prescribe the documents that the prosecutor must send to the defendant, and to prescribe the period within which the defendant must respond to those documents before a single justice trial can take place.

7.3 Taking as a model the established procedure under rule 37.8 of the Criminal Procedure Rules, the Rule Committee has adapted that rule in a new rule 37.9 that sets out the requirements delegated to the Rules by the Act. The rule requires the prosecutor to send to the defendant ('serve on' the defendant, in the language of the Rules) documents setting out the facts of the alleged offence; documents containing or describing the other information relevant to sentence that the court will receive; a notice explaining the procedure that will apply; and forms of notice for the defendant to send to the court, if the defendant wants to do so, explaining whether the defendant wants to plead guilty without attending court, or to plead guilty at court, or to plead not guilty. The rule requires the defendant to send the court any notice that he or she wants to give, and any other written representations, within 21 days of those documents being served on him or her.

7.4 Rule 7(e) of these Amendment Rules adds the new rule 37.9 to the Criminal Procedure Rules. Rule 7(d) substitutes a revised version of rule 37.8, which changes none of its substance but which aligns the expression of that and the new rule. All the other Amendment Rules make consequential amendments to other Criminal Procedure Rules and notes to rules.

### *Bringing the new rules into force*

7.5 The changes made by these Amendment Rules come into force on Monday 6<sup>th</sup> April, 2015, following the convention explained at paragraph 4.2 above.

- ***Consolidation***

7.6 When it made the Criminal Procedure Rules 2005, the Rule 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 it did so in the Criminal Procedure Rules 2010. Having consulted on the possibility of continuing to consolidate the Rules at regular intervals, the Committee decided to do so, and subsequently produced the Criminal Procedure Rules 2011, the Criminal Procedure Rules 2012, the Criminal Procedure Rules 2013 and the Criminal Procedure Rules 2014. The Committee intends to effect further such consolidations in future. 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/courts/procedure-rules/criminal/rulesmenu>.

## **8. Consultation outcome**

8.1 The Rule Committee fulfilled its statutory obligation to consult as the Committee considers appropriate by inviting and reviewing suggestions and observations solicited by its members from among the groups from which each is drawn, and by inviting and reviewing suggestions and observations from the Ministry of Justice, Her Majesty's Courts and Tribunals Service and prosecuting authorities which will have power to bring prosecutions under the new single justice trial procedure.

## **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 HM Courts and Tribunals Service, within the principal prosecuting authorities, and among local criminal justice boards.

9.2 News of changes to the Rules and of the effect of those changes is published on the Ministry of Justice website, at: <http://www.justice.gov.uk/courts/procedure-rules/criminal>.

## **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. The Committee secretariat maintains an email address for enquiries about the rules, and from the enquirers to that address receives comments which it relays to the Committee. Twice a year the Committee receives and considers statistical information about criminal case management gathered by HM Courts and Tribunals 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 HM Courts and Tribunals 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](mailto:jonathan.solly@justice.gsi.gov.uk).