

EXPLANATORY MEMORANDUM TO
THE CRIMINAL PROCEDURE (AMENDMENT No. 2) RULES 2010
2010 No. 3026 (L.19)

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 contempt of court. They replace the current rules about discontinuing a prosecution. They amend the current rules about service of documents and about defence disclosure.

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 rule amendments and by notes to rules (i) the implementation of section 6C of the Criminal Procedure and Investigations Act 1996, which requires a defendant to give notice of intended defence witnesses, and (ii) Schedule 3 to the Safeguarding Vulnerable Groups Act 2006, which provides for a defendant in specified cases to be included in a barred list under that Act.

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*

Service of documents

7.1 The rules in Part 4 of the Criminal Procedure Rules provide for the various ways in which documents may be formally delivered to ('served on') another party to a case, or the court itself. Rule 4.7 requires service by the particular methods specified in that rule, in the particular circumstances it lists. Some amendments to that rule were needed as a result of other rule changes, including the making of the new Part 62 rules about contempt of court (see paragraphs 7.11 to 7.13 of this Explanatory Memorandum). The Rule Committee took the opportunity to clarify the extent of the court's discretionary power to allow service by a method other than one for which the Part 4 rules usually provide.

7.2 Thus, rule 4.7 of the Criminal Procedure Rules (Documents that must be served by specified methods) is amended to bring up to date the cross-references it contains. Rule 4.9 (Service by another method) is amended to make it clear that the court may, in its discretion, allow service of documents by methods other than those allowed by the other Part 4 rules; and, where rule 4.7 requires service by a specific method, to make it clear that the court may allow service by a method other than the one specified.

7.3 Rule 3 of these Amendment Rules gives effect to these amendments.

Discontinuing a prosecution

7.4 A new Part 8 of the Criminal Procedure Rules (Discontinuing a prosecution) is substituted for the rules currently in that Part. It applies to a prosecutor's statutory power to discontinue a case in the Crown Court, as well as to the corresponding power to discontinue a case in a magistrates' court.

7.5 Sections 23 and 23A of the Prosecution of Offences Act 1985 allow a prosecuting authority in certain circumstances to discontinue a case, in a magistrates' court or in the Crown Court, without preventing a subsequent prosecution for the same offence. However, the existing rules in Part 8 of the Criminal Procedure Rules apply only to discontinuance in a magistrates' court, under section 23 of the 1985 Act. It was reported to the Rule Committee that the absence of rules governing the corresponding procedure in the Crown Court, under section 23A of the Act, caused confusion. The new rules apply the existing procedures to both courts.

7.6 Rule 4 of these Amendment Rules and Schedule 1 introduce the new rules.

Disclosure

7.7 On 1st May, 2010, section 34 of the Criminal Justice Act 2003 came into force, adding to the Criminal Procedure and Investigations Act 1996 a new obligation on a defendant to indicate whether he or she intends to call at trial any witnesses (other than him or herself) and, if so, identifying them. The existing defence obligation to disclose, in a defence statement, the main elements of the defence already is referred to in rule 22.4 of the Criminal Procedure Rules (Defence disclosure).

7.8 That rule is amended to apply that procedure to the new obligation, too; and notes are added to describe the new requirement.

7.9 Rule 22.8 (Unauthorised use of disclosed material) is amended in consequence of the new Part 62 rules about contempt of court. Part of the existing rule allows magistrates' courts to exercise procedural powers that would not otherwise be available to them. That part is moved into the new rules, where it now better belongs.

7.10 Rule 6 of these Amendment Rules gives effect to these amendments.

Contempt of court

7.11 A revised and expanded Part 62 of the Criminal Procedure Rules (Contempt of court) is substituted for the rules currently in that Part (though the content of most of the current rules is retained).

7.12 The existing rules in Part 62 of the Criminal Procedure Rules deal with the procedure on an application for someone to be dealt with for contempt of court for disobeying a court order. Those rules were introduced in October 2009, in response to a judgment of the Court of Appeal which had remarked on the lack of such rules. At the time, the Rule Committee announced that further rules would be added as soon as possible to deal with other types of contempt of court (see paragraph 7.26 of the Explanatory Memorandum laid before Parliament with the Criminal Procedure (Amendment) Rules 2009, S.I. 2009 No. 2087). The Committee now has made those additional rules. The new rules deal with the procedure to be followed where there is a contempt of court by obstructive, disruptive, insulting or intimidating conduct, in the courtroom or in its vicinity, or otherwise immediately affecting the proceedings, and where certain other types of contempt occur. The rules codify procedures hitherto laid down by common law, or followed in practice. The existing rules that govern the procedure on dealing with disobedience of a court order are retained.

7.13 Rule 9 of these Amendment Rules gives effect to this amendment.

Other amendments

7.14 Rule 42.3 of the Criminal Procedure Rules (Sentencing procedures in special cases - Notification requirements) is brought up to date to include a reference to the court's procedural obligation to inform a defendant when the sentence passed means that he or she will be included in a barred list under the Safeguarding Vulnerable Groups Act 2006. Miscellaneous corrections are made to Criminal Procedure Rules 15.1, 35.2, 68.7 and 76.7. The preamble to the Criminal Procedure Rules 2010, and the Arrangement of Rules they contain, are brought up to date.

Bringing the new rules into force

7.15 The changes made by these Amendment Rules come into force on Monday 4th April, 2011, following the convention explained at paragraph 4.2 above.

- ***Consolidation***

7.16 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 revised and expanded rules about contempt of court, the Committee consulted publicly, and the new rules take account of the responses received. On the substituted rules about discontinuing a prosecution, the Committee consulted with the prosecuting agencies most likely to use those rules, and took account of their views.

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.