

EXPLANATORY MEMORANDUM TO
THE CRIMINAL PROCEDURE (AMENDMENT) RULES 2015

2015 No. 13 (L.1)

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 provide for ‘ground rules hearings’ and rules to require advance notice if further evidence is to be introduced on an appeal to the Crown Court from a magistrates’ court. They make other rule amendments consequent on other legislative changes.

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 by new rules, by rule amendments or by notes to rules, as appropriate: the repeal of section 6 of the Violent Crime Reduction Act 2006, which provided for drinking banning orders, by the Anti-social Behaviour, Crime and Policing Act 2014; the bringing into force of section 62 of, and Schedule 12 to, the Tribunals, Courts and Enforcement Act 2007, and the associated Taking Control of Goods Regulations 2013 and the Taking Control of Goods (Fees) Regulations 2014;

the bringing into force of section 17 of the Crime and Courts Act 2013, creating the single county court for England and Wales; the statutory amendments made by Schedule 3 to the Criminal Justice Act 2003, which in 2013 finally abolished committal and transfer for trial to the Crown Court and replaced them with sending for trial; the Proceeds of Crime Act 2002 (External Investigations) Order 2014, which allows a judge to order the supply of information to officers in the United Kingdom who are assisting a proceeds of crime investigation taking place in a European Union member state or other jurisdiction abroad; section 55 of the Policing and Crime Act 2009 (inserting sections 47A to 47S into the Proceeds of Crime Act 2002), which allows certain police and other officers to apply for a court's authority to search for and seize some types of property, where that property otherwise might be made unavailable for satisfying a confiscation order; section 58 of the Policing and Crime Act 2009 (inserting sections 67A to 67D into the Proceeds of Crime Act 2002), which allows certain police and other officers to apply for a court's authority to realise property which has been seized towards payment of a confiscation order; and section 66 of the Policing and Crime Act 2009 (amending section 343 of the Proceeds of Crime Act 2002) which allows a judge to order the supply of information to officers who are conducting a 'detained cash investigation' under the Proceeds of Crime Act 2002.

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*

Ground rules hearings

7.1 Rule 3.9 of the Criminal Procedure Rules requires the court, among other things, to 'take every reasonable step to encourage and to facilitate the attendance of witnesses when they are needed, and to facilitate the participation of any person, including the defendant'. Rule 3.9(6) provides, 'Facilitating the participation of any person includes giving directions for the appropriate treatment and questioning of a witness or the defendant, especially where the court directs that such questioning is to be conducted through an intermediary.' This amendment adds a paragraph to rule 3.9 which expands on what the court must do where directions for appropriate treatment and questioning are required.

7.2 The court may direct measures to assist a witness or the defendant to give complete, coherent and accurate evidence where the criteria prescribed by the Youth Justice and Criminal Evidence Act 1999 are met, and in some other circumstances. One such measure is the provision of an intermediary, who can help a witness or defendant to communicate with the court. A recently published survey of the experiences of intermediaries reported that the need to set 'ground rules' for questioning sometimes was overlooked: see the 4th *Intermediary Survey* recording the experiences of intermediaries in criminal proceedings, conducted by Professor Penny Cooper and published by Kingston University, London, July 2014. The authors

suggested that it would assist if, among other things, the Criminal Procedure Rules were to supply an explicit procedural framework for the setting of such ground rules. The Rule Committee agreed.

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

Investigation orders

7.4 Part 6 of the Criminal Procedure Rules is amended in consequence of the Proceeds of Crime Act 2002 (External Investigations) Order 2014 and of section 66 of the Policing and Crime Act 2009, so as to accommodate those provisions. What that legislation does is summarised in paragraph 4.3 above. The procedures for which the amended rules provide are not changed.

7.5 Rule 5 of these Amendment Rules gives effect to the amendments.

Service of the indictment

7.6 Rule 14.1 of the Criminal Procedure Rules prescribes the time limit for service of the formal notice of the criminal charge or charges against the defendant (the 'indictment') where a case is to be tried in the Crown Court. The processes of committal for trial to the Crown Court and of transfer for trial to that court were finally abolished with effect from 30th August, 2013. Now, serious cases are instead sent for trial by a magistrates' court, under the statutory provisions that are listed in the notes to rule 14.1. This amendment removes from the rule the references to committal or transfer for trial, now that no more cases will reach the Crown Court by those means.

7.7 Rule 6 of these Amendment Rules gives effect to the amendments.

Behaviour orders

7.8 Part 50 of the Criminal Procedure Rules governs the procedure on the making of a type of order which is not described as a sentence in the legislation which creates it but which operates rather like an injunction made by a civil court: except that breach of such a statutory 'behaviour order' is an offence in its own right. There is a list of such orders in the note to rule 50.1.

7.9 The legislation that created drinking banning orders has been repealed: see paragraph 4.3 above. While making amendments to the rules in Part 50 consequential on that repeal, the Rule Committee decided to correct the omission of a reference to the Director of the Serious Fraud Office as a potential applicant for the variation of an order, and to clarify the way in which the subject matter of the Part is described, in its title and in rule 50.1.

7.10 Rule 9 of these Amendment Rules gives effect to the amendments.

Warrants of control

7.11 Part 52 of the Criminal Procedure Rules deals with, among other things, the procedure to be followed where the court orders that goods should be seized and sold to pay a fine or other sum to which the rules in that Part apply. In consequence of the coming into force earlier this year of Part 3 of the Tribunals, Courts and Enforcement Act 2007, and Regulations made under that Act (see paragraph 4.3 above), the Rule Committee has brought the rules up to date and has supplied procedures for the applications to the court for which the 2007 Act and the Regulations provide.

7.12 Rule 10 of these Amendment Rules gives effect to the amendments.

Confiscation proceedings

7.13 Part 58 of the Criminal Procedure Rules governs the procedure where the court applies Part 2 of the Proceeds of Crime Act 2002 to make an order against a defendant confiscating the proceeds of crime. The rules in Part 58 are among the few not yet to have been revised by the Rule Committee since the adoption of those rules in the Criminal Procedure Rules 2005. The Committee understands that the amendments to the 2002 Act made by section 58 of the Policing and Crime Act 2009 (see paragraph 4.3 above), which concern the realisation of seized property in payment of a confiscation order, soon may be brought into force. So to supplement those statutory amendments with new procedure rules, and to begin to revise and simplify the rules already in Part 58, the Committee has made a number of amendments.

7.14 New rules 58.13 to 58.15 supply the procedures to be followed on making an application or bringing an appeal under the new statutory provisions. The amendments to existing rules 58.1 to 58.11 remove from them the statutory references that the present rules contain and replace them with descriptions in ordinary language of when each rule applies, with the statutory references placed instead in a note to each rule in the style of Criminal Procedure Rules made since 2005.

7.15 Rule 11 of these Amendment Rules gives effect to the amendments.

Seizure and detention proceedings

7.16 At present, Part 59 of the Criminal Procedure Rules governs the procedure where the court is asked to make an order (a 'restraint order') under section 42 of the Proceeds of Crime Act 2002 preventing the disposal of assets that could be used to satisfy a confiscation order, if one is made. The Rule Committee understands that the amendments to the 2002 Act made by section 55 of the Policing and Crime Act 2009 soon may be brought into force (see paragraph 4.3 above). Those provisions concern a new type of application for the court's authority to search for and seize some types of property that then can be used to satisfy a confiscation order, if one is made, without needing a restraint order. New rules 59.7 to 59.10 supply the procedures to be followed on making an application or bringing an appeal under those new statutory provisions.

7.17 Rule 12 of these Amendment Rules gives effect to the amendments.

Further evidence on an appeal to the Crown Court

7.18 Part 63 of the Criminal Procedure Rules governs the procedure on an appeal from a magistrates' court to the Crown Court. That type of appeal is by way of a rehearing of the case, and where the appeal is against conviction then usually the evidence introduced on appeal is the same as was given at trial in the magistrates' court. Sometimes, however, the prosecutor or defendant wants to introduce on appeal different evidence; and it was reported to the Rule Committee that in those circumstances it sometimes was argued that the time limits for giving notice of certain types of evidence, including hearsay and bad character evidence, which time limits apply at trial, did not apply on appeal; with unfair consequences for the other party. To stop that happening, the Committee decided to add a new rule to Part 63 imposing specific time limits where further evidence was to be introduced.

7.19 Rule 13 of these Amendment Rules gives effect to the amendments.

Other amendments

7.20 Rule 7 of these Amendment Rules corrects errors in two sub-paragraphs of rule 17.21 of the Criminal Procedure Rules, which governs the service of a respondent's notice in an appeal to the High Court in an extradition case.

7.21 Rule 8 corrects a reference to the county court in rule 39.1 of the Criminal Procedure Rules, which governs appeal against a refusal to excuse someone from jury service, consequent on the bringing into force of section 17 of the Crime and Courts Act 2013: see paragraph 4.3 above.

7.22 Rule 14 amends rule 76.11 of the Criminal Procedure Rules to allow any member of staff of the Lord Chancellor to carry out an initial assessment of costs under that rule. It was reported to the Rule Committee that, as a result of administrative changes, staff of the National Taxing Team, who conduct such assessments, while remaining staff of the Lord Chancellor no longer will be regarded as court staff.

7.23 Rule 15 corrects an error in the preamble to the Criminal Procedure Rules 2014, where the enabling statutory power for some rules in Part 4 of the Criminal Procedure Rules (Service of documents) is recited.

7.24 Rule 16 amends the Arrangement of Rules in the Criminal Procedure Rules 2014, consequent on the amendments made by rules 9 and 12 of these Amendment Rules (see paragraphs 7.8 – 7.10 and rules 7.16 – 7.17 above).

Bringing the new rules into force

7.25 The rules about investigation orders and about warrants of control, and the rules that correct errors in the Criminal Procedure Rules 2014, come into force on Monday 2nd February, 2015. The other changes made by these Amendment Rules come into force on Monday 6th April, 2015, following the convention explained at paragraph 4.2 above.

• ***Consolidation***

7.26 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 by government departments and other authorities directly affected by rules of criminal procedure. In addition, on the ground rules hearing rules the Committee invited the observations of the authors of the survey cited at paragraph 7.2 above and adjusted the rules in consequence.

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 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 Her Majesty's 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 Her Majesty’s 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.