

## EXPLANATORY MEMORANDUM TO

### THE CRIMINAL PROCEDURE (AMENDMENT No. 2) RULES 2017

2017 No. 282 (L. 5)

#### 1. Introduction

- 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 2015, S.I. 2015 No. 1490, by adding rules to govern the procedure on an application to authorise an extension of the period during which a defendant who is suspected of an offence may be kept on bail before being charged.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

##### *Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### 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, the High Court, in an extradition appeal, 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. Section 72 requires the Committee to consult such persons as they consider appropriate before making rules. 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 Part 4 of the Policing and Crime Act 2017 inserts new provisions about pre-charge police bail into the Police and Criminal Evidence Act 1984. New sections 47ZA and 47ZB of the 1984 Act limit the period during which a defendant who has been arrested for an offence may be on police bail after being released without being charged. In specified circumstances that period may be extended by a senior police officer. After that, on an application by an investigator to a magistrates' court under sections 47ZF and 47ZG of the 1984 Act, the period may be further extended on the authority of the court.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is 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*

#### *Applications for authority to extend the period of pre-charge police bail*

- 7.1 In order to supplement the new provisions introduced by the Policing and Crime Act 2017, these Rules insert three new rules into Part 14 of the Criminal Procedure Rules, the rules about bail and custody time limits, and make some consequential changes to other rules in that Part.
- 7.2 In the manner of other comparable Criminal Procedure Rules, new rule 14.20 provides for the powers that the court can exercise and for procedural restrictions on the exercise of those powers. Some of those powers and restrictions derive directly from the new statutory provisions themselves, for example the requirement for the court to decide an application without a hearing except in specified circumstances. Others are in the discretion of the Rules and reflect what the Rule Committee considered fair, for example the requirement to allow the defendant a specified time within which to respond to the application.
- 7.3 New rule 14.21 requires an investigator's application to a magistrates' court to contain the information that the court will need in order to decide whether the new statutory criteria for authorising an extension of police bail are met.
- 7.4 New rule 14.22 supplies the procedure to be followed where an applicant investigator wants the court to exercise the power conferred by the new statutory provisions to allow the withholding of information from the defendant.

### *Consolidation*

- 7.5 When it made the first Criminal Procedure Rules, in 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. Since then the Rule Committee has regularly consolidated the Rules and intends to effect further consolidations in future, in 2020 and at 5 yearly intervals after that. In the meantime, 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-2015>

## **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.

- 8.2 In addition, the Committee convened a working group to discuss the rules in draft, which group included representatives from the Home Office, the police, HM Courts and Tribunals Service and prosecutors and defence lawyers.

## **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 There is no impact on business, charities or voluntary bodies.
- 10.2 These rules have no impact of themselves on the public sector, because 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 activities that are undertaken by small businesses.

## **12. Monitoring & 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**

- 13.1 Jonathan Solly at the Ministry of Justice Telephone: 020 3334 4031 or email: [jonathan.solly@justice.gsi.gov.uk](mailto:jonathan.solly@justice.gsi.gov.uk) can answer any queries regarding the instrument.