

EXPLANATORY MEMORANDUM TO
THE CRIMINAL PROCEDURE (AMENDMENT NO. 4) RULES 2017
2017 No. 915 (L. 13)

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 require magistrates' courts and the Crown Court to collect the name, date of birth and nationality of a defendant.

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 Section 162 of the Policing and Crime Act 2017 inserts a new section 86A into the Courts Act 2003. The new section requires a person who is a defendant in proceedings in a magistrates' court or the Crown Court to provide his or her name, date of birth and nationality if at any stage of proceedings he or she is required to do so by the court; and requires Criminal Procedure Rules to specify the stages of proceedings at which such requirements are to be imposed. A person commits an offence if, without reasonable excuse, he or she fails to comply with such a requirement, whether by providing false or incomplete information or by providing no information.

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

Requirements to provide name, date of birth and nationality

- 7.1 In accordance with the provision introduced by section 162 of the Policing and Crime Act 2017, these Rules amend rule 3.13 of the Criminal Procedure Rules, the rule about pre-trial hearings in the Crown Court, and add a new rule 3.27 about pre-trial hearings in magistrates' courts.
- 7.2 The Rule Committee concluded that the most useful point at which, in ordinary circumstances, to collect the information required by the statute would be the beginning of each case in each court. Rule 3.13 therefore is amended to require the collection of the necessary information at the first hearing in the Crown Court. In cases in which the defendant attends a magistrates' court and the case will proceed to trial in that court at a later date, in practice the court will give directions at that first hearing for the preparation of the case for trial. That practice is provided for explicitly in the Criminal Practice Directions made by the Lord Chief Justice but until now has been only implicit in the Criminal Procedure Rules. The Rule Committee took the opportunity to provide for it explicitly in a new rule, rule 3.27, which also requires the collection of the information required by the statute at the first hearing in the magistrates' court.

Consolidation

- 7.3 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 and from representatives from the Ministry of Justice, the Home Office, the police, HM Courts and Tribunals Service and the Crown Prosecution Service. All agreed that the first hearing in each case plainly was the appropriate point at which to collect the information required by the Act.

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 can answer any queries regarding the instrument.