

EXPLANATORY MEMORANDUM TO THE
THE MAGISTRATES' COURTS (AMENDMENT) RULES 2004
2004 No.2993 (L.20)

1. This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

The above Rules are made in exercise of the powers conferred under section 111 of the Criminal Justice Act 2003 and section 144 of the Magistrates Courts Act 1980. The Rules specify the procedure for giving notice or making application to adduce evidence of bad character. The Rules will come into force on 15 December 2004.

3. Matters of special interest to the Joint Committee on Statutory Instruments and the Select Committee on Statutory Instruments

None.

4. Legislative Background

Part 11 of the Criminal Justice Act 2003 introduces reforms enabling juries and magistrates hear about a defendant's previous convictions and other misconduct, where these are relevant to the case and provided their probative value outweighs their prejudicial effect. The Act sets out the circumstances in which this evidence can be given, in order to clarify this area of the law and encourage the admission of this evidence where it will properly assist the courts. The intended approach is inclusionary, but with safeguards to enable courts to exclude evidence that could have a disproportionate effect on the fairness of the trial. The Act also provides safeguards for witnesses against attacks on their character, where such attacks cannot be justified either as important explanatory evidence or as having substantial probative value in relation to the matter at issue.

The draft Criminal Justice Act 2003 (Categories of Offences) Order 2004 is currently before Parliament for approval by affirmative resolution. It is made in exercise of the powers conferred under section 102(4)(b) of the Act. However these Rules are not dependent on the implementation of the Order.

5. Extent

This instrument applies to England and Wales.

6. European Convention on Human Rights

Not applicable.

7. Policy objectives

The Rules specify the information that must be contained in notices of intention or applications for leave to adduce bad character evidence. They also specify the procedure for opposing an application to adduce such evidence. The Rules set out time-limits within which notice must be given and applications made.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

Ros Johnson at the Office of Criminal Justice Reform can answer any queries regarding the instrument. Her contact details are:

Ros Johnson
Office of Criminal Justice Reform - Trial Policy and Procedure Unit
50 Queen Anne's Gate
London SW1H 9AT
Tel: 0207 273 2188
Email: ros.johnson@homeoffice.gsi.gov.uk