

EXPLANATORY MEMORANDUM TO
THE CRIMINAL PROCEDURE (AMENDMENT No.3) RULES 2007
2007 No. 3662 (L.32)

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

2. Description

2.1 These Rules amend the Criminal Procedure Rules 2005. They introduce some new rules about criminal case management and about applications in criminal cases for orders such as anti-social behaviour orders. They replace with revised and simplified rules existing procedure rules about applications to the Court of Appeal for permission to appeal, or to refer a case, to the House of Lords. They make other changes to accommodate those new rules and to accommodate some new primary legislation.

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

3.1 None.

4. Legislative Background

4.1 Sections 68 to 72 of the Courts Act 2003 provide for a Criminal Procedure Rule Committee to make rules that govern the practice and procedure of the criminal courts. Section 69 requires that Committee to make rules that are simple and simply expressed, and that help make the criminal justice system accessible, fair and efficient. These Rules contain the fifth set of amendments to the Criminal Procedure Rules 2005.

4.2 The Rule Committee has taken the opportunity to accommodate (a) provisions of the Serious Crime Act 2007 that will give the Crown Court the power to make a serious crime prevention order and that will confer rights of appeal in respect of a Crown Court decision about such an order (under sections 19 and 24 of the 2007 Act); and (b) provisions of that Act that will abolish the Assets Recovery Agency and amend provisions of the Proceeds of Crime Act 2002 (section 74 and Schedule 8 of the 2007 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

7.1 Members of the Criminal Procedure Rule Committee are drawn from among all the groups involved in the criminal justice system – the judiciary, the magistracy, legal practitioners, prosecutors, the police, voluntary organisations and government departments. The first rules made by the 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 making the Criminal Procedure Rules 2005, the Committee has continued to scrutinise the rules with a view to gradually improving and simplifying them. Part of that objective is to make rules as far as possible capable of accommodating whatever new criminal justice legislation Parliament may enact, without the need for ever-increasing numbers of new procedure rules. The Committee hopes to avoid making sporadic changes to the Criminal Procedure Rules and to make rules only twice a year, ordinarily in December and in June, to come into force ordinarily on the first Monday in April and on the first Monday in October, wherever appropriate making any rules needed to supplement new legislation even where that new legislation has not yet been brought into force. The Committee intends to consolidate these changes at 5 yearly intervals (so first in 2010). Meanwhile, an informal consolidated text is available to the public on the Ministry of Justice website at http://www.justice.gov.uk/criminal/procrules_fin/index.htm.

7.2 This memorandum explains first the amendments made by these Amendment Rules to Part 3 of the Criminal Procedure Rules 2005; then the revisions of Parts 50 and 74; and finally the amendments to Parts 2, 56, 57 to 62, 65, 68 and 71 that accommodate the new rules and the Serious Crime Act 2007 and that make some other minor corrections.

Case management: Part 3 of the Criminal Procedure Rules

7.3 Part 3 of the Criminal Procedure Rules 2005 sets out the general duties and powers of the court, and the duties of the parties, relevant to the pre-trial preparation of a criminal case; and the rules in that Part set out the specific powers that the court may exercise for that purpose. However, the rules in that Part of the Criminal Procedure Rules 2005 contained no sanctions for a party's failure to comply with a procedure rule or with a case management direction made by the court. The court's powers to make a costs order in consequence of such a failure, to adjourn the case or, in some circumstances, to exclude evidence or to draw adverse inferences from the late introduction of an issue or evidence, are powers that are conferred by other legislation and under some other procedure rules.

7.4 In the case of *R (Kelly) v Warley Magistrates' Court* [2007] EWHC 1836 (Admin), the Administrative Court considered rules 3.5 and 3.10 of the Criminal Procedure Rules and held that the absence of any appropriate sanction within Part 3 rendered ineffectual the case management direction that was in issue in that case. Having considered that judgment, the Rule Committee has decided to amend rules 3.5 and 3.10, and the note to rule 3.5, to make the court's powers to impose sanctions explicit. The Rule Committee has taken the opportunity also to amend rule 3.8 to make it clear that in the Crown Court there should usually be held a plea and case management hearing, being an important pre-trial hearing for which the Consolidated

Criminal Practice Direction issued by the Lord Chief Justice has long provided but not until now the Criminal Procedure Rules themselves.

7.5 These amendments are made by rules 7 to 11 of these Amendment Rules.

Civil behaviour orders: Part 50 of the Criminal Procedure Rules

7.6 The Criminal Procedure Rules 2005 contained no rules governing the procedure by which a prosecutor might invite the court to make an anti-social behaviour order or any of the other civil orders that can be made in criminal proceedings. The absence of clearly applicable procedure rules was criticised by the Court of Appeal in the case of *R v Wadmore and Foreman* [2006] EWCA Crim 686. The new rules apply generally to any civil ‘behaviour’ order that can be made in a criminal case, and the notes to the new rules list for readers’ benefit the legislation under which such orders may be made. The rules specify what information the prosecutor must give the court and the defendant. They prescribe a procedure for the variation or revocation of such an order, where the Act under which it is made allows. They also prescribe a procedure for the introduction and challenging of hearsay evidence under the Civil Evidence Act 1995.

7.7 The new rules were formulated in consultation with the principal prosecuting agencies and with the Home Office, the Ministry of Justice and the office of the Attorney General. The Rule Committee also took account of the observations of the Court of Appeal in the *Wadmore and Foreman* judgment.

7.8 The new rules are introduced by rule 12 of these Amendment Rules and by Schedule 1.

Appeal or reference to the House of Lords: Part 74 of the Criminal Procedure Rules

7.9 In the fourth set of amendments to the Criminal Procedure Rules 2005 (the Criminal Procedure (Amendment No. 2) Rules 2007: S.I. 2007 No. 2317) the Rule Committee revised and simplified the rules in Parts 65 to 70 about appeals from the Crown Court to the criminal division of the Court of Appeal. The revised Part 65 contains general rules about procedure in the Court of Appeal and the revised Parts 66 to 70 adopt a common procedural framework for different types of appeal, with adaptations to accommodate the unique requirements of each type. The revision and simplification of the rules in Part 74 effected by these Amendment Rules make them consistent with the revised rules in those other Parts. The new rules are shorter and clearer than those that they replace. They have been rewritten in the style of other new criminal procedure rules and, like those other new rules, they include notes that refer the reader to other relevant provisions (including the legislation that confers the rights of appeal). They maintain and set out explicitly existing procedures of the Court of Appeal that are familiar to court users and that have been found to work well.

7.10 The new rules were formulated in consultation with the Registrar of Criminal Appeals and staff of the Criminal Appeal Office (who have to apply them).

7.11 The new rules are introduced by rule 33 of these Amendment Rules and by Schedule 6.

Other amendments

7.12 By rules 13 and 14 of these Amendment Rules, the Rule Committee has taken the opportunity to amend rule 56.4 of the Criminal Procedure Rules 2005 (application

to vary or discharge certain orders) to correct the references in that rule to Her Majesty's Revenue and Customs.

7.13 The rules about proceedings under the Proceeds of Crime Act 2002 that are contained in Parts 57 to 62 of the Criminal Procedure Rules 2005 are amended by rules 15 to 23 of these Amendment Rules, and by Schedules 2 to 4, to accommodate the abolition of the Assets Recovery Agency and associated changes made by the Serious Crime Act 2007.

7.14 The general rules about appeal from the Crown Court to the Court of Appeal in Part 65 of the Criminal Procedure Rules 2005 are amended by rules 24 to 29 of these Amendment Rules to take account of the revised Part 74. They make clear that those general rules apply also where the rules in Part 74 apply. They insert a new rule 65.6(4), to accommodate the practice of the Court of Appeal under which a written application for permission to appeal or to refer a case to the House of Lords may be considered by members of the court in private before announcing their decision at a hearing.

7.15 Rule 68.1 of the Criminal Procedure Rules 2005 (which concerns appeal to the Court of Appeal about conviction or sentence) and the notes to that rule are amended by rules 30 and 31 of these Amendment Rules, to take account of the right of appeal under section 24 of the Serious Crime Act 2007 in respect of a decision about a serious crime prevention order.

7.16 A substituted Part 71 of the Criminal Procedure Rules 2005 is introduced by rule 32 of these Amendment Rules and by Schedule 5. The purpose of the change to the rules in that Part is to correct the cross-references to Part 65 contained in those rules.

Bringing the new rules into force

7.17 The changes to the rules about Proceeds of Crime Act cases in Parts 57 to 62 will come into force on 1st April, 2008, to coincide with the date on which the associated provisions of the Serious Crime Act 2007 are expected to come into force. However, to accommodate continuing cases begun by the Assets Recovery Agency before that date, rule 4 of these Amendment Rules adds a new paragraph to rule 2.1 of the Criminal Procedure Rules 2005 applying the old rules to such cases and providing for them to be conducted by the Serious Organised Crime Agency.

7.18 All the other changes made by these Amendment Rules come into force on the first Monday in April, 2008, following the Rule Committee's established convention. However, to avoid confusion and potential unfairness to those involved in cases that have started before that date, rule 5 of these Amendment Rules adds other new paragraphs to rule 2.1 of the Criminal Procedure Rules 2005 providing that (a) the new rules in Part 50 will apply in cases that start on or after that date or where the court so orders, and (b) the new rules in Part 74 will apply where an appeal, application or reference to which that Part applies is made on or after that date.

7.19 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 relevant members of the judiciary, to other relevant bodies and to the editors of relevant legal journals, as well as by publicity within Her Majesty's Courts Service. In addition, news of changes to the Rules and a 'plain

English’ description of the effect of those changes is published on the Ministry’s website: see ‘Changes to the Criminal Procedure Rules’ at http://www.justice.gov.uk/news/announcement_031207a.htm

8. Impact

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

9. Contact

Jonathan Solly at the Ministry of Justice can answer any queries regarding the instrument. Telephone: 020 7210 8083, or e-mail: jonathan.solly@justice.gsi.gov.uk