

EXPLANATORY MEMORANDUM TO
THE CRIMINAL PROCEDURE (AMENDMENT No. 2) RULES 2008
2008 No. 3269 (L. 28)

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 2005. They introduce new procedure rules about bail, and about giving initial details of the prosecution case. They replace the existing trial procedure rules for magistrates' courts, including youth courts, and the rules about proceedings in those courts on the breach, revocation or amendment of community orders.

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

3.1 In the Thirtieth Report of Session 2007-2008, published on 10th November, 2008, the Joint Committee on Statutory Instruments found a rule made by the Criminal Procedure Rule Committee to have been defectively drafted (rule 7.4(1) of the Criminal Procedure Rules, substituted by rule 8 and Schedule 1 of the Criminal Procedure (Amendment) Rules 2008, S.I. 2008 No. 2076). The Rule Committee has amended the rule in question, by rule 6 of these Amendment Rules.

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, the magistracy, legal practitioners, prosecutors, the police, voluntary organisations and government departments.

4.2 The first rules made by the Rule 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 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 Committee amends the Criminal Procedure Rules only twice a year, in June or July and again in December. The amendments are brought into force ordinarily on the first Monday in October and on the first Monday in April of each year.

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*

Bail

7.1 In a report published in April, 2008, entitled, ‘A review to ascertain the circumstances in which Anthony Leon Peart, also known as Anthony Leon Joseph, came to be at liberty on 29th July, 2005’, undertaken by HM Crown Prosecution Service Inspectorate with the other criminal justice inspectorates, the inspectors made this recommendation, among others (at paragraph 3.6 of the report):

“We recommend that

- where there is any doubt as to the suitability of an address put forward as a place of residence, the prosecution team should provide the court with sufficient information to enable it to make an informed decision; and
- suitable mechanisms should be in place to enable necessary checks to be made promptly.”

The report is at http://www.attorneygeneral.gov.uk/attachments/Peart_Review.pdf.

7.2 The changes made by rule 7 of these Amendment Rules to Part 19 of the Criminal Procedure Rules contribute to achieving the inspectors’ recommendation, consistently with the overriding objective in Part 1 of the Rules. The amendments give legislative effect to the well-established court practice of requiring prosecutors (with the police) to investigate the suitability of an address proposed as a condition of residence for a defendant who is to be released on conditional bail. The amendments oblige the prosecutor to assist the court, and they oblige a defendant who may be released on bail with a condition of residence to co-operate with the prosecutor in providing that assistance. The rules in Part 19 already require a party to a case in the Crown Court, who intends to apply for a variation of bail conditions, to give advance notice explaining what is sought, and why. The changes made by these Amendment Rules extend that requirement to magistrates’ courts as well.

Initial details of the prosecution case

7.3 A procedural initiative in magistrates’ courts known as ‘Criminal Justice: Simple, Speedy, Summary’ (or by its initials, ‘CJSSS’) provides for the prosecutor to make available to the defendant and to the court, on the first day the case comes to court, enough information about it for the defendant to be given effective advice, and for the court to make effective case management decisions, straight away. See <http://www.justice.gov.uk/news/newsrelease231008a.htm> for more information about the scheme. There are some exceptions. The scheme does not apply to cases that have to be sent at once for trial in the Crown Court (because in those cases information about the prosecution case has to be given under other rules). Nor is it yet available in every case at every magistrates’ court throughout the country.

7.4 Rule 8 of these Amendment Rules and Schedule 1 give legislative effect to the CJSSS scheme. In doing so, they replace the existing rules in Part 21 of the Criminal Procedure Rules with rules that are shorter and clearer. The old rules applied only to an offence classified as one that could be tried either in a magistrates' court or in the Crown Court. The new rules apply to any offence that can be tried in a magistrates' court, including one that can be tried only in such a court.

Trial, sentence and breach of community order proceedings in a magistrates' court

7.5 Parts 37, 38 and 44 of the Criminal Procedure Rules 2005 contain rules about trial and sentence in magistrates' courts, including youth courts. They reproduce rules formerly contained in the Magistrates' Courts Rules 1981 and in the Magistrates' Courts (Children and Young Persons) Rules 1992. But those rules are incomplete. Essential rules of procedure governing this important stage in the progress of a criminal case are established by other legislation (principally, but not exclusively, by the Magistrates' Courts Act 1980); by practice directions; and by case law. The new rules revise, simplify and consolidate the existing rules. They incorporate other relevant rules of procedure so as to make these rules comprehensive and comprehensible. 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 establishes rules of procedure that have been incorporated.

7.6 Rule 9 of these Amendment Rules and Schedule 2 replace the existing rules with new consolidated rules. Rule 10 omits the old Part 38, which is no longer required.

7.7 Parts 38 and 44 deal also with the procedure where a probation officer reports to a youth court that a young defendant has disobeyed the terms of an order made on a finding of guilt, such as an order to attend a training course or other activity. Rule 11 of these Amendment Rules and Schedule 3 replace those rules with a new Part 44 that contains revised, simplified and consolidated rules about that procedure, which new rules now apply to adult defendants in magistrates' courts as well.

Other amendments

7.8 Rule 4 of these Amendment Rules adds to Part 2 of the Criminal Procedure Rules a definition of 'justices' legal adviser', which is an expression used in the new Part 37 rules and which the Criminal Procedure Rule Committee expects to use again in other new rules. Rule 5 adds to Part 7 (Starting a prosecution in a magistrates' court) a cross-reference to the new Part 44, which uses the procedure for which Part 7 provides.

Bringing the new rules into force

7.9 The changes made by these Amendment Rules come into force on Monday 6th April, 2009, following the convention explained above. However, to avoid confusion and potential unfairness to those involved in cases that have started before that date, rule 3 adds new paragraphs to rule 2.1 of the Criminal Procedure Rules 2005 so as to provide that (a) the new rules in Part 21 will apply at once unless the court otherwise directs, (b) the new rules in Part 37 will apply only where a defendant pleads guilty, or a trial starts, on or after that date, and (c) the new rules in Part 44 will apply only where an application to which that Part applies is made on or after that date.

- ***Consolidation***

7.10 The Committee intends to consolidate changes to the Criminal Procedure Rules at 5 yearly intervals, so first in 2010. In the meantime, an informal consolidated text is available to the public free of charge on the Ministry of Justice website at http://www.justice.gov.uk/criminal/procrules_fin/index.htm.

8. Consultation outcome

8.1 The Criminal Procedure Rule Committee consulted publicly on the new Part 37 rules between June and September, 2008. Copies of the Committee's invitation to comment were sent to members of the judiciary, to professional and other bodies with an interest in criminal procedure, to the principal prosecuting authorities, to the criminal justice departments of government, and to editors of relevant legal periodicals. The invitation was published on the Ministry of Justice website.

8.2 A total of 18 responses were received: three from judicial bodies, four from legal professional bodies, four from prosecuting authorities, one from Victim Support, and others from individuals (a judge, a magistrate, a justices' legal adviser, a barrister, a solicitor and an academic). Respondents answered 12 questions posed by the invitation about the content of the proposed rules. In each case, the Rule Committee has accepted the view of the majority of respondents. In addition, respondents offered a number of detailed drafting suggestions, many of which the Rule Committee adopted gratefully. The revision of Part 44 effected by these Amendment Rules derives from suggestions by several respondents to the consultation.

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 Service, within the principal prosecuting authorities, and among local criminal justice boards.

9.2 In addition, news of changes to the Rules and a 'plain English' description of the effect of those changes is published on the Ministry of Justice website. See the website links at <http://www.justice.gov.uk/whatwedo/criminal-procedure-rules.htm>.

10. Impact

10.1 These rules have no impact on business, charities or voluntary bodies.

10.2 These rules have no impact on the public sector because they introduce no procedures that are not already current in courts.

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. Twice a year the Committee receives and considers statistical information about criminal case management gathered by Her Majesty's Courts 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 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 7210 8083, or e-mail: jonathan.solly@justice.gsi.gov.uk.