

COURTS ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS: PART 7

Criminal Procedure Rules and practice directions

Section 68: Meaning of “criminal court”

175. This section gives the collective title of “criminal court” to the Criminal Division of the Court of Appeal and, when dealing with any criminal cause or matter, the Crown Court and magistrates’ courts. The term is used in this Part when referring to the new Criminal Procedure Rule Committee (Crim PRC) (section 70) and the new power to make practice directions (section 74).

Section 69: Criminal Procedure Rules

176. This section provides for rules of court to be made by the Crim PRC, to determine the practice and procedure to be followed in all criminal courts in England and Wales. Once established, this Crim PRC will deal with the criminal business matters now dealt with by the Magistrates and Crown Court Rule Committees, but will be able to exercise an over-arching, watching brief to ensure consistency in procedures across the criminal courts and for ensuring that rules are made consistently.
177. The section confirms that Criminal Procedure Rules may be made for different cases or different areas. This distinction is intended to enable the Crim PRC to make rules in support of new initiatives - that is, to enable “pilot” schemes to be established. Rules may also be made for specified courts or proceedings, for example, Youth Courts. Subsection (4) sets out guiding principles that the Crim PRC must follow when making rules, consistent with those that the Family Procedure Rule Committee (FPRC) and the Civil PRC must follow.

Section 70: Criminal Procedure Rule Committee

178. This section sets out the proposed membership of the new Crim PRC. The membership includes representatives of all the key groups in the criminal justice system and enables representatives from voluntary groups to be included. Therefore those with a direct interest will be able to participate in the rule-making process.
179. The Lord Chief Justice will chair the Crim PRC and will have a deputy who is a High Court or Court of Appeal judge. The Lord Chancellor will have the power to reimburse the travelling expenses of members of the Crim PRC and any person (for example, an expert in a particular field) invited to assist the Crim PRC in its programme of work.

Section 71: Power to change certain requirements relating to Committee

180. This section makes provision for the Lord Chancellor to revise the membership and other arrangements set out in section 70. The Lord Chancellor must consult with the Lord Chief Justice before making an order to bring about any change. These provisions are intended to give flexibility to adjust the membership and other arrangements.

Section 72: Process for making Criminal Procedure Rules

181. This section sets out the arrangements for the making of the criminal procedure rules. It confirms that the Crim PRC should consult as appropriate and, unless it is inexpedient, meet, before it makes the rules. This is intended to encourage the full discussion of the difficulties with existing procedures and of the potential improvements.
182. The section also describes the power for the Lord Chancellor, with the agreement of the Secretary of State, to allow, alter or disallow any rules made by the Crim PRC and sets out the Parliamentary process for the rules. The agreement of the Secretary of State is necessary as he bears responsibility for criminal policy, while the Lord Chancellor is responsible for the administration of the courts.
183. The section provides for the Lord Chancellor to consult the Crim PRC, before he alters any rules made by them. This is necessary in order to ensure that there is clear understanding of the reasons for any alteration. In addition where rules are altered, they would follow the affirmative resolution procedure in Parliament, enabling alterations to be debated.

Section 73: Power to amend legislation in connection with the rules

184. This section sets out the powers of the Lord Chancellor to make changes to legislation where, as a result of the work of the Crim PRC, anomalies are discovered. It describes the requirement for the Lord Chancellor to act, with the concurrence of the Secretary of State, when making such changes. The agreement of the Secretary of State is necessary for the reasons set out above in the notes on section 72.

Section 74: Practice directions as to practice and procedure of the criminal courts

185. This section provides that the Lord Chief Justice, with the concurrence of the Lord Chancellor, can issue directions as to the practice and procedure of the criminal courts. This does not prevent the Lord Chief Justice from giving guidance to the criminal courts on law or making judicial decisions without the concurrence of the Lord Chancellor.