

**EXPLANATORY MEMORANDUM TO
THE CRIMINAL PROCEDURE (AMENDMENT) RULES 2007**

2007 No. 699 (L.3)

1. This Explanatory Memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Rules amend the Criminal Procedure Rules 2005. They replace some existing rules with rules that are consolidated, revised and simplified, including revised rules about the service of documents, indictments and witness summonses.

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

3.1 None.

4. Legislative Background

4.1 Sections 68 – 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 the 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 third set of amendments to the Criminal Procedure Rules 2005.

4.2 Section 2 of the Indictments Act 1915 was amended by section 109 of, and paragraph 67 of Schedule 8 to, the Courts Act 2003 so that the Criminal Procedure Rule Committee could revoke and, if it chose, replace the rules made under the 1915 Act. By these Amendment Rules the Committee has used that power to revoke the existing rules made under that Act, the Indictment Rules 1971. But instead of replacing them with separate rules made under the 1915 Act it has used its power under section 69 of the Courts Act 2003 to consolidate, revise and simplify rules about indictments that now all will be contained in Part 14 of the Criminal Procedure Rules 2005.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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 in April and 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 Department's website at: http://www.dca.gov.uk/criminal/procrules_fin/index.htm.

7.2 This memorandum explains first the major amendments to Parts 4, 14 and 28 of the Criminal Procedure Rules 2005 made by these Amendment Rules, and then explains the smaller amendments to Parts 19 and 31.

Service of documents: Part 4 of the Criminal Procedure Rules

7.3 The rules adopted in the Criminal Procedure Rules 2005 contained a number of different provisions about service that had been made at different times in the past and for different purposes. They contained some inconsistencies and, once they all became part of a single set of rules, the need for separate service rules for different purposes disappeared. As part of its programme of reform of existing rules the Committee has consolidated, revised and simplified those rules. Under the new rules documents can be served, generally, in any one of the various ways specified, including by electronic means where possible. But the new rules retain the present provision that restricts the method of service of certain documents - notably, summonses - to well established ways of bringing them to the personal attention of the intended recipient.

7.4 The new rules are introduced by rule 5 of these Amendment Rules and by Schedule 1. The rules they replace are revoked by rule 38 and by Schedule 4. Amendments to existing rules and notes that accommodate the new rules are made by rules 6 - 8 and 29 - 36 of these Amendment Rules.

The indictment: Part 14 of the Criminal Procedure Rules

7.5 The new rules consolidate the procedure rules about indictments. They are shorter and clearer than the rules they replace. In a judgment given in June, 2005 the Court of Appeal called for the Criminal Procedure Rule Committee to review aspects of the Indictment Rules 1971 that the court thought had caused an unnecessary difficulty for the prosecution in that case.

7.6 The Criminal Procedure Rule Committee consulted widely on these rules between March and June 2006. It invited comments from participants in the criminal justice system including the various professional bodies involved. It considered the compatibility of its proposals with Article 6 of the European Convention on Human Rights and took account of the corresponding rules in Scotland. It took advice from

leading counsel. New rule 14.2(2) of the Criminal Procedure Rules 2005 recasts what is often called the “rule against duplicity”. The new rule allows a prosecutor in certain circumstances to bring a single charge against a defendant even though that includes more than one incident of the offence alleged – for example, where the defendant has laundered the proceeds of drug trafficking in comparatively small weekly sums for week after week, or has assaulted the same victim in the same way repeatedly over a period of time. The Committee took account among other things of the potential under the old rules for a perceived unfairness to a victim of multiple offending where out of many alleged offences only a few are prosecuted as examples, giving the impression that the victim’s distress has been underestimated or that he or she has not been believed. The Committee was satisfied that the new rule reflects what judgments of the House of Lords in the past have found consistent with fundamental principles of fairness.

7.7 The new rules are introduced by rule 9 of these Amendment Rules and by Schedule 2.

Witness summonses, warrants and orders: Part 28 of the Criminal Procedure Rules

7.8 The new rules are shorter and clearer than those that they replace. The Criminal Procedure Rule Committee received reports of difficulties with the existing procedure rules about witness summonses. In particular it was reported that applications for the production of confidential documents held, for example, by health and local authorities often were made late and without adequate consideration being given to the relevance and admissibility of the documents concerned. The same difficulties had been pointed out by Lord Justice Auld in his *Review of the Criminal Courts of England and Wales* presented to the Lord Chancellor and published in October, 2001.

7.9 The Criminal Procedure Rule Committee consulted widely on these rules between June and September 2006. It invited comments from participants in the criminal justice system, including the various professional bodies involved, and from organisations representing bodies likely to be recipients of witness summonses. During the period of the consultation two applications for judicial review arising out of the operation of the existing rules came before the Administrative Court, *R (TB) v Stafford Crown Court* [2006] EWHC 1645 Admin and *R (Cunliffe) v West London Magistrates’ Court and Others* [2006] EWHC 2081 Admin, in the first of which the court commented in its judgment on the Committee’s proposals. The Committee took account of both those cases. An important feature of the new rules is that before issuing a witness summons the court must be satisfied that it has taken proper account of the rights of any person the production of whose medical or other confidential records is being sought, and such a person – frequently the victim of the offence – must have had an opportunity to make representations.

7.10 The new rules are introduced by rule 16 of these Amendment Rules and by Schedule 3.

Other amendments

7.11 The rules about custody and bail in Part 19 of the Criminal Procedure Rules 2005 are amended by rules 10 - 15 of these Amendment Rules to take account of applications under section 47(1E) of the Police and Criminal Evidence Act 1984 for variation of bail conditions imposed by the police before a defendant is charged, and to make some minor consequential amendments.

7.12 The rules in Part 31 of the Criminal Procedure Rules 2005 are extended to apply in magistrates' courts as well as in the Crown Court by rules 17 - 28 of these Amendment Rules. The rules in Part 31 deal with the restrictions imposed by sections 34, 35 and 36 of the Youth Justice and Criminal Evidence Act 1999 which prevent a defendant in person cross-examining a witness who is the victim of a sexual offence. The old rules in Part 31 applied only in the Crown Court despite the fact that the restrictions under the 1999 Act in principle could apply in magistrates' courts as well. This amendment removes that anomaly.

Bringing the new rules into force

7.13 The new rules about service of documents will apply as soon as these Amendment Rules themselves come into force on 2nd April, 2007. But it could be unfair to those involved in a criminal case if the revised rules about indictments and witness summonses were to apply straightaway in every case on that date even though important steps already had been taken under the old rules. So rule 4 of these Amendment Rules adds rules to Part 2 of the Criminal Procedure Rules 2005 providing that the new indictment rules will apply only to cases sent, committed or transferred for trial to the Crown Court on or after 2nd April, 2007; and that the new witness summons rules will apply only where someone applies for a witness summons on or after that date.

7.14 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 all relevant bodies and to the editors of relevant legal journals, as well as by publicity within Her Majesty's Courts Service. In addition, a 'plain English' description of the effect of changes to the Rules is published on the Department's website at: http://www.dca.gov.uk/procedurerules/guide_cusp.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

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