

The Criminal Procedure (Amendment No. 3) Rules 2007
SI number 3662 of 2007 (L. 32)

Guide for Court Users, Staff and Practitioners

January 2008

Summary

In April 2008, the fifth amendment of the Criminal Procedure Rules 2005 will come into force, affecting procedures used in all criminal courts. The following information explains the types of change and is intended for court users, staff and practitioners.

Background

The Criminal Procedure Rule Committee makes rules for the criminal courts in England and Wales. These rules amend the Criminal Procedure Rules 2005 (SI reference 384 of 2005), which govern the practice and procedure to be followed in the criminal courts - i.e. the criminal division of the Court of Appeal and (when dealing with any criminal cause or matter) the Crown Court and magistrates' courts.

The elements of change are the introduction of some new provisions; and the amendment of the current rules.

1. New Provisions in The Criminal Procedure Rules 2005

The Amendment Rules add the following **new provisions**:

Part 2 – When the Rules apply

A new rule explains that the amendments to the rules in Parts 57 to 62 (Proceeds of Crime Act 2002 – rules for various proceedings) apply in proceedings that begin on or after 1st April, 2008. This date coincides with the date of the changes brought about by the Serious Crime Act 2007, which abolish the Assets Recovery Agency and transfer certain functions to the Serious Organised Crime Agency. This ensures that the new Criminal Procedure Rules can be applied straightaway in these types of proceedings.

A new rule confirms that the rules in the new Part 50 (Civil behaviour orders after verdict or finding) will apply in cases where the defendant is charged on or after 7th April, 2008 and in other cases where the court so orders.

A third new rule confirms that the rules in Part 74 (Appeal or reference to the House of Lords) apply where an appeal, application or reference is made after 7th April, 2008.

- These amendments are introduced by rules 4, 5 and 6 of the Amendment Rules.

Part 3 – Case management

A new rule sets out the sanctions that a court can impose for failure to comply with a procedure rule or procedural direction.

A new rule requires the Crown Court to conduct a plea and case management hearing unless it is unnecessary.

A replacement rule requires the court to establish the issues the parties intend to explore at the trial or at the appeal.

- These are introduced by rules 7, 9 and 10 of these Amendment Rules.

To clarify the court's case management powers, new explanatory notes are provided.

- These are introduced by rule 8 of the Amendment Rules. Rule 11 introduces a cross-reference.

Background

There are some amendments to the rules about criminal case management, to take account of a judgment of the Administrative Court (*R. (Kelly) v. Warley Magistrates' Court & The Law Society* [2007] EWHC 1836 (Admin)). The Administrative Court found that the Criminal Procedure Rules prescribed no sanction for failure to comply with the case management direction with which that case was concerned. Although there are sanctions available under some primary legislation and under some specific rules, the Committee decided to clarify the case management rules themselves.

Part 50 – Civil behaviour orders after verdict or finding

A new Part 50 prescribes the procedure for applying in criminal cases for an anti-social behaviour order, or other civil behaviour order. This replaces the former Part 50 – 'Supplementary orders made on conviction'.

- Rule 12 of these Amendment Rules introduces the Schedule containing the new Part 50.

Background

There are new rules for magistrates' courts and for the Crown Court about applications in criminal cases for anti-social behaviour and comparable orders.

Until now there have been no procedure rules governing applications for ASBOs and comparable 'behaviour' orders in criminal proceedings. Magistrates' courts and the Crown Court in practice have adopted the procedure prescribed for civil proceedings in magistrates' courts. The lack of proper rules for criminal cases was criticised in a judgment of the Court of Appeal (R. v. Wadmore and Foreman [2006] EWCA Crim 686).

The Committee has prepared some simple but comprehensive rules to meet that criticism, in close consultation with criminal justice system stakeholders and in particular with Home Office officials and with officials of the Office for Criminal Justice Reform and of Her Majesty's Courts Service.

Part 74 – Appeal or reference to the House of Lords

A new Part 74 prescribes the procedure for applying to the Court of Appeal for permission to appeal, or to refer a case to, the House of Lords.

- Rule 33 of these Amendment Rules introduces the Schedule containing the new Part 74.

Background

There are new rules for the Court of Appeal about appeals from that court to the House of Lords. The rules complete the Committee's comprehensive revision and simplification of the procedure rules for the Court of Appeal.

2. Amendments of the Criminal Procedure Rules 2005

The following **amendments** of the current Rules are made:

Part 56 – Confiscation proceedings under the Criminal Justice Act 1988 and Drug Trafficking Act 1994

Minor amendments to rule 56.4 (Application to the Crown Court to discharge or vary order to make material available) and the related note are required, to reflect the change of name of Customs and Excise.

- These are amended by rules 13 and 14 of these Amendment Rules.

Part 57 – Proceeds of Crime Act 2002 – rules applicable to all proceedings

Minor amendments to rule 57.1 (Interpretation), in the paragraph about receivership proceedings, to remove references to certain sections of the Proceeds of Crime Act 2002. The related note is updated.

- These amendments are made by rules 15 and 16 of these Amendment Rules.

Parts 58 – 62 Proceeds of Crime Act 2002: rules for particular types of proceedings and applicable to investigations

These rules introduce various amendments to accommodate the implementation of the Serious Crime Act 2007 in relation to the transfer of functions from the Assets Recovery Agency to other authorities.

Parts 58, 60 and 62 of the Criminal Procedure Rules have been replaced and the new rules are introduced in Schedules to the Statutory Instrument.

- The new rules in Part 58 are introduced by rule 17 of these Amendment Rules; the new rules for Part 60 by rule 20 and for Part 62 by rule 23.
- Minor amendments, only, were required within Parts 59 and 61 and these have been amended by rules 18 and 19 and rules 21 and 22, respectively.

Part 65 – Appeal to the Court of Appeal: general rules

Part 65 sets out the general rules that apply to all appeals and references to the Court of Appeal and some amendments have been made to take account of the new Part 74 (appeal or reference to the House of Lords).

- These amendments are introduced by rules 24 to 29 of the Amendment Rules.

Part 68 – Appeal to the Court of Appeal about conviction or sentence

Part 68 is amended to take account of the provisions of the Serious Crime Act 2007 that confer rights of appeal in respect of a serious crime prevention order.

- These amendments are introduced by rules 30 and 31 of the Amendment Rules.

Part 71 – Appeal to the Court of Appeal under the Proceeds of Crime Act 2002

The rules about appeals in Part 71 of the Criminal Procedure Rules 2005 are amended to take account of the changes to Part 65 (the general rules about appeals to the Court of Appeal).

- Rule 32 of the Amendment Rules introduces the Schedule containing the new Part 71.

3. Other News

The Consolidated Criminal Practice Direction

The Consolidated Criminal Practice Direction was amended in November 2007, at Paragraph **IV.34: 'Settling the Indictment'**. That amendment, number 17, introduced replacement paragraphs about Settling the Indictment, 'Multiple offending: trial by jury and then by judge alone' and 'Multiple offending: count charging more than one incident'.

4. Useful Web Addresses

- The Committee's statutory duty is to make Criminal Procedure Rules that are simple and simply expressed – wherever possible, having consulted beforehand. (Sections 69-74 of the Courts Act 2003 refer.) **The Criminal Procedure Rule Committee's page** can be viewed at :-

<http://www.justice.gov.uk/about/criminal-proc-rule-committee.htm>

- When new Criminal Procedure Rules are made and the Statutory Instrument has been laid before Parliament, we post information on the Ministry of Justice website on the **Changes to the Rules** page, at :-

http://www.justice.gov.uk/news/announcement_210108a.htm

This provides advance notice of changes, to give the public information as soon as possible.

- The home page for the Criminal Procedure Rules, providing access to news about proposals to amend the rules, is:-

<http://www.justice.gov.uk/whatwedo/criminal-procedure-rules.htm>

- **The Statutory Instrument can be found on the OPSI website, at :-**

http://www.opsi.gov.uk/si/si2007/uksi_20073662_en_1

- The PDF (Acrobat) version of the Statutory Instrument can be viewed at :-
http://www.opsi.gov.uk/si/si2007/pdf/uksi_20073662_en.pdf

- The **Ministry of Justice website** area containing the complete **Criminal Procedure Rules, the Consolidated Criminal Practice Direction and Forms** is :-

http://www.justice.gov.uk/criminal/procrules_fin//index.htm

Please note that the Criminal Procedure Rules website is not updated with amendments until they have actually come into force. This means that the effects of the fifth amendment will not appear there until 1 April, 2008.

- This website also contains the forms for use in the criminal courts in Acrobat format, at :-

http://www.justice.gov.uk/criminal/procrules_fin/contents/formssection/formspage.htm

- The HMCS website address for Recent Practice Directions is :-

<http://www.hmcourts-service.gov.uk/cms/pds.htm>

- The address for the full **Consolidated Criminal Practice Direction** is :-

http://www.hmcourts-service.gov.uk/cms/files/ccpd_260407.pdf

- The HM Courts Service (HMCS) website route for the related forms in Word format is :-

From the HMCS Home Page at <http://www.hmcourts-service.gov.uk/cms/index.htm>, choose 'Forms and Guidance'. Then select the "Form Finder" menu as it appears on the left hand side of the screen. Go to the 'Work-type' field in the centre of the screen and from the drop-down menu, choose 'Criminal Procedure Rules'. A list of forms will then appear, from which you can make your selection. We are continuing to develop ways to improve electronic access to these Word forms.