EXPLANATORY MEMORANDUM TO

THE CRIMINAL PROCEDURE (AMENDMENT No. 2) RULES 2013

2013 No. 3183 (L. 25)

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 2013, S.I. 2013 No. 1554. They add rules to govern the procedure relating to deferred prosecution agreements. They amend the rules governing the supply of information to the public to provide for the publication of court hearing lists. They amend the rules governing the procedure on allocation and sending for trial. They make other rule amendments consequent on other legislative changes.

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

3.1 None.

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, including the magistracy, the legal professions, prosecutors, the police, voluntary organisations and the Ministry of Justice.

4.2 The first rules made by the Rule Committee were the Criminal Procedure Rules 2005. 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 rules now are consolidated annually, in June, and amended if necessary in December, with these revisions coming into force ordinarily on the first Monday in October and on the first Monday in April, respectively, of each year.

4.3 These Rules accommodate by the addition of new rules and by the amendment of existing rules Schedule 17 to the Crime and Courts Act 2013, which provides for deferred prosecution agreements.

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***

Publication of court hearing lists

7.1 Rule 5.8 of the Criminal Procedure Rules is amended to provide for the long-established practice of publishing court hearing lists in the court building. The object of the practice and of the amended rule is to make available to the public, as well as to the parties, information about the place and time of a court hearing. The rule amendment also authorises a more general publication of that information, including by electronic means, subject to the other legislative restrictions that apply.

7.2 In terms that are consistent with other legislation about the supply of information, and notably the Rehabilitation of Offenders Act 1974 and the Data Protection Act 1998, rule 5.8 already provides for the circumstances in which basic information about a court hearing, and about the court's decision, must be supplied to anyone who asks for that information. The rule also allows for an application to the court for the supply of other information. It was reported to the Rule Committee that it would assist for the rule in addition to provide for the publication of hearing lists: and in particular to accommodate the plans of Her Majesty's Courts and Tribunals Service in due course to make court hearing lists more widely available on the internet, where some daily hearing lists already are published.

7.3 Rule 5 of these Amendment Rules give effect to this amendment.

Sending for trial

7.4 Rule 9.2 of the Criminal Procedure Rules is amended to supply a procedure to be followed by a magistrates' court which is dealing with two or more defendants jointly charged with an offence which can be tried either in the Crown Court or in a magistrates' court.

7.5 It was reported to the Rule Committee that there was some doubt about the procedural consequences of those sections of the Crime and Disorder Act 1998 which apply to this situation. Those sections sometimes require the magistrates to go back and deal again with a defendant whom they have just agreed should be tried in the magistrates' court. The Committee agreed that it would assist to impose a procedural requirement for the court to explain to the defendants that if one of them is sent for trial in the Crown Court then any others who have pleaded not guilty must usually be sent, too: even if neither they nor the magistrates otherwise would have opted for Crown Court trial, and even if the magistrates have just decided on magistrates' court trial – the point of the legislation being to ensure that there will be only one trial.

7.6 Rule 6 of these Amendment Rules gives effect to the amendment and makes a consequential amendment to rule 9.7 of the Criminal Procedure Rules.

Deferred prosecution agreements

7.7 A new Part 12 is added to the Criminal Procedure Rules to supply the procedure relating to a new way of dealing with certain alleged crimes.

7.8 Schedule 17 to the Crime and Courts Act 2013 provides for a way of dealing with fraud and some other offences, allegedly committed by a corporation, partnership or association, by means of a 'deferred prosecution agreement' made between the prosecutor and the prospective defendant and approved by the Crown Court. The Rule Committee decided that it would serve the statutory objective set by section 69 of the Courts Act 2003 (see paragraph 4.1 above) to make rules governing applications for the approval of such agreements and the associated proceedings. The procedure is for the most part implicit in the Act, the relevant provisions of which are identified in the notes to the new rules. In addition, the Committee thought it appropriate to include a requirement for the parties to the proposed agreement each to make formal declarations to the court that the information each has supplied is accurate and complete, and to include provision for one party to pay the other's legal costs in proceedings for an alleged breach of the agreement.

7.9 Rule 7 of these Amendment Rules and the Schedule insert the new Part 12 rules. Rule 9 of these Amendment Rules makes changes to Part 76 of the Criminal Procedure Rules to allow for costs orders.

Other amendments

7.10 Rule 2.2 of the Criminal Procedure Rules is amended to bring up to date the references in the Rules to the associated Practice Directions made by the Lord Chief Justice, which he has revised and renamed.

7.11 In response to a suggestion in a report by the House of Lords Secondary Legislation Scrutiny Committee published on 25th July, 2013, to help make it clear to what type of contempt of court each rule refers the Rule Committee has added references to 'criminal contempt' and 'civil contempt' to the notes to rules 62.5 and 62.9 respectively of the Criminal Procedure Rules.

7.12 The note to rule 76.4 of the Criminal Procedure Rules is amended by rule 9(c) of these Amendment Rules to reflect changes to the entitlement to defendants' costs orders made by the Costs in Criminal Cases (General) (Amendment) (No. 2) Regulations 2013, S.I. 2013/2830.

Bringing the new rules into force

7.13 The new Part 12 rules about deferred prosecution agreements come into force on 24th February, 2014, when the Rule Committee understands that Schedule 17 to the Crime and Courts Act 2013 is likely to be brought into force. The other changes made by these Amendment Rules come into force on Monday 7th April, 2014, following the convention explained at paragraph 4.2 above.

- ***Consolidation***

7.14 When it made the Criminal Procedure Rules 2005, the Rule Committee declared its intention to effect after 5 years a legislative consolidation of those Rules with such amendments as had been made by then, and it did so in the Criminal Procedure Rules 2010. Having consulted on the possibility of continuing to consolidate the Rules at regular intervals, the Committee decided to do so, and

subsequently produced the Criminal Procedure Rules 2011, the Criminal Procedure Rules 2012 and the Criminal Procedure Rules 2013. The Committee intends to effect further such consolidations at regular intervals in future. An informal consolidated text will continue to be available to the public free of charge on the Ministry of Justice website, at: http://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu.

8. Consultation outcome

8.1 The Rule Committee consulted on the rules about deferred prosecution agreements between June and September, 2013, by issuing an invitation to comment on the draft rules to judges and legal practitioners likely to be affected by them and by making that invitation available to the public on the Ministry of Justice website. Responses were received from the Crown Prosecution Service, the Serious Fraud Office and two academic commentators. The Rule Committee considered those responses and adjusted the rules about time limits and about the parties' declarations in consequence.

8.2 On other rule amendments, the Rule Committee fulfilled its statutory obligation to consult as the Committee considers appropriate by inviting and reviewing suggestions and observations solicited by its members from among the groups from which each is drawn, and by inviting and reviewing suggestions and observations by government departments and other authorities directly affected by rules of criminal procedure.

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

9.2 News of changes to the Rules and of the effect of those changes is published on the Ministry of Justice website, at: http://www.justice.gov.uk/courts/procedure-rules/criminal.

10. Impact

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

10.2 These rules have no impact of themselves on the public sector, because they reproduce rules and procedures that are already current, and they introduce new rules and procedures that supplement legislation already made.

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. The Committee secretariat maintains an email address for enquiries about the rules, and from the enquirers to that address receives comments which it relays to the Committee. Twice a year the Committee receives and considers statistical information about criminal case management gathered by Her Majesty's Courts and Tribunals 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 and Tribunals 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 3334 4031, or e-mail: jonathan.solly@justice.gsi.gov.uk.