EXPLANATORY MEMORANDUM TO

THE CRIMINAL PROCEDURE (AMENDMENT) RULES 2012

2012 No. 3089 (L. 12)

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 2012, S.I. 2012 No. 1726. They amend the rules about representatives; about case management; about the service of initial details of the prosecution case; about sentencing reasons and explanations in magistrates' courts; and about the supply of documents and other information to magistrates who are about to conduct a trial. They make a number of other rule amendments consequent on recent and imminent statutory amendments.

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 amendments to rules and to notes to rules, the implementation of provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 that concern (i) orders for costs to be paid out of central funds (section 62 of the Act, and Schedule 7) and (ii) the remand of young defendants

otherwise than on bail (sections 91 to 107 of the Act); and likewise the anticipated implementation of provisions which concern legal aid (Part 1 of the Act).

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***

Prosecution and company agents

7.1 Rule 2.4 of the Criminal Procedure Rules is amended to clarify the circumstances in which someone other than a qualified legal representative can start a prosecution on behalf of a prosecutor, or speak and act on behalf of a defendant company.

7.2 Most prosecutions are brought by public authorities, the powers of which authorities, and of their staff, are conferred by statute. However, some prosecutions are brought privately, by an individual or by an association or corporation, with or without the assistance of a legal representative. Rights to represent the prosecutor or defendant are conferred by statute, mainly by the Legal Services Act 2007; and rule 2.4 of the Criminal Procedure Rules lists the circumstances in which someone can (i) start a prosecution on the prosecutor's behalf and (ii) do for a defendant company those things that an individual defendant could do for him or herself. In the recent case of *Media Protection Services Ltd. v Crawford* [2012] EWHC 2373 (Admin) the High Court held that a company acting as agent on a private prosecutor's behalf had no authority to start a prosecution. The Rule Committee concluded that the rule required amendment to reflect that decision.

7.3 Rule 3of these Amendment Rules give effect to this amendment. Rule 5 makes a related amendment to the note to Criminal Procedure Rule 7.2.

Case management

7.4 Rule 3.8 of the Criminal Procedure Rules is amended explicitly to require courts to facilitate the participation in the trial of anyone taking part, both witnesses and defendants.

7.5 It was reported to the Rule Committee that some courts were unsure of their powers and duties under the Rules to take reasonable steps to ensure the effective participation of defendants, especially those hampered, by comparison with others, by a learning disability or communication difficulty. The Committee agreed to elaborate the rule accordingly.

7.6 Rule 4 of these Amendment Rules gives effect to the amendment.

Detention of young defendants pending trial

7.7 Section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 provides a new regime for the detention of young defendants who are not released on bail pending trial, either in local authority accommodation or in youth detention accommodation. The Rule Committee has made amendments to the relevant rules to reflect the requirements of the new regime.

7.8 Rules 6 and 7 of these Amendment Rules give effect to the amendments.

Initial details of the prosecution case

7.9 Rule 21.2 of the Criminal Procedure Rules is amended to require the prosecutor to supply in initial details of the prosecution case in response to a defence request.

7.10 The Rules already require the prosecutor to make those initial details available by no later than the beginning of the day of the first court hearing, so that the defendant and the court have an indication of how the prosecutor intends to prove the alleged offence and of what is likely to be in issue at trial. However, that may be too late to allow the defendant effectively to assist the court at that first hearing in making arrangements for trial. Defence representatives asked the Rule Committee to consider providing explicitly for requests for those details in advance and, after consultation with prosecution and defence representatives, the Committee agreed to do so.

7.11 Rule 8 of these Amendment Rules gives effect to this amendment.

Sentencing reasons and explanations in magistrates' courts

7.12 Rule 37.10 of the Criminal Procedure Rules sets out the procedure that applies in magistrates' courts where, after convicting a defendant, the court receives information relevant to sentence, and passes sentence. The current rule reflects the requirements of section 174 of the Criminal Justice Act 2003, which obliges courts to announce reasons for sentence, and explain the effect of sentence, even when the defendant is absent (having pleaded guilty by post, for example) and when no reporter or other member of the public is present.

7.13 The amendment of section 174 of the 2003 Act by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 gives the Rule Committee power to prescribe cases in which there do not apply the court's usual statutory duties to give reasons and explanations. Since other Criminal Procedure Rules already require court staff to send an absent defendant notice of the sentence passed and its effect, the Committee has exercised its new power to relieve magistrates of the obligation to make sentencing announcements in the court room even when there is no-one there to hear: which, the Committee concluded, serves no useful purpose and wastes court time.

7.14 Rule 9(a) and (b) of these Amendment Rules gives effect to the amendments. Rule 16 adds a reference to the new power to the Criminal Procedure Rules 2012.

Information for magistrates about to conduct a trial

7.15 Rule 37.12 of the Criminal Procedure Rules provides for the documents which magistrates must be given when they conduct a trial, and rule 37.14 provides for the particular responsibilities of magistrates' legal advisers at trial.

7.16 It was reported to the Rule Committee that there was some doubt about what information from the court's case file ought fairly and usefully be given to the magistrates about to conduct a trial, and in particular whether they should have access to case management information supplied, and directions made, when the case first came to court. The Committee convened a working group to enquire into what would be an effective and fair practice. It has changed the rules to give effect to that group's conclusions. The rules now list the material that the trial court will receive and describe the pre-trial summary of that material which the court's legal adviser will give.

7.17 Rule 9(c) and (d) of these Amendment Rules gives effect to these amendments.

Legal aid and costs

7.18 A number of Criminal Procedure Rules, and the Glossary, are amended by rules 11, 12, 13, 14 and 15 of these Amendment Rules to reflect changes made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to legal aid and costs.

Other amendments

7.19 Part 42 of the Criminal Procedure Rules is amended by rule 10 of these Amendment Rules to include explicit references to the reduced sentence a court can give, under section 73 of the Serious Organised Crime and Police Act 2005, where a defendant has assisted in the investigation or prosecution of an offence.

Bringing the new rules into force

7.20 The changes made by these Amendment Rules come into force on Monday 1st April, 2013, following the convention explained at paragraph 4.2 above.

- ***Consolidation***

7.21 When it made The Criminal Procedure Rules 2005, the 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 and The Criminal Procedure Rules 2012. 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 When considering the new rule about a defendant's participation at trial, the Rule Committee heard from representatives of Mencap and the Prison Reform Trust.

8.2 The Committee's working group on trial documents for magistrates consulted with magistrates, their legal advisers, District Judges (Magistrates' Courts) and prosecution and defence representatives.

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.