EXPLANATORY MEMORANDUM TO

THE CROWN COURT (AMENDMENT) RULES 2009

2009 No. 3361 (L.29)

AND

THE MAGISTRATES' COURTS (AMENDMENT) RULES 2009

2009 No. 3362 (L.30)

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instruments

2.1 The Crown Court (Amendment) Rules 2009 are made in exercise of the powers conferred under sections 84(1) and 86 of the Supreme Court Act 1981. The Rules provide the Crown Court with explicit case management powers when dealing with civil proceedings and introduce a requirement for grounds of appeal to be stated in relation to appeals made under section 4 of the Crime and Disorder Act 1998.

2.2 The Magistrates' Courts (Amendment) Rules 2009 are made in exercise of the powers conferred under section 144(1) and 145(1) of the Magistrates' Courts Act 1980, and similarly provide Magistrates' Courts with specific case management powers when dealing with civil cases.

2.3 Both sets of Rules will come into force on 5 April 2010.

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

None

4. Legislative Context

The Crown Court (Amendment) Rules 2009

4.1 These rules make amendments to the Crown Court Rules 1982, which have to a large extent been superseded by the Criminal Procedure Rules, but which remain in force for the civil jurisdiction of the Crown Court. The amendments concern that civil jurisdiction only.

4.2 Rule 3 inserts a new rule 5A into the Crown Court Rules 1982, giving the Crown Court explicit case management powers when dealing with civil proceedings.

4.3 Rule 4 amends Part III of Schedule 3 introducing a requirement for the grounds of appeal to be stated in relation to notices of appeal made under section 4 of the Crime and Disorder Act 1998.

The Magistrates' Courts (Amendment) Rules 2009

4.4 These rules make amendments to the Magistrates' Courts Rules 1981, which like the Crown Court Rules have been superseded to a large extent by the Criminal Procedure Rules. The amendments concern the civil (but not family) jurisdiction of magistrates' courts.

4.5 Rule 3 operates in the same way as rule 3 of the Crown Court (Amendment) Rules, and inserts a new rule 3A into the Magistrates' Courts Rules 1981 giving magistrates' courts explicit case management powers when dealing with civil proceedings.

5. Territorial Extent and Application

These instruments apply to England and Wales.

6. European Convention on Human Rights

As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 The need for provision of the sort made by these Rules was identified in the wake of the case of R v Metropolitan Police Commissioner and LB Brent [2004] EWCH 229(Admin), in which applications for Anti-Social Behaviour Orders (ASBOs) required a 15 day hearing before a district Judge in the Magistrates Court; and on appeal to the Crown Court a hearing that extended over 5 weeks.

7.2 At judicial review, Lord Justice Kennedy expressed concern regarding the court time spent in dealing with the case, and suggested that changes could be made to the appeal process to prevent those who had engaged in anti-social behaviour (ASB) from engaging in another form of abuse. The then Senior Presiding Judge, Lord Justice Thomas indicated his support for the change.

7.3 Agreement to amend the rules so as to provide the Crown Court and Magistrates' Courts with explicit case management powers when dealing with civil cases including ASB, and in the Crown Court to require the grounds of appeal to be stated in relation to appeals against ASBOs, was sought and received from the President of the Queens Bench Division, Lord Chancellor, and Lord Chief Justice in 2007.

7.4 The civil rule amendments were not made immediately, but awaited the completion of further case management rules which were being drafted to deal with civil orders made after criminal verdict or finding. It was thought appropriate for both sets of rules, to deal with both orders in civil proceedings and orders on-conviction, should be introduced around the same time, to provide one regime and an easier transition for practitioners and the courts.

7.5 The on-conviction rules, which fell under the remit of the Criminal Procedure Rules Committee, were brought into force in April 2008 by virtue of the Criminal Procedure (Amendment No.3) Rules 2007 3662/2007. However, the Crown Court Rules Committee needed to review and approve the Crown Court Rules, was inquorate at the time, a situation only recently remedied by the appointment of four new members.

The Crown Court (Amendment) Rules 2009

7.6 These rules introduce a case management framework for the conduct of civil proceedings in the Crown Court. These powers are substantially the same as those that can be exercised in criminal proceedings under Part 3 of the Criminal Procedure Rules 2005 (which themselves took as an initial model the case management powers in the Civil Procedure Rules). Under these rules all participants are required to assist in making the case proceed efficiently under the supervision of the court.

7.7 The rules also require the grounds of appeal to be stated in appeal notices in relation to appeals made to the Crown Court under section 4 of the Crime and Disorder Act 1998, against an anti-social behaviour order made in civil proceedings in a magistrates' court.

The Magistrates' Courts (Amendment) Rules 2009

7.8 These rules introduce a case management framework for the conduct of civil proceedings in magistrates' courts, on the same model as the Crown Court Rules.

7.9 These are amendments to the existing two sets of rules, and there is no present intention to undertake any consolidation into the parent legislation.

8. Consultation outcome

8.1 A consultation exercise was conducted with key stakeholders including the Senior Presiding Judge, the Council of Circuit Judges, Senior District Judges (Magistrates' Courts), Magistrates' Association, Justices Clerks Society, the Law Society, and the Bar Council. In 2007 both sets of draft rules were circulated to members of the Crown Court and Magistrates' Courts Rule Committees, and following their representations, amended drafts that included provision for the appointment of case progression officers were re-circulated. Further drafts were circulated to both Rule Committees in October 2009.

8.2 The only issue raised in 2007, was by the President of the Family Division, Sir Mark Potter, whose concern was that the title of 'case progression officer' featured two distinct roles; one where the parties are required to nominate an individual to progress the case and the other where the court is to nominate a court officer to progress the case. The President felt it would add clarity to have separate titles; but on the basis that the same judiciary, advocates and court staff are likely to deal with the applications brought to the Court, it was agreed that the term 'case progression officer' should remain a generic one applying equally to both roles to be performed.

8.3 In 2009, HHJ Wide (a member of the Crown Court Rule Committee) suggested that the meaning of the word 'court' in the case management context be defined in the Crown Court Rules. However on the basis that case management decisions are generally for a judge, as given in rule 2(1) of the Crown Court

Rules 1982 and only when they are clearly of a formal or administrative nature, or specific provision is made for them to be performed by a court officer, are they performed by court staff, it was concluded that the rules were sufficiently clear so that no definition was required.

9. Guidance

9.1 There will be limited need to issue extensive new guidance for these rules. HM Courts Service and other partners in the Criminal Justice System are aware of the guidance for powers exercised in criminal proceedings under Part 3 of the Criminal Procedure Rules 2005, which very much mirror the guidance that will be issued for these rules.

9.2 Guidance issued will be to the Judiciary and Court officers through an update of the Crown Court Manual, and for both the Crown Court and Magistrates' Courts, through the HM Courts Service intranet and communication with Court managers. Relevant Criminal Justice System (CJS) partner agencies including the Directorate of Judicial Offices for England and Wales, Magistrates' Association, Justices Clerks Society, Crown Prosecution Service, Home Office, and the Office for Criminal Justice Reform will receive communications on the new case management framework.

10. Impact

A Regulatory Impact Assessment has not been prepared for these instruments as they have no impact on business, charities or voluntary bodies.

11. Regulating small business

The rules do not apply to small business.

12. Monitoring & review

12.1 The outcomes from making these rules will not be subject to review as they contain standard operational procedures, which mirror the existing rules applied in criminal cases.

12.2 The key criterion for success will be ensuring that parties to proceedings are aware of, and apply the rules in all civil proceedings in the Courts. Whether this is done will be clearly obvious, as there will be case management stages that any such case must go through prior to proceedings being brought before the bench.

13. Contact

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