



The Rules Committee

CONSULTATION ON CRIMINAL PROCEDURE AMENDMENT RULES

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Date submissions are due: 7 September 2015

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Introduction

1. The Rules Committee (“the Committee”) is seeking feedback on proposed amendments to the Criminal Procedure Rules 2012 prepared by the Criminal Rules Sub-Committee. The proposed amendments are contained in the Draft Criminal Procedure Amendment Rules 2015, which is attached to this consultation paper.
2. The Committee invites submissions on the proposed amendments. Please provide submissions or comments to Harriet Bush, the Clerk to the Committee, by **7 September 2015**.

Nature of the Changes

3. The Criminal Procedure Amendment Rules 2015 contains a collection of minor Rule changes. The main change is that the existing Sentencing Practice Note has been converted into Rules. This reflects an on-going policy of reducing the number of places where criminal procedure rules are located.
4. The contents of Sentencing Practice Note are largely unchanged. However, the proposed Rules clarify the obligation to provide a summary of facts at the time of a guilty plea, and require points of dispute to be identified; in this regard, attention is drawn to proposed rules 5A.1 and 5A.2.

5. The changes effected by the other proposed rules are minor. The Rules are presently silent on the need to file a protocol notice. This omission is addressed in a manner that reflects current practice (proposed rule 4.14). The time for filing of formal statements is extended from 25 to 15 days before trial callover. Presently, extensions of time are routinely being sought and granted. This change has already been the subject of consultation (proposed rule 5.5(1)). Finally, the correct Registry for the filing of appeals is clarified (proposed rule 8.3(1) and (2)).

Return of Submissions

6. Please return submissions or comments on the proposed changes to Harriet Bush, the Clerk to the Rules Committee, by **7 September 2015** by post to:

Ms Harriet Bush
Clerk to the Rules Committee
Auckland High Court
PO Box 60
Auckland 1010

Or by emailing the submissions to: harriet.bush@justice.govt.nz

7. Submissions that are received may be posted on the Rules Committee website.

The Rules Committee would like to take the opportunity to remind members of the profession that feedback from the profession is a valuable way of ensuring that the rules are working well. If you have any concerns about a particular rule or its application, please raise this with the Committee by emailing RulesCommittee@courts.govt.nz

IN CONFIDENCE

Criminal Procedure Amendment Rules 2015

Governor-General

Order in Council

At Wellington this day of 2015

Present:
in Council

Pursuant to section 386 of the Criminal Procedure Act 2011, section 122 of the District Courts Act 1947, and section 51C of the Judicature Act 1908, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice, the Chief District Court Judge, and at least 2 other members of the Rules Committee established under section 51B of the Judicature Act 1908 (of whom at least 1 was a Judge of the High Court and at least 1 was a District Court Judge), makes the following rules.

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Rules

1 Title

These rules are the Criminal Procedure Amendment Rules 2015.

2 Commencement

These rules come into force on 1 October 2015.

3 Principal rules

These rules amend the Criminal Procedure Rules 2012 (the **principal rules**).

4 Rule 2.8 amended (Who is responsible for serving document)

Replace rule 2.8(5)(c) with:

- (c) any other person approved by the court or a Registrar—
 - (i) to serve documents generally in criminal proceedings; or
 - (ii) to serve documents in connection with the particular proceeding or a class of proceedings that includes the particular proceeding.

5 Rule 4.8 amended (Case management memorandum)

After rule 4.8(1)(d), insert:

- (da) a summary of the facts (including any dispute about the summary of the facts the parties wish to raise before the court); and

6 New rule 4.14 inserted (Notice about protocol offence)

After rule 4.13, insert:

4.14 Notice about protocol offence

- (1) This rule applies in any proceeding that includes a protocol offence.
- (2) The prosecutor must file in the court hearing the proceeding a notice identifying—
 - (a) the protocol offence and the class of protocol offence;
 - (b) whether the proceeding must be transferred to the High Court because the defendant is charged with a stage-3 offence;
 - (c) the appropriate court for trial;
 - (d) any jointly charged defendant;
 - (e) whether a protocol determination has already been made against a jointly charged defendant;
 - (f) the qualifying features for an offence described in the protocol as a class 1 or class 2 protocol offence;
 - (g) details of any other matter the prosecutor or the defendant wishes the court to consider, including any of the matters in section 67(4)(b) of the Act.
- (3) If the defendant is represented by a lawyer, the notice filed under subclause (2) must be jointly completed by the prosecutor and the defendant’s lawyer.
- (4) The notice filed under subclause (2) must be filed no later than—
 - (a) 5 working days before the date of the case review hearing; or
 - (b) before the date specified by the court for the filing of the notice.
- (5) In this rule, **stage-3 offence** has the same meaning as in section 86A of the Sentencing Act 2002.

7 Rule 5.5 amended (Filing of formal statements)

In rule 5(1), replace “25” with “15”.

8 Subpart 6 of Part 4 amended

In Part 4, after the subpart 6 heading, insert:

Note: Subpart 6 should be read in conjunction with the requirements set out in regulations 4 to 6 of the Crown Prosecution Regulations 2013. Regulation 4 specifies what a Crown prosecution is, regulation 5 specifies the time at which the Solicitor-General must assume responsibility for proceedings that are Crown prosecutions, and regulation 6 sets out the notice periods when amending, adding, or withdrawing charges. As at 1 October 2015, under regulation 6(1)(a) of the Crown Prosecution Regulations 2013, the notice period for many prosecutions expires on the date of the case review hearing. Readers of subpart

6 who may need to apply its provisions should also familiarise themselves with regulations 4 to 6 of the Crown Prosecution Regulations 2013.

9 New Part 5A inserted

After Part 5, insert:

Part 5A Sentencing

Subpart 1—Summary of facts if guilty plea entered

5A.1 Summary of facts

- (1) At the time that a defendant pleads guilty,—
 - (a) the prosecutor must provide a summary of the facts about the offence and the facts alleged against the defendant to the court; and
 - (b) the defendant must advise the court whether the summary of facts is accepted.
- (2) If the defendant does not accept the summary of facts,—
 - (a) the defendant must identify the facts disputed; and
 - (b) the defendant and the prosecutor must try to resolve the dispute.
- (3) If the dispute is resolved, the prosecutor must advise the court of the resolution and of any agreed amendment to the summary of facts as soon as practicable.
- (4) If the dispute is not resolved within 10 working days after the guilty plea is entered, the prosecutor and the defendant must notify the court of that fact and seek an indication in accordance with section 24(2) of the Sentencing Act 2002.

5A.2 Application for leave to amend summary of facts

- (1) This rule applies if the Solicitor-General, in accordance with any regulations made under section 387(1)(a) to (c) of the Act, assumes responsibility for a Crown prosecution after the defendant pleads guilty.
- (2) If the Solicitor-General or other Crown prosecutor wishes to add material matters of aggravation to the summary of facts, he or she may, by application in writing, seek the leave of the court to amend the summary of facts provided under rule 5A.1.
- (3) If the court grants leave under subclause (2), rule 5A.1 applies to the amended summary of facts as if it were the summary of facts first provided under that rule.
- (4) An application for leave under subclause (2) must be made within 15 working days after the guilty plea is entered.

Subpart 2—Sentencing memoranda

5A.3 Application of this subpart

This subpart applies to sentencing hearings—

- (a) in the High Court:
- (b) in the District Court, if the Crown has assumed or is to assume responsibility for the proceeding prior to sentencing in accordance with any regulations made under section 387(1)(a) to (c) of the Act:
- (c) in any other criminal proceedings, if the Judge directs that sentencing memoranda be filed.

5A.4 Filing of sentencing memoranda

- (1) The prosecutor must file a sentencing memorandum in accordance with rule 5A.5(1) no later than 5 working days before the date of the sentencing hearing.
- (2) The defendant must file a sentencing memorandum in accordance with rule 5A.5(2) no later than 3 working days before the date of the sentencing hearing.

5A.5 Sentencing memoranda

- (1) A sentencing memorandum filed by the prosecutor must contain the following information (to the extent applicable):
 - (a) the purposes and principles of sentencing of particular relevance to the proceeding:
 - (b) the appropriate starting point, including a copy of any decision relied upon that is not a guideline judgment:
 - (c) any aggravating factors, both in relation to the offending itself and factors personal to the defendant:
 - (d) any mitigating factors, both in relation to the offending itself and factors personal to the defendant, including what reduction should be made for any guilty plea:
 - (e) the appropriateness of a sentence requiring electronic monitoring, with supporting reasons:
 - (f) whether a sentence of preventive detention or a minimum period of imprisonment is sought:
 - (g) whether any supplementary orders such as protection orders or a sentence of reparation are sought:
 - (h) the sentence imposed on any co-defendant, including sentencing notes if available:
 - (i) any other relevant matter.
- (2) A sentencing memorandum filed by the defendant must (to the extent applicable)—

- (a) identify any information contained in the sentencing memorandum filed by the prosecution that is disputed:
- (b) contain the following information:
 - (i) information that the defendant relies on that is in dispute under paragraph (a):
 - (ii) the appropriate starting point, including a copy of any decision relied on that is not a guideline judgment or another judgment referred to in the prosecutor's sentencing memorandum:
 - (iii) any mitigating factors, both in relation to the offending itself and factors personal to the defendant, including what reduction should be made for a guilty plea:
 - (iv) the appropriateness of a sentence requiring electronic monitoring, with supporting reasons:
 - (v) whether the defendant wants the Judge to take account of any restorative justice process or other matter listed in section 10 of the Sentencing Act 2002:
 - (vi) any other relevant matter.

Subpart 3—Sentencing hearing

5A.6 Sentencing hearing

- (1) Unless the court directs otherwise,—
 - (a) the order of submissions is that the prosecutor goes first, followed by the defendant:
 - (b) there is no right of reply, except with the leave of the Judge:
 - (c) the summary of facts is taken as read.
- (2) A direction under subclause (1) may be given on the court's own motion or on the application of the prosecutor or the defendant.

Subpart 4—Assistance to authorities

5A.7 Assistance to authorities

- (1) Where the defendant wants assistance given by him or her to Police or other authorities to be taken into account at sentencing on a confidential basis, the prosecutor and the defendant must prepare a joint memorandum for consideration by the Judge.
- (2) The memorandum must be placed in a sealed envelope and provided to the court by the defendant no later than 3 working days before the sentencing hearing.
- (3) The confidential information must not be referred to in open court by the prosecutor or the defendant.

5A.8 Assistance to authorities known only to the prosecutor

- (1) Despite rule 5A.7, if the confidential information is not known to counsel for the defendant, the prosecutor must prepare a memorandum for consideration by the Judge, including submissions on whether that information should be disclosed to any other person.
- (2) The memorandum must be placed in a sealed envelope and provided to the court by the prosecutor no later than 5 working days before the sentencing hearing.

10 Rule 8.3 amended (How to give notice of appeal or apply for leave to appeal)

Replace rule 8.3(1) and (2) with:

- (1) A party appeals by filing a notice of appeal in—
 - (a) the registry of the appeal court nearest to the registry of the court in which the charging document was filed under section 14(1) of the Act; or
 - (b) if the proceedings were transferred to another court or a different registry of the same court under section 75, 76, 157, or another provision of the Act, the registry of the appeal court nearest to the registry of the court to which the proceedings were transferred.
- (2) If leave is required for an appeal, a party must file a notice of application for leave to appeal instead of a notice of appeal, in accordance with subclause (1)(a) and (b).

Clerk of the Executive Council.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

These rules, which come into force on 1 October 2015, insert a *new Part 5A* into the Criminal Procedure Rules 2012 (the **principal rules**).

That *new Part* sets out procedures for sentencing. It replaces the present practice note relating to sentencing practice. *New rules 5A.1 and 5A.2* require the prosecutor to provide the defendant with a copy of the summary of facts at the time a guilty plea is entered and sets out a process for resolving any dispute about the contents of the summary of facts. It also sets out a process where the Crown can seek to amend the statement of facts to add aggravating factors. *New rules 5A.3 to 5A.5* provide for the filing and service of sentencing memoranda by the prosecutor and defendant in sentencing hearings for more serious offences and describes the matters that the prosecution and defence memoranda must each address. *New rule 5A.6* sets out the order of presentation of submissions at a sentencing hearing and provides that a summary of facts is

taken as read. *New rules 5A.7 and 5A.8* deal with assistance to the authorities. *New rule 5A.7* sets out the procedure to be adopted where a defendant wants assistance that he or she has given to the Police or other authorities to be taken into account on sentencing. *New rule 5A.8* sets out the process to be adopted where confidential information to be taken into account is not known by counsel for the defendant.

These rules also make a number of other changes to the principal rules. Rule 2.8(5) of the principal rules is amended to clarify that process servers can be granted a general approval to serve documents rather than requiring approval from a court or Registrar on each occasion when documents are required to be served. Rule 4.8 of the principal rules is amended to require a summary of the facts to be included with case management memoranda. Rule 5.5 of the principal rules is amended to reduce the period during which a prosecutor must file the formal statements required by section 85 of the Act from 25 working days to 15 working days before the trial callover date. A *new rule 4.14* is inserted to require a prosecutor to give the court notice of certain details relating to a protocol offence. Rule 8.3 of the principal rules is amended to clarify where a notice of appeal must be filed.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*:

These rules are administered by the Ministry of Justice.