EXPLANATORY MEMORANDUM TO

THE CRIMINAL PROCEDURE (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 908

1. Introduction

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

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

2. Purpose of the instrument

2.1 These Regulations amend the Crown Court Rules (Northern Ireland) 1979, the Magistrates' Courts Rules (Northern Ireland) 1984 and the Criminal Procedure Rules 2015 (that apply respectively, in Northern Ireland and England and Wales). They are made using powers in the European Union (Withdrawal) Act 2018 and address deficiencies in the relevant legislation that arise from the withdrawal of the United Kingdom from the European Union, and amendments made by other instruments made under powers conferred by that Act. They remove from those procedure rules references to provisions that will be repealed, revoked or disapplied by the Act and by those other instruments.

Explanations

What did any relevant EU law do before exit day?

2.2 Article 267 of the Treaty on the Functioning of the European Union allowed courts to request the Court of Justice of the European Union to give a preliminary ruling concerning the interpretation of the Treaty on European Union, or of the Treaty on the Functioning of the European Union, or the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union.

2.3 The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 and the Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019 make the other amendments to legislation upon which these Regulations are consequent. Lists of the legislation amended by those two instruments, and descriptions of its effect, are contained in the Explanatory Memoranda published with them.

Why is it being changed?

2.4 Explanations for, and descriptions of, the amendments made by the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 and the Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019 are contained in the Explanatory Memoranda published with those instruments. The legislation amended by those instruments is supplemented or referenced in rules 58A, 58B, 60A, 60B, 61, and 62A to 62M of the Crown Court Rules (Northern Ireland) 1979, in rules 52D, 52GA, 52GB, 52IA, 52IB, 52J, 52L, 52M and 52O to 52Q of the Magistrates' Courts Rules (Northern Ireland) 1984 and in Parts 3, 14, 18, 21, 30, 31, 39, 47, 49 and 50 of the Criminal Procedure Rules 2015, all of which therefore need to be changed in consequence.

2.5 Part 44 of the Criminal Procedure Rules 2015 supplied the procedure for the preparation and submission of a request to the European Court by a court to which the Criminal Procedure Rules apply.

What will it now do?

2.6 The amendments to the procedure rules made by these Regulations omit what will become redundant references to legislation that will be repealed or revoked by the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 or by the Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019, and omit from the Criminal Procedure Rules 2015 the rules governing requests to the European Court that will not be possible after exit day.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The instrument has been laid for sifting and the Sifting Committees have agreed that it should progress under the negative resolution procedure.

The instrument is being laid under the European Union (Withdrawal) Act 2018.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent and application of this instrument is Northern Ireland and England and Wales. The amendments made by this instrument have the same territorial extent and application as the procedure rules that it amends.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 In Northern Ireland, procedure rules for the Crown Court are made by the Crown Court Rules Committee in the exercise of powers conferred by sections 52(1) and 53A of the Judicature (Northern Ireland) Act 1978. Procedure rules for magistrates' courts are made by the Magistrates' Courts Rules Committee in exercise of the powers conferred by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981. The current rules are contained in the Crown Court Rules (Northern Ireland) 1979, S.R. 1979 No. 90 and in the Magistrates' Courts Rules (Northern Ireland) 1984, S.R. 1984 No. 225, both as since amended.

6.2 In England and Wales, sections 68 to 72 of the Courts Act 2003 provide for rules made by the Criminal Procedure Rule Committee to govern the practice and procedure of magistrates' courts and the Crown Court in criminal cases; of the High Court in an extradition appeal; and of the criminal division of the Court of Appeal.

The current rules are contained in the Criminal Procedure Rules 2015, SI 2015/1490, as since amended.

6.3 These Regulations amend all three of those instruments in consequence of section 6(1)(b) of the EU (Withdrawal) Act 2018 (which provides that a court cannot refer any matter to the European Court on or after exit day), the Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019 and the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (each of which instruments amends legislation that implements EU criminal justice measures).

7. Policy background

What is being done and why?

7.1 The amendments to procedure rules made by these Regulations are exclusively consequential upon the EU (Withdrawal) Act 2018 and the amendments made by the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 and the Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019.

7.2 Those other two instruments include transitional and saving provisions the effect of which is that in some circumstances legislation which the rules supplement is preserved. Therefore these Regulations include a transitional and saving provision to preserve those rules for those purposes.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made using the power in paragraph 21 of Schedule 7 in the European Union (Withdrawal) Act 2018. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 In Northern Ireland the Crown Court Rules and Magistrates' Courts Rules are available in consolidated hard copy volumes which are due to be updated in 2019. The amendments made by these Regulations will be included in those updates. An informal consolidated text, provided by an independent barrister, is made available to the public free of charge on the Northern Ireland Courts and Tribunals website at https://www.justice-ni.gv.uk/publications/cpurt-rules-publications.

9.2 In England and Wales, legislative consolidations of the Criminal Procedure Rules are made at regular intervals. The next such consolidation is due in 2020. Meanwhile an informal consolidated text is made available to the public free of charge on the Ministry of Justice website at: http://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu-2015. The amendments made by these Regulations will be included in those legislative and informal consolidations.

10. Consultation outcome

10.1 There has been no formal public consultation on this instrument.

11. Guidance

11.1 Amendments to the procedure rules to which these Regulations apply are drawn to the attention of participants in the criminal justice system by correspondence addressed to members of the judiciary, to other relevant representative bodies (for example, the Law Society, the Law Society of Northern Ireland, the Bar Council and the Bar Council of Northern Ireland) and to the editors of relevant legal journals; as well as by publicity within the Northern Ireland Courts Service and HM Courts and Tribunals Service and within the principal prosecuting authorities.

11.2 In England and Wales, news of changes to the Criminal Procedure 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.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 These rules have no impact of themselves on the public sector because they are entirely consequential on other legislation.

12.3 An Impact Assessment has not been prepared for this instrument.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 As this instrument is made under the EU (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Olga Kostiw at the Ministry of Justice, EU Exit Criminal Justice Policy, (telephone: 0203 334 6400 or email: olga.kostiw@justice.gov.uk) can be contacted with any queries regarding this instrument.

15.2 Kristen Tiley, Deputy Director of Europe Division at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lucy Frazer QC MP, the Parliamentary Under-Secretary of State for Justice can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/ESIC
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 77	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9, and 23(1) or jointly exercising	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising clauses 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Sch 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

1.1 The Parliamentary Under- Secretary of State for Justice, Lucy Frazer QC MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Criminal Procedure Rules (Amendment) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)". This is the case because the instrument does not fall into the category of regulations identified in Schedule 7, Part 1, paragraph 1(2) as requiring approval in draft by resolution of both Houses of Parliament. The instrument amends the Criminal Procedure Rules only consequentially upon the EU (Withdrawal) Act 2018 and the amendments made by the Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019 and the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019.

2. Appropriateness statement

2.1 The Parliamentary Under-Secretary of State for Justice, Lucy Frazer QC MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Criminal Procedure Rules (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate". This is the case because the instrument does no more than remove from the Rules references to provisions that will be repealed, revoked or disapplied by the 2018 Act and by the Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019 and the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019.

3. Good reasons

3.1 The Parliamentary Under-Secretary of State for Justice, Lucy Frazer QC MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action". These are that the amendments to the Criminal Procedure Rules made by these Regulations omit what will become redundant references to legislation that will have been repealed or revoked, or no longer will apply.

4. Equalities

4.1 The Parliamentary Under-Secretary of State for Justice, Lucy Frazer QC MP, has made the following statement:

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

4.2 The Parliamentary Under-Secretary of State Minister for Justice, Lucy Frazer QC MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Lucy Frazer have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.".

5. Explanations

5.1 The explanations statement has been made in paragraph 2 of the main body of this Explanatory Memorandum.