**EXPLANATORY MEMORANDUM TO**

**THE CRIMINAL PROCEDURE (AMENDMENT) RULES 2025**

**2025 No. 60 (L. 1)**

## 1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

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

## 2. Declaration

2.1 The Rt Hon. Shabana Mahmood MP, Lord Chancellor and Secretary of State for Justice, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 Ed Lidington, Director of Courts, Criminal and Family Justice, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

## 3. Contact

3.1 Jonathan Solly at the Ministry of Justice telephone: 07811 823574 or email: jonathan.solly@justice.gov.uk can be contacted with any queries regarding the instrument.

## Part One: Explanation, and context, of the Instrument

## 4. Overview of the Instrument

***What does the legislation do?***

4.1 These Rules amend the Criminal Procedure Rules 2020, S.I. 2020 No. 759, in the following principal respects. They clarify the procedure on an application for a court order requiring a bank to allow a party to a criminal case to inspect and copy bank records. They clarify reference to a particular type of hearsay evidence in the rules about the introduction of such evidence. They clarify reference to the power of a magistrates' court to reduce the amount of a fine or to vary the payment terms. They amend the time limit for prosecution appeal against a judge's ruling in the Crown Court. In connection with confiscation of the proceeds of crime, they extend to receivership proceedings the same rules about the making of costs orders as presently apply to restraint proceedings. They clarify the rules about procedure in the event of contempt of court by obstruction, disruption or insulting or intimidating behaviour in a courtroom or in its vicinity.

4.2 These Rules also correct two errors in the Criminal Procedure Rules, and amend the Criminal Procedure (Amendment No. 2) Rules 2024, S.I. 2024 No. 842, to correct amendments to the 2020 Rules yet to come into force.

***Where does the legislation extend to, and apply?***

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

## 5. Policy Context

***What is being done and why?***

***Application for order to inspect and copy bank records***

5.1 Under section 7 of the Bankers' Books Evidence Act 1879 a party to legal proceedings can apply to the court for an order allowing that party to inspect and take copies of entries in bank records for any of the purposes of those proceedings. Where the proceedings are in a criminal case, relevant procedure rules are in Part 17 of the Criminal Procedure Rules. However, in criminal cases such orders are rarely sought because (i) evidence from bank records is likely to have been obtained by a public authority investigator under one of the powers to which Part 47 of the Criminal Procedure Rules applies (Investigation orders and warrants), (ii) that evidence is likely then to be introduced as part of the prosecution case, and (iii) records of banking transactions carried out by a defendant can be obtained by that defendant without a court order as a customer of the bank. Sometimes, however, an 1879 Act order may be needed by a defendant or by a prosecutor who is not a public authority.

5.2 In the case of *R (Abbasi) v Crown Court at Southwark*[1] the Court of Appeal dealt with a case in which a private prosecutor had obtained evidence from bank records by issuing a witness summons, leading to legal argument in the Crown Court and then the High Court. The case was brought to the attention of the Rule Committee to whom it appeared that no, or no sufficient, consideration had been given by the applicant to the 1879 Act, the use of which might have obviated much of the argument. The Committee decided to amend rules in Part 17 more clearly to reference and to supplement the Act. Rule 6 of these Rules amends rules in Part 17 of the Criminal Procedure Rules accordingly.

***Reference to hearsay evidence of which advance notice is required***

5.3 Chapter 2 of Part 11 of the Criminal Justice Act 2003 provides for hearsay evidence, which the Act defines as "a statement not made in oral evidence in the proceedings". Under section 115 of the Act, "statement" means any representation of fact or opinion. The Act lists circumstances in which hearsay evidence will be admissible in a criminal case. One, under section 117 of the Act, applies where a statement is contained in a document which was created or received by a person in the course of a trade, business, profession or other occupation, and the person who supplied the information contained in the statement had or may reasonably be supposed to have had personal knowledge of the matters dealt with. Under that section other requirements apply if the statement concerned was prepared specifically for the purposes of pending or contemplated criminal proceedings, or for a criminal investigation. Prompted by a then recent judgment of the Court of Appeal about a case in which a witness who had given a written statement to the police then had gone abroad, in 2012 the Rule Committee included that sort of hearsay evidence in the list of evidence of which the Criminal Procedure Rules require advance notice under rule 20.2.

5.4 It was suggested to the Committee that rule 20.2(1)(c) misdescribes the evidence of which that sub-paragraph requires notice when it lists "evidence in a statement prepared for the purposes of criminal proceedings", because the word "statement" in

[1] https://caselaw.nationalarchives.gov.uk/ewhc/admin/2024/1781; judgment of 15th July, 2024.

that rule could mean either the type of statement defined by the Act or the type of written witness statement routinely used in criminal cases. In the Committee's opinion the Act, too, is ambiguous in that respect. However, the Committee agreed that if the present description caused confusion, then the rule should be changed to read (omitting two present words) "a statement prepared for the purposes of criminal proceedings". Rule 7 of these Rules amends rule 20.2 of the Criminal Procedure Rules to that effect.

***Variation of fines, etc.***

5.5 By section 85 of the Magistrates' Courts Act 1980, "Where a fine has been imposed on conviction of an offender by a magistrates' court, the court may at any time remit the whole or any part of the fine, but only if it thinks it just to do so having regard to a change of circumstances". A magistrates' court also has other powers to change the amount of a fine, and to vary the time for payment of a fine or of a criminal courts charge (which is a charge in respect of court costs levied under the Sentencing Act 2020). Rule 30.5 of the Criminal Procedure Rules supplies a procedure for the exercise of those powers. In some cases, however, where the court has made a "collection order" under the Courts Act 2003, the court's power to vary the time for payment is displaced by the power of a fines officer to do so under the 2003 Act.

5.6 It was suggested to the Rule Committee that rule 30.5 of the Criminal Procedure Rules misdescribes the powers that the court cannot exercise where a collection order is in force. The Committee agreed to clarify the rule. Rule 8 of these Rules amends rule 30.5 of the Criminal Procedure Rules accordingly.

***Prosecution appeal against Crown Court ruling***

5.7 Section 58 of the Criminal Justice Act 2003 allows the prosecutor to appeal to the Court of Appeal against a ruling in the Crown Court, with the permission of the Crown Court judge or of the Court of Appeal. The ruling, and any such appeal, may take place during a trial. It is important, therefore, that the appeal should be made and decided quickly. Part 38 of the Criminal Procedure Rules supplies the procedure. Rule 38.2 requires the prosecutor to tell the Crown Court judge of any decision to appeal immediately after the ruling against which the prosecutor wants to appeal, or on expiry of the time allowed by the judge, which time is limited by the rule. If the prosecutor wants to ask the Crown Court judge for permission to appeal, rule 38.5 requires the prosecutor to do that immediately after the ruling, too.

5.8 In the case of *R v Ng and O'Reilly*[2] the Court of Appeal dealt with a case in which a prosecution had been dismissed because prosecuting counsel had been unable to attend court on the date on which the case was listed for trial. The prosecutor appealed and the appeal was allowed, so the prosecution could continue. The Court of Appeal added, "When refusing an adjournment in circumstances where that will be a terminating ruling, the court must take steps to ensure that the prosecution is able to consider an appeal to this court. Necessarily, there will be no trial advocate present in cases of this kind, and fairness requires that the refusal is communicated to the prosecution in such a way that it can either give notice of its intention to appeal immediately after the ruling, or to seek an adjournment to allow it to consider doing so as required by CrimPR 38.2."

5.9 The case was brought to the attention of the Rule Committee. The Committee decided that the rules should be changed to allow for circumstances in which a ruling is made in the prosecutor's absence by providing explicitly that the prosecutor must have

[2] https://caselaw.nationalarchives.gov.uk/ewca/crim/2024/493; judgment of 9th May, 2024.

become aware of that ruling before the requirement to act immediately will apply. Rule 10 of these Rules amends rules 38.2 and 38.5 of the Criminal Procedure Rules accordingly.

***Costs orders in receivership proceedings***

5.10 The Proceeds of Crime Act 2002 allows the Crown Court to order the confiscation of property held by a convicted defendant up to the value of the defendant's financial benefit from their crime or crimes. Where it seems likely that a defendant has benefited from crime then the Act allows the Crown Court to make a restraint order that prevents any dealing with property to which the order applies. To facilitate the enforcement of a confiscation order or a restraint order, the Act allows the Crown Court to appoint a receiver with power, among other things, to take possession of property, deal with it and realise its proceeds. In November, 2021, the Law Commission published a report that recommended changes to the law and procedure about confiscation and restraint orders.[3] Some of the Commission's recommendations were addressed to the Rule Committee.[4] In response to recommendation 92, and among other relevant rule changes made last year, the Committee amended the rule about orders for the payment of legal costs by one party to the other in restraint proceedings: see now rule 45.7(6) of the Criminal Procedure Rules[5], which was amended by rule 11 of the Criminal Procedure (Amendment) Rules 2024.[6] The rule now corresponds more closely with comparable statutory provisions that govern costs orders in unexplained wealth order proceedings.[7]

5.11 The Rule Committee was asked by the Home Office, the Crown Prosecution Service and the Serious Fraud Office to apply the amended costs rule to receivership proceedings as well as to restraint proceedings. The Committee agreed. Rule 11 of these Rules amends rules 45.2 and 45.7 of the Criminal Procedure Rules accordingly.

***Contempt of court***

5.12 Obstructive, disruptive, insulting or intimidating behaviour in or near a courtroom is recognised as a type of contempt of court, as are the actions prohibited by the six statutory provisions listed in rule 48.5(1) of the Criminal Procedure Rules (and at paragraph 6.3(vi) of this Memorandum). Rules 48.5 to 48.8 of the Criminal Procedure Rules supply the procedure that a court must follow in the event of an apparent such contempt. Such conduct may affect directly the member or members of the court itself but the court's response must remain measured and impartial. The court must follow rules in Part 48 which since 2011 have incorporated long-established case law on achieving the twin objectives of prompt and effective action and fair trial for the alleged contemnor.

5.13 It was reported to the Committee that some judges and other legal practitioners now found the procedure set out in Part 48 difficult to reconcile with more recent guidance. The Committee reviewed the rules, taking into account the recent judgment of the Court of Appeal in *R v John Jordan*[8] and the recently published consultation by the Law Commission on contempt of court, and decided to adjust them. Rule 12 of these Rules amends rules in Part 48 accordingly. Rule 48.2 is amended to require the

[3] https://www.lawcom.gov.uk/project/confiscation-under-part-2-of-the-proceeds-of-crime-act-2002/.
[4] Numbers 10, 11, 12, 13, 14, 15, 20, 33, 45, 48, 55, 90 and 92.
[5] https://www.legislation.gov.uk/uksi/2020/759/rule/45.7.
[6] https://www.legislation.gov.uk/uksi/2024/62/rule/11/made#rule-11-c-vi.
[7] https://www.legislation.gov.uk/ukpga/2002/29/section/362U.
[8] https://caselaw.nationalarchives.gov.uk/ewca/crim/2024/229; judgment of 12th March, 2024.

publication of any decision to punish for contempt of court. The procedure set out in rules 48.5 to 48.8, and in the first of those rules in particular, is clarified.

***Correction of errors***

5.14 Rule 5 of these Rules corrects a cross-reference in rule 9.15 of the Criminal Procedure Rules. Rule 9 of these Rules supplies an amendment omitted from rule 9(k) of the Criminal Procedure (Amendment) Rules 2024, S.I. 2024/62.

***Amendments to the Criminal Procedure (Amendment No. 2) Rules 2024***

5.15 Rule 13 of these Rules corrects the errors described at paragraph 11 beneath.

## 6. Legislative and Legal Context

6.1 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, the High Court, in an extradition appeal, and the criminal division of the Court of Appeal. 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. Section 72 requires the Committee to consult such persons as they consider appropriate before making rules. 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.

6.2 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 initiatives and for developments in legislation and in case law. Unless rule changes are needed urgently, the rules now are amended, if necessary, in June and in December, with the changes coming into force ordinarily on the first Monday in October and on the first Monday in April, respectively, of each year.

6.3 These rules supplement and accommodate (i) section 7 of the Bankers' Books Evidence Act 1879 (Court or judge may order inspection, etc), (ii) section 117 of the Criminal Justice Act 2003 (Business and other documents), (iii) section 85 of the Magistrates' Courts Act 1980 (Power to remit fine), (iv) section 58 of the Criminal Justice Act 2003 (General right of appeal in respect of rulings), (v) section 52 of the Senior Courts Act 1981, which allows Criminal Procedure Rules to authorise the Crown Court to order costs, and (vi) common law and the statutory provisions listed in rule 48.5 of the Criminal Procedure Rules 2020 (Initial procedure on obstruction, disruption, etc.), namely section 3 of the Criminal Procedure (Attendance of Witnesses) Act 1965, section 20 of the Juries Act 1974, section 97(4) of the Magistrates' Courts Act 1980, sections 9 and 12 of the Contempt of Court Act 1981 and section 41 of the Criminal Justice Act 1925, each of which confers powers on courts to deal with contempt of court.

6.4 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 desirability of continuing to consolidate the Rules at

regular intervals, the Committee decided to do so: at first annually, between 2010 and 2015, then in 2016 reverting to the plan to consolidate at 5 yearly intervals.

6.5 In accordance with that plan the Criminal Procedure Rules were consolidated again in 2020. The Committee now intends to make a further consolidation in June, 2025. Meanwhile, the effects of amendments to the Criminal Procedure Rules 2020 will be published at https://www.legislation.gov.uk/uksi/2020/759/contents and an informal consolidated text will continue to be available to the public, with some additional commentary and explanation, at https://www.gov.uk/guidance/rules-and-practice-directions-2020.

## 7. Consultation

***Summary of consultation outcome and methodology***

7.1 Material statutory provisions and case law in many instances determine procedure that must or should be followed in criminal courts and which Criminal Procedure Rules incorporate. The Rule Committee nonetheless fulfilled its statutory obligation to consult as the Committee considers appropriate by inviting and reviewing suggestions solicited by its members from among the groups from which each is drawn and then canvassing members' observations during Committee meetings; such observations incorporating the views and experiences of members themselves and of those with whom members routinely work and communicate.

## 8. Applicable Guidance

8.1 Amendments to the Criminal Procedure Rules 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 and the Bar Council) and to the editors of relevant legal journals; as well as by publicity within HM Courts and Tribunals Service, within the principal prosecuting authorities, and among local criminal justice boards.

8.2 News of changes to the Rules and of the effect of those changes is published at https://www.gov.uk/guidance/announcements-from-the-criminal-procedure-rule-committee.

# Part Two: Impact and the Better Regulation Framework

## 9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument for the reasons given beneath.

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because these rules do not apply to the activities undertaken by them (the rules govern procedure in criminal courts).

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because these Rules maintain rules and procedures that are already current and introduce new rules and procedures that give effect to other legislation or established best practice.

## 10. Monitoring and review

***What is the approach to monitoring and reviewing this legislation?***

10.1 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. At least once a year the Committee receives and considers statistical information about criminal case management gathered by HM Courts and Tribunals Service and the Ministry of Justice.

10.2 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.

10.3 Representatives of HM 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.

10.4 The instrument does not include a statutory review clause.

## Part Three: Statements and Matters of Particular Interest to Parliament

## 11. Matters of special interest to Parliament

11.1 In its Fifth Report of the Parliamentary Session 2024 – 25, published on 15th November, 2024[9], the Joint Committee on Statutory Instruments reported the Criminal Procedure (Amendment No. 2) Rules 2024, S.I. 2024/842[10], for failure to follow proper legislative practice in one respect and for defective drafting in one respect.

11.2 The failure to follow proper legislative practice was the erroneous publication of a version of that instrument that did not correspond with the one made and laid before Parliament. That error was corrected by substituted publication of the correct version on 18th November, 2024.

11.3 The defective drafting was an erroneous reference to the term "low-level shoplifting" in Schedule 1 to that instrument instead of a reference to "low-value shoplifting". That error is removed by rule 13(d) of these Rules. Other errors to which the Joint Committee had drawn attention but did not report are corrected by rule 13(a), (b), (c) and (e) of these Rules.

## 12. European Convention on Human Rights

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

[9] https://publications.parliament.uk/pa/jt5901/jtselect/jtstatin/38/report.html.
[10] https://www.legislation.gov.uk/uksi/2024/842/contents/made.

## 13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts"). It does however relate to the withdrawal of the United Kingdom from the European Union because the procedure rule amendments corrected by rule 13(b) and (c) of these Rules accommodate statutory amendments to the 2018 Act made by the 2023 Act.