EXPLANATORY MEMORANDUM TO

THE CRIMINAL PROCEDURE (AMENDMENT) RULES 2026

2026 No. 47 (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. David Lammy 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 Amy Randall, Director, Criminal Justice and Courts Directorate, 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 2025, S.I. 2025 No. 909, in the following principal respects. They incorporate a description from case law of the open justice principle as it applies to the supply of information from court records. They substitute a time limit expressed in business days (as defined in the Criminal Procedure Rules) for the service of a draft indictment at the direction of the Court of Appeal. They substitute a time limit for the service of an objection to the admissibility of a written witness statement to ensure the compatibility of that time limit with section 9(2A) of the Criminal Justice Act 1967 in all circumstances. They clarify the availability of a magistrates' court's power to remit a fine or to vary the payment terms to ensure the compatibility of the relevant rule with sections 75 and 85 of the Magistrates' Courts Act 1980 and paragraphs 12 and 22 of Schedule 5 to the Courts Act 2003. They clarify the rules about behaviour orders (as defined in the Criminal Procedure Rules). They clarify the application of rules about judicial approval of authorisations for the exercise of some powers under the Regulation of Investigatory Powers Act 2000.

4.2 These Rules also correct errors in the Criminal Procedure Rules 2025 identified by the Joint Committee on Statutory Instruments and by the Criminal Procedure Rule Committee.

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 of the open justice principle

5.1 Rule 5.7 of the Criminal Procedure Rules requires that, "Where rules 5.8, 5.9, 5.10 and 5.11 apply, as well as furthering the overriding objective in accordance with rules 1.2 and 1.3 the court officer and the court must have regard to the importance of (a) dealing with criminal cases in public; (b) allowing a public hearing to be reported to the public; and (c) the rights of a person affected by a direction or order made, or warrant issued, by the court to understand why that decision was made. In rules 5.10 and 5.11 this requirement is called 'the open justice principle'." Rules 5.8 and 5.9 require court staff to supply to specified recipients, including members of the public, specified information from court records on request. Where those rules do not require information to be supplied then court staff must refer the request to a judge or magistrate for consideration under rule 5.10.

5.2 Substantially the same principle of open justice applies also in other courts. The recent judgment of the Court of Appeal in *In re HMP* [2025] EWCA Civ 824[1] concerned a decision of the family court. The judgment explained the purpose of the open justice principle as that applies to access to information in court records, and did so in terms which the Rule Committee decided it would be helpful to include in the note to rule 5.10; for ready reference by those requesting information and by courts asked to determine such requests. Rule 5 of these Rules amends that note accordingly.

Time limits for (i) serving a draft indictment and (ii) objecting to a written witness statement

5.3 Rule 2.2(1) of the Criminal Procedure Rules defines 'business day' as meaning any day except Saturday, Sunday, Christmas Day, Boxing Day, Good Friday, Easter Monday or a bank holiday. That allows for the imposition of a short, but realistically short and fair, time limit for the service of a document without requiring separate provision each time for the potential effect of a weekend or public holiday. In the Criminal Procedure Rules 2020 time limits set by the Rules were converted to periods expressed in business days. Time limits set by legislation other than Criminal Procedure Rules were not converted to business days if to do so would have been incompatible with that other legislation.

5.4 In 2020 the time limit set by rule 10.8 of the Criminal Procedure Rules (Draft indictment served by the prosecutor at the direction of the Court of Appeal) was overlooked and remains 28 days, not 20 business days; each of those periods being the equivalent of 4 weeks, but with 20 business days allowing for any public holiday which falls within that period. The omission was recently drawn to the Rule Committee's attention. For consistency with other Criminal Procedure Rules, and in particular rules 10.4 and 10.5 about service of a draft indictment in other

[1] https://caselaw.nationalarchives.gov.uk/ewca/civ/2025/824.

circumstances, each of which sets a time limit of 20 business days, the Rule Committee agreed to amend rule 10.8 and rule 6 of these Rules does so accordingly.

5.5 Section 9 of the Criminal Justice Act 1967 allows the prosecutor and defendant in criminal proceedings to rely on a witness's evidence contained in a written statement as long as, among other things, "none of the other parties or their solicitors, within the relevant period, serves a notice on the party so proposing objecting to the statement being tendered in evidence under this section". The "relevant period" is defined by the Act as "such number of days, which may not be less than seven, from the service of the copy of the statement as may be prescribed by Criminal Procedure Rules". Under rule 16.4(4)(b) of the Criminal Procedure Rules, as amended in 2020 as described in paragraph 5.3 above, a party served with a written witness statement who objects to its introduction in evidence must serve a notice of any objection not more than 5 business days after service of the statement unless, among other things, the court extends that time limit, before or after the statement was served. In practice, the court will set a timetable for the service of written statements, and for any objection, which allows for a longer period than the minimum and is appropriate to the individual case.

5.6 In most circumstances, 5 business days is the equivalent of 7 days (except that a period of 5 business days excludes any public holiday falling within that period, which a 7 day time limit does not). Moreover, the rules about service of documents in Part 4 of the Criminal Procedure Rules mean that the only way in which a time limit of 7 days in which to object to a written statement could be longer than 5 business days would be where the statement was delivered to the recipient by handing it to them personally on a Saturday or Sunday, an event in practice unlikely to occur. But if that happened, and if the court had not already extended the time limit for objection and refused to extend it after the event by the one or two days required, then in those circumstances the time limit imposed by the rule would be shorter than the time limit required by section 9 of the Criminal Justice Act 1967 and would be incompatible with the Act. That possibility recently was remarked by the Joint Committee on Statutory Instruments: see paragraphs 11.1 and 11.2(i) beneath. To avoid that possibility, no matter how unlikely, the Rule Committee agreed to amend rule 16.4(4)(b) of the Criminal Procedure Rules and rule 7 of these Rules does so accordingly.

Magistrates' courts' power to remit a fine

5.7 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.

5.8 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.

Applications and proposals for behaviour orders

5.9 Part 31 of the Criminal Procedure Rules is headed "Behaviour orders" and rule 31.1 presently begins, "This Part applies where a magistrates' court or the Crown Court can (a) make, vary, renew, discharge or revoke a civil order (i) as well as, or instead of, passing a sentence, or in any other circumstances in which other legislation allows the court to make such an order, and (ii) that requires the defendant to do, or not do, something". The rules in Part 31 were first made in 2008. They apply to all present and any future statutory behaviour orders. A note to current rule 31.1 lists the existing statutory provisions to which those rules apply. Some require an application before the court can make an order, others do not. Most are available only if the defendant is convicted, but some are available on acquittal or in other circumstances. The court can give a special measures direction to support a witness in proceedings for some orders but not others. Moreover, some orders can be made in civil proceedings to which criminal procedure rules do not apply.

5.10 The differences between the many statutory provisions can cause confusion. While reviewing the capacity of present Criminal Procedure Rules to accommodate provision for more behaviour orders in proposed legislation now under consideration by Parliament, the Rule Committee decided substantially to revise the description of the scope of Part 31 in rule 31.1, substantially to rearrange rules 31.3 and 31.4 to make it easier to distinguish between the procedures which they contain, and to make some consequential amendments. Rule 9 of these rules amends rules 31.1, 31.2, 31.3, 31.4 and 31.6 accordingly.

Application to magistrates' court to approve an authorisation under the Regulation of Investigatory Powers Act 2000

5.11 The Regulation of Investigatory Powers Act 2000 among other things provides for a designated local authority officer to authorise surveillance in connection with a criminal investigation, or to authorise the use of a covert human intelligence source within the meaning of the Act for that purpose. Judicial approval by a magistrate of such an authorisation is required, under sections 32A and 32B of the Act. Criminal Procedure Rules supplement those sections by supplying the procedure for an application for such approval in rules 47.51, 47.52 and 47.53.

5.12 Corresponding provision under sections 23A and 23B of the same Act used to apply to applications to magistrates to approve authorisations for the interception of communications. Under the Investigatory Powers Act 2016, in 2020 that provision was repealed subject to exceptions now no longer likely to occur. For that reason, the Rule Committee decided now to remove the references to those provisions in the Criminal Procedure Rules and rule 10 of the Rules makes amendments accordingly.

Correction of errors contained in the Criminal Procedure Rules 2025

5.13 See paragraphs 11.2(ii) and 11.4 beneath (Matters of special interest to Parliament). In addition to errors identified by the Joint Committee on Statutory Instruments, the corrections made by paragraphs 5, 7, 8, 11 and 14 of the Schedule to these Rules are of errors identified by the Criminal Procedure Rule Committee. Following consultation with the Statutory Instruments Registrar, these Rules are being issued free of charge to all known recipients of the Criminal Procedure Rules 2025.

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 across 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 8 of the Criminal Appeal Act 1968 and section 77 of the Criminal Justice Act 2003, (ii) section 9 of the Criminal Justice Act 1967, (iii) sections 75 and 85 of the Magistrates' Courts Act 1980 and paragraphs 12 and 22 of Schedule 5 to the Courts Act 2003, (iv) the nineteen statutory provisions creating behaviour orders which are listed in the note to rule 31.1 of the Criminal Procedure Rules substituted by rule 9(a) of these Amendment Rules, (v) the three statutory provisions that allow a court to give a special measures direction in respect of a witness in some proceedings for behaviour orders, listed in the note to rule 31.4 of the Criminal Procedure Rules substituted by rule 9(d) of these Amendment Rules, (vi) sections 32A and 32B of the Regulation of Investigatory Powers Act 2000, and (vii) sections 31, 36B, 36C, 113, 118C and 118D of the Extradition Act 2003.

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 in 2020 and again in 2025. The Committee now intends to make a further consolidation in June, 2030. Meanwhile, the effects of amendments to the Criminal Procedure Rules 2025 will be published on the National Archive website at legislation.gov.uk[2] and an informal consolidated text, with some commentary and explanation and with some additional material, will be published on the government website[3].

[2] At https://www.legislation.gov.uk/uksi/2025/909/contents.
[3] 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 frequently 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 it considered 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. Those observations thus reflect the views and experiences of Committee members themselves and of those with whom those members routinely work and communicate. All the amendments made by these Rules were influenced by those observations.

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 online.[4]

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 feature in reported case law. 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.

[4] At https://www.gov.uk/guidance/announcements-from-the-criminal-procedure-rule-committee.

10.2 Each judicial and legal member of the Committee practises regularly in the criminal courts, while the remaining members are closely engaged with the work 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, they are also able to reflect the views of the professional or representative constituencies from which they are drawn.

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 Fortieth Report of the Parliamentary Session 2024 – 26, published on 21st November, 2025[5], the Joint Committee on Statutory Instruments reported the Criminal Procedure Rules 2025, S.I. 2025/909, for doubt as to whether rules were *intra vires* in two respects and for defective drafting in one respect.

11.2 The doubts as to vires concerned (i) rule 16.4(4)(b) of the Criminal Procedure Rules 2025, on grounds that in some circumstances the period for objection to a written witness statement allowed by the rule would be less than the minimum period required by section 9(2A) of the Criminal Justice Act 1967, and (ii) rule 50.23 of the Criminal Procedure Rules 2025, on grounds of error in the citation in the preamble to those Rules of the sections of the Extradition Act 2003 enabling that rule. As to (i), the doubt is dispelled by the amendment made by rule 7 of these Amendment Rules. As to (ii), the doubt is dispelled by the substitution effected by paragraph 15 of the Schedule to these Amendment Rules and by the citation in the preamble to these Rules of the correct enabling provisions.

11.3 The defective drafting was the reference in rule 45.4(8)(b) and (9) of the Criminal Procedure Rules 2025 to regulations made by the Lord Chancellor which are identified in the note to that rule but not in the text of the rule. That formulation had been first adopted in the Criminal Procedure (Amendment) Rules 2012. It was subsequently repeated in the Criminal Procedure Rules 2013, 2014, 2015 and 2020, and most recently in the Criminal Procedure (Amendment No. 2) Rules 2022, without attracting comment or reported confusion. The Criminal Procedure Rule Committee recently discussed proposals for the substantive amendment of rule 45.4 of the Criminal Procedure Rules prompted by two recent decisions of the Court of Appeal (in each of which the rule and the relevant regulations were cited, interpreted and applied without apparent difficulty). The Rule Committee will be asked to take account of the Joint Committee's report if it decides now to make other amendments to the rule.

11.4 In correspondence with the Ministry of Justice dated 8th October, 2025, the Joint Committee on Statutory Instruments drew attention to another fourteen discrepancies in the Criminal Procedure Rules 2025. Ten are resolved by the amendments effected by rule 10 of these Amendment Rules and by the corrections made by paragraphs 1, 2,

[5] At https://committees.parliament.uk/publications/50316/documents/271937/default/.

3, 4, 6, 9, 10, 12 and 13 of the Schedule. The other four occur in footnotes which will be amended in the next consolidation of the 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.

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").