EXPLANATORY MEMORANDUM TO

THE CRIMINAL PROCEDURE RULES 2025

2025 No. 909 (L.7)

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.

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 Laura Weight, Interim 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 In accordance with the programme of the Criminal Procedure Rule Committee, these Rules revoke the Criminal Procedure Rules 2020, S.I. 2020/759, with the amendments made to those Rules by S.I. 2021/40, 2021/849, 2022/45, 2022/815, 2023/44, 2023/786, 2024/62, 2024/842 and 2025/60, and consolidate and replace the provision made by those rules. They renumber the rules in Parts 18 and 33 of the Rules in consequence of previous revocations. They include the new rule amendments described beneath and make consequential rule amendments. Otherwise, they reproduce the rules that they consolidate and supersede.

Where does the legislation extend to, and apply?

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

4.3 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?

Power of authorised Crown Court officer to amend community order or suspended sentence order

5.1 Under provisions of the Sentencing Act 2020, while a community order or a suspended sentence order made by a court is in force a probation officer can allow the offender to change the local justice area in which they live. If the probation officer does so, then the 2020 Act requires the court to amend its order correspondingly. Amending the order is a judicial function, but one in which the court has no discretion.

5.2 Under Section 67B of the Courts Act 2003 Criminal Procedure Rules may provide for the exercise of some judicial functions by court staff who are authorised to do so. The Rules already allow magistrates' courts' staff to amend the local justice area named in an order of the court, but not Crown Court staff. Officers of HM Prisons and Probation Service drew attention to that anomaly and to the need at present to ask a Crown Court judge to deal with what would be a purely administrative matter were it not for the terms of the 2020 Act. The Rule Committee agreed that Crown Court staff, too, should be allowed to deal with these amendments to court orders. Rule 2.7(2) of the Criminal Procedure Rules is amended accordingly.

Consideration of reporting restrictions and arrangements

5.3 Some restrictions that prevent the reporting of criminal court cases apply automatically. Others may be imposed by the court. The note to rule 6.1 of the Criminal Procedure Rules lists the statutory provisions under which such restrictions may be made. Rule 6.2 of the Rules prohibits the court from exercising any power it has to order a reporting restriction unless, usually, the parties to the case and any other person who will be affected by the restriction has had an opportunity to make representations.

5.4 It was reported to the Rule Committee that journalists rarely received notice of an application for a reporting restriction, or notice of a restriction that had been ordered; and that arrangements had been agreed between media representatives and HM Courts and Tribunals Service to facilitate the giving of such notice by creating lists of interested journalists' email addresses which court staff can give to applicants. The Committee was asked to amend the rules to accommodate these arrangements, and agreed to do so. Amendments to rules 6.2, 6.4 and 6.5 of the Rules are for that purpose.

5.5 In addition, the Committee observed that responses to a survey of opinion on open justice carried out by the Ministry of Justice[1] included requests by some journalists that courts should consider reporting restrictions and other reporting arrangements as a matter of routine during preparation for trial. The Committee decided to include such provision in the Rules. Amendments to rules 3.2, 3.16, 3.21, 5.8, 5.11, 24.2 and 25.2 require consideration and review of reporting and similar restrictions, and of arrangements for public observation and reporting, during trial preparation and immediately before trial, and include consequential amendments.

[1] Ministry of Justice *Summary of Responses to the Call for Evidence: Open Justice, the way forward*, published in January 2025 at https://www.gov.uk/government/consultations/open-justice-the-way-forward.

Taking a deposition

5.6 A person who could give evidence about an offence due to be tried in the Crown Court but who refuses to do so voluntarily can be required to attend at a magistrates' court to be questioned, and to have their replies recorded in a written statement called a "deposition", under paragraph 4 of Schedule 3 to the Crime and Disorder Act 1998. That written statement then can be used as evidence in the Crown Court.

5.7 The current rules in Part 17 of the Criminal Procedure Rules apply to the issue of a summons or warrant requiring the potential witness to attend court to have a deposition taken. However, those rules do not specify the procedure to be followed once the witness attends court, potentially resulting in inconsistency. It was suggested to the Rule Committee that it would be helpful to have such rules to ensure consistency and efficiency in taking depositions.

5.8 The Committee agreed. New rule 17.8 now sets out the procedure. Rules 17.1, 17.2 and 17.3 have been amended to better reflect the courts' statutory powers to require a witness to attend to give evidence, at trial or in a deposition, and the better to describe courts' powers to penalise those who refuse to do so without just excuse.

Appeal in confiscation proceedings

5.9 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.

5.10 A defendant against whom a confiscation order is made can appeal to the Court of Appeal against that order and the rules in Part 39 of the Criminal Procedure Rules apply. In addition, in some circumstances the Proceeds of Crime Act 2002 allows prosecutors, and people with an interest in confiscated or restrained property, to appeal against Crown Court decisions affecting that property. The rules about procedure on those appeals are in Part 42 of the Criminal Procedure Rules. While other types of appeal to the Court of Appeal begin with the giving of an appeal notice to the Registrar of Criminal Appeals, at present an appeal to which Part 42 applies begins with an appeal notice to the Crown Court. The Registrar of Criminal Appeals reported that this caused confusion. She suggested that every type of appeal to the Court of Appeal should begin with an appeal notice given to her.

5.11 The Rule Committee agreed. Rules 42.11, 42.13 and 42.15 now require a Part 42 appeal to begin with notice to the Registrar. In addition, the Committee took the opportunity to make other rules in Part 42 correspond more closely with rules about the same procedures in other appeal rules, by amendments to rules 42.5, 42.12, 42.16 and 42.20, and by introducing a new rule 42.21 concerning the re-opening of an appeal determination.

Omission of the Glossary

5.12 The Glossary was included in the first Criminal Procedure Rules in 2005. Since then many of the expressions glossed have been omitted from the Rules, or now are explained in notes to individual rules, and since then other descriptions and explanations serving the same purpose as the original Glossary have been published with, though not in, the Rules. The Rule Committee decided that a Glossary in the Rules themselves no longer was needed.

Amendment of cross-references

5.13 The 34 rules and notes to rules listed in the Explanatory Note have been amended to update general and consequential cross-references, particularly those affected by re-numbering in Parts 18 and 33.

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 required urgently, amendments to the rules are made in June and in December, with the changes coming into force on the first Monday in October and on the first Monday in April, respectively, of each year.

6.3 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. In accordance with that plan the Criminal Procedure Rules were consolidated again in 2020[2], incorporating subsequent amendments. The Rules now are reconsolidated as described at paragraph 4.1 above. The Committee intends to make a further consolidation in June, 2030.

6.4 These rules supplement and accommodate (i) in the amendment to rule 2.7, section 67B of the Courts Act 2003 (the power for Criminal Procedure Rules to provide for the exercise of judicial functions by court staff) and paragraph 16 of Schedule 10, and paragraph 23 of Schedule 16, to the Sentencing Act 2020 (about amending community orders and suspended sentence orders), (ii) in the amendments to Part 17 of the Rules, paragraph 4 of Schedule 3 to the Crime and Disorder Act 1998 (about depositions), and (iii) in the amendments to Part 42 of the Rules, sections 13B, 43 and 65 of the Proceeds of Crime Act 2002 (about appeal in prescribed circumstances).

[2] Published at https://www.legislation.gov.uk/uksi/2020/759/contents and 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. These observations reflect both the views and experiences of Committee 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 online.[3]

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.

[3] 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 None.

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").