

## EXPLANATORY MEMORANDUM TO

# The Crown Court (Amendment) Rules (Northern Ireland) 2018

2018 No. 24

### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office as the lead policy department for the European Investigation Order and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

### 2. Purpose of the instrument

- 2.1 The Criminal Justice (European Investigation Order) Regulations 2017 seek to simplify existing mutual legal assistance measures for requesting and sharing evidence for criminal investigations between participating states (listed in Schedule 2 of the Regulations). The key elements include standardising the format in which a request is made; applying the principle of mutual recognition to requests and introducing timeframes for responding to requests.
- 2.2 The purpose of the instrument is to amend the Crown Court Rules (Northern Ireland) 1979 (S.R. 1979 No. 90) (“the 1979 Rules”) to take account of the Criminal Justice (European Investigation Order) Regulations 2017 (S.I. 2017/730) which transpose Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p.1).

### 3. Matters of special interest to Parliament

#### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 The Rules were drafted in Northern Ireland by the Office of the Lord Chief Justice and were agreed and made by the Northern Ireland Crown Court Rules Committee. After making Crown Court rules the Crown Court Rules Committee must submit them to the relevant authority. In relation to Crown Court rules which deal (or would deal) with an excepted matter, the relevant authority means the Lord Chancellor. As the European investigation order is considered an excepted matter the Rules must be submitted to the Lord Chancellor.
- 3.2 Amendments to the Magistrates’ Courts Rules (Northern Ireland) 1984 have also been made to take into account the procedural changes of the Magistrates’ Courts. These Rules will be cited as the Magistrates’ Court (Amendment) Rules (Northern Ireland) 2018 and will come into force at the same time as the Crown Court (Amendment) Rules (Northern Ireland) 2018.
- 3.3 Regulation 61 of the Criminal Justice (European Investigation Order) Regulations 2017 provides that rules of court may make provision as to the practice and procedure to be followed in connection with proceedings under the Regulations. This provides the

vires to make court rules in Northern Ireland where functions are conferred on a judicial authority. This is the first time this provision has been used.

*Other matters of interest to the House of Commons*

- 3.4 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 Section 52 of the Judicature (Northern Ireland) Act 1978 (“the 1978 Act”) provides that Crown Court rules may be made in accordance with section 53A. Section 53 of the 1978 Act provides that there shall be a Crown Court Rules Committee which has the function of making Crown Court rules. Section 53A provides that after making Crown Court rules the Committee must submit them to the relevant authority, which means in relation to Crown Court rules which deal (or would deal) with an excepted matter, the Lord Chancellor; and otherwise, the Department of Justice in Northern Ireland. The relevant authority must allow or disallow Crown Court rules submitted to it.
- 4.2 The 1979 Rules make provision for the practice and procedures to be followed in the Crown Court. The Rules provided for in this instrument amend the 1979 Rules to include the procedures needed to supplement the Criminal Justice (European Investigation Order) Regulations 2017 that came into force on 31 July 2017.

**5. Extent and Territorial Application**

- 5.1 The extent of this instrument is Northern Ireland.
- 5.2 The territorial application of this instrument is Northern Ireland.

**6. European Convention on Human Rights**

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

**7. Policy background**

*What is being done and why*

- 7.1 These Rules supply procedures needed to supplement the Criminal Justice (European Investigation Order) Regulations 2017. The Rules provide for applications to be made to a court in Northern Ireland for a European investigation order for execution in another participating state. That is, they allow for applications to be made to a Crown Court in Northern Ireland seeking assistance from other participating states in obtaining evidence for criminal investigations. Such evidence can then be used in domestic (Northern Irish) criminal investigations and proceedings. Conversely, the Rules provide for the judicial consideration in Northern Ireland of a European investigation order made in another participating state which has been sent for execution in Northern Ireland. The Rules follow closely the provisions of the Criminal Justice (European Investigation Order) Regulations 2017 and set out the procedures to be followed.
- 7.2 The Rules insert new Part VIIIA into the 1979 Rules. Part VIIIA is inserted after Rule 62B and contains Rules 62C to 62M:
- Rule 62C defines terms used in Part VIIIA;

- Rule 62D sets out how an application for a European investigation order is to be made to the Court;
- Rule 62E sets out how an application for the variation or revocation of a European investigation order is to be made;
- Rule 62F explains that the Court may determine who may appear to take part in the proceedings and may exclude from the proceedings any person who is not directly concerned;
- Rule 62G requires the chief clerk to make a record of proceedings;
- Rule 62H requires the chief clerk to make arrangements for an interpreter to be present at proceedings involving a videoconference or other audiovisual transmission or telephone conference;
- Rule 62I requires the chief clerk to make a record of proceedings involving videoconference or other audiovisual transmission;
- Rule 62J requires the chief clerk to make a record of proceedings involving a telephone conference;
- Rule 62K requires the Secretary of State to serve on the chief clerk a draft warrant or order to give effect to the European investigation order;
- Rule 62L sets out the application process for varying or revoking a search warrant or other order issued to give effect to a European investigation order or to authorise the release of evidence seized or produced;
- Rule 62M sets out that the rules kept under 62G, 62I and 62J shall not be open to inspection by any person except – as authorised by the Secretary of State; or with leave of the Court.

## **8. Consultation outcome**

- 8.1 The Rules were proposed by the Department of Justice in consultation with the Home Office, which has responsibility for European investigation order policy. In proposing the Rules the Department consulted the Police Service of Northern Ireland, the Public Prosecution Service and the Northern Ireland Courts and Tribunals Service. The Rules were made by the Crown Court Rules Committee, which is chaired by the Lord Chief Justice and made up of representatives from the Judiciary and the legal profession.
- 8.2 Due to the representative nature of the Crown Court Rules Committee and the fact that the rules are procedural in nature (and are therefore of limited public interest) no formal consultation was considered necessary on this occasion.

## **9. Guidance**

- 9.1 Operational guidance is the responsibility of individual criminal justice system partners for example, the Police Service of Northern Ireland, the Public Prosecution Service and the Northern Ireland Courts and Tribunals Service.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.

10.2 These Rules have no impact of themselves on the public sector, because they reproduce rules and procedures that are already current, and they introduce new rules and procedures that supplement legislation already made.

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

### **11. Regulating small business**

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

### **12. Monitoring & review**

12.1 These rules will form part of the Crown Court Rules (Northern Ireland) 1979 which are kept under review, as necessary, by the Crown Court Rules Committee.

### **13. Contact**

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