

EXPLANATORY MEMORANDUM TO
THE CROWN COURT (AMENDMENT) RULES (NORTHERN IRELAND)

2021 No. 016

Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Ministry of Justice 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 These rules amend the Crown Court Rules (Northern Ireland) 1979 (“the principal rules”) to:
 - a. take account of the Crime (Overseas Production Orders) Act 2019 (“the 2019 Act”); and
 - b. insert rules relating to telephone hearings under the Crime (International Co-operation) Act 2003 (“the 2003 Act”)
 - 2.2 **Rules relating to the 2019 Act: rule 2(4) and the Schedule** insert into the principal rules a new Part VIII B which prescribes the procedural steps for making applications for orders under the 2019 Act and the manner in which such applications will be considered. The rules are similar to those in Part 47 of the England and Wales Criminal Procedure Rules 2020, which were made by rule 12 of the Criminal Procedure (Amendment No. 2) Rules 2019.
 - 2.3 **Rules relating to telephone hearings under the 2003 Act (rules 1(2) and 2(1)-(3)):** Provision relating to telephone hearings under the 2003 Act was contained in rule 62A of the principal rules with consequential provisions in rules 61 and 62B. The Criminal Procedure (Amendment) (EU Exit) Regulations 2019 erroneously omitted rule 62A and its consequential references from the principal Rules with effect from the end of the transition period of the United Kingdom’s exit from the European Union i.e. on ‘IP completion day’. To correct this error, rules 2(1)-(3) reinsert rule 62A and its consequentials into the principal rules.
- 3. Matters of special interest to Parliament**

Matters of special interest to the Joint Committee on Statutory Instruments

 - 3.1 These 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 with an excepted matter, the relevant authority means the Lord Chancellor. As the 2019 Act and the 2003 Act contain excepted matters, the Rules must be submitted to the Lord Chancellor.

- 3.2 Section 11 of the 2019 Act provides that rules of court may be made in order that the procedures for applications under the 2019 Act in the Crown Court are clearly prescribed.
- 3.3 Section 49 of the 2003 Act provides for the making of rules relating to telephone hearings.

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)

- 3.4 As this 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 extent of this instrument is Northern Ireland.
- 4.2 The territorial application of this instrument is Northern Ireland.

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 Sections 52(1) and 53A of the Judicature (Northern Ireland) Act 1978 provide that Crown Court rules may be made; and section 53 provides that there shall be a Crown Court Rules Committee which has the function of making Crown Court rules. Section 53A, in relevant parts, 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 with an excepted matter, the Lord Chancellor. The relevant authority must allow or disallow Crown Court rules submitted to it.
- 6.2 Section 11(1) of the 2019 Act and section 49 of the 2003 Act make provision for the practice and procedure to be followed in the Crown Court.

7. Policy background

Background to the rules relating to the 2019 Act (rule 2(4) and the Schedule)

- 7.1 The increasing use of software applications over public networks to facilitate criminal activities makes the data generated by their use a vital source of evidence which can be crucial for investigations and prosecutions of criminal offences, including terrorism. However, the companies holding or controlling this data are increasingly located outside the UK, most often in the US.
- 7.2 The 2019 Act will enable UK law enforcement agencies and criminal justice agencies to obtain, via a court approved order, electronic data directly from foreign service providers (those who create, process, communicate or store electronic data) to support UK criminal investigations and prosecutions. Such orders may only be used when permitted under an international co-operation agreement arrangement between the UK and the country where the subject of the order is located.
- 7.3 The 2019 Act:

- creates a new power to enable law enforcement and criminal justice agencies to seek electronic data via an overseas production order which has extra-territorial effect, meaning that these orders are granted by UK courts exerting jurisdiction over evidence and persons outside the UK. This jurisdiction may only be asserted where an international co-operation agreement to which the UK is a party permits this to happen and has been designated for the purposes of the 2019 Act; and
- enables this power to be used by an appropriate officer to apply for and obtain data stored electronically to support UK investigations and prosecutions of criminal offences, including terrorism.

7.4 The practical effect of the 2019 Act is to empower a UK Crown Court to require the production of, or access to, stored electronic data directly from a person or company located outside the UK (where the UK has an international co-operation agreement with that country), as it would if the information were located in or controlled by a company in the UK.

7.5 The 2019 Act received Royal Assent in February 2019. Its provisions have been commenced in respect of England and Wales and Scotland and partly in Northern Ireland. It is now intended that the provisions will be extended fully to Northern Ireland.

7.6 The intention in bringing forward the 2019 Act was for all of the provisions to apply across the whole of the UK. However, as the provisions relate to both transferred matters and reserved/excepted matters, and in line with convention, commencement of the provisions was not extended to Northern Ireland during the absence of a Northern Ireland Executive to permit the devolved administration an opportunity to consider the Act when an Executive could be formed. The Explanatory Notes to the Act made specific reference to this position.

7.7 Following the formation of the current Executive, the Department of Justice has agreed with the Home Office that the provisions of the 2019 Act shall be extended to Northern Ireland in advance of the entry into use of the 2019 Act.

Background to the rules relating to telephone hearings under the 2003 Act (rules 1(2) and 2(1)-(3))

7.8 As indicated at 2.3 above, provision within the principal rules relating to telephone hearings under the 2003 Act was erroneously omitted by The Criminal Procedure (Amendment) (EU Exit) Regulations 2019. The amendments reinstate those provisions by reinserting rule 62A and its consequential.

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

8.1 This instrument does not relate to withdrawal from the European Union. However, as indicated at 2.3 and 8.1 above, it corrects an error contained within The Criminal Procedure (Amendment) (EU Exit) Regulations 2019.

9. Consolidation

9.1 None.

10. Consultation outcome

- 10.1 The rules were proposed by the Department of Justice in consultation with the Home Office, which has policy responsibility for the 2019 and 2003 Acts. In proposing the rules, the Department consulted the Police Service of Northern Ireland 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 legal profession.
- 10.2 Due to the representative nature of the Crown Court Rules Committee, and the fact that the Rules are procedural in nature (and therefore of limited public interest), no formal consultation was considered necessary on this occasion.

11. Guidance

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

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 reinsert rules and procedures which were already current and introduce new rules and procedures to give effect to 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 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.

15. Contact

- 15.1 Veronique Read at the Home Office, email: Veronique.read3@homeoffice.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Matthew Gould, Deputy Director for Criminal Courts and Criminal Law Policy at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Alex Chalk MP, Parliamentary Under Secretary of State at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.