

**EXPLANATORY MEMORANDUM TO**  
**THE CRIMINAL PROCEDURE (AMENDMENT NO. 2) (CORONAVIRUS) RULES**  
**2020**

**2020 No. 417 (L.12)**

**1. 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 make temporary amendments to the Criminal Procedure Rules 2015, S.I. 2015 No. 1490, to remove inconsistencies with the modifications to legislation made by the Coronavirus Act 2020.

**3. Matters of special interest to Parliament**

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

- 3.1 These Rules come into force shortly after the day on which they are laid before Parliament, in breach of the convention that a statutory instrument should not be laid less than 21 days before it comes into force. Although the modifications made by the 2020 Act have effect anyway, despite inconsistent procedure rules, the complexity of those modifications is such that the inconsistency is causing confusion and uncertainty which appropriately should be dispelled as soon as possible. The Rule Committee has prepared, discussed, settled and submitted to the Lord Chancellor detailed temporary rule amendments as soon as it could do so after the enactment of the 2020 Act and in the circumstances of the current public health emergency.

*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)*

- 3.2 As the 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 territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

**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 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 rule amendments all are consequential on the modifications made by the Coronavirus Act 2020 to sections 36, 37 and 38 of the Mental Health Act 1983, Part IIIA of the Crime and Disorder Act 1998, Part 8 of the Criminal Justice Act 2003, and sections 206A and 206C of the Extradition Act 2003; and on the addition of section 85A to the Courts Act 2003 by the 2020 Act.
- 6.4 These Rules rely, for the first time in the making of Criminal Procedure Rules, on section 14A of the Interpretation Act 1978 which provides that '... subordinate legislation may include ... provision for the legislation to cease to have effect at the end of a specified day or a specified period'.

## **7. Policy background**

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

#### *Live links*

- 7.1 The modified provisions of the Crime and Disorder Act 1998 and the Criminal Justice Act 2003 allow for the use of live video and live audio links by people taking part in preliminary hearings, sentencing hearings and enforcement hearings, as defined in the 1998 Act, and by people taking part in 'eligible criminal proceedings' as defined in the 2003 Act (which proceedings include trials and appeals). As modified, those Acts impose a number of detailed requirements and limitations which are not the same as those imposed by the unmodified provisions. The temporary amendments made by these Rules remove the procedural requirements that supplement the unmodified Acts and substitute ones compatible with the modified versions.
- 7.2 These Rules also make temporary amendments (i) to supplement the modifications to the Extradition Act 2003 which allow for the use of live video links in extradition

hearings and in hearings in preparation for extradition hearings, and (ii) to supplement the modification to the Courts Act 2003 which allows courts in specified circumstances to make broadcasting and recording directions where proceedings take place wholly by live link.

***Orders under the Mental Health Act 1983***

- 7.3 Normally, a criminal court can make certain orders for a defendant’s detention and treatment under the Mental Health Act 1983 only after receiving the evidence of at least two registered medical practitioners, at least one of whom is approved as having special experience in the diagnosis or treatment of mental disorder. The Coronavirus Act 2020 modifies provisions of the 1983 Act so that where that requirement is impractical, or would involve undesirable delay, then the court may act on the evidence of only one such practitioner. These Rules make temporary amendments to notes to the relevant Criminal Procedure Rules so that those notes describe the effect of the modified provisions.

**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.

**9. Consolidation**

- 9.1 When it made the Criminal Procedure Rules 2005, the Rule 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 possibility of continuing to consolidate the Rules at regular intervals, the Committee decided to do so and subsequently produced the Criminal Procedure Rules 2011, the Criminal Procedure Rules 2012, the Criminal Procedure Rules 2013, the Criminal Procedure Rules 2014 and the Criminal Procedure Rules 2015, each consolidating the previous year’s rules with subsequent amendments. The Committee now intends to effect a further consolidation later this year, thus reverting to its initial plan to consolidate at 5 yearly intervals. Meanwhile, an informal consolidated text remains available to the public free of charge on the Ministry of Justice website at: <http://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu-2015>.

**10. Consultation outcome**

- 10.1 The Rule Committee fulfilled its statutory obligation to consult as the Committee considers appropriate by, in each instance, inviting and reviewing suggestions and observations solicited by its members from among the groups from which each is drawn.

**11. Guidance**

- 11.1 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.

- 11.2 News of changes to the Rules and of the effect of those changes is published on the Ministry of Justice website, at: <http://www.justice.gov.uk/courts/procedure-rules/criminal>.

## **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 make rule amendments that supplement 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 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.
- 14.2 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.
- 14.3 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.

## **15. Contact**

- 15.1 Jonathan Solly at the Ministry of Justice telephone: 07580 701398 or email: [jonathan.solly@justice.gov.uk](mailto:jonathan.solly@justice.gov.uk) can answer 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 The Rt Hon. Robert Buckland QC MP, the Lord Chancellor, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.