

**EXPLANATORY MEMORANDUM TO**  
**THE CRIMINAL PROCEDURE (AMENDMENT) RULES 2024**

**2024 No. 62 (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.

**2. Purpose of the instrument**

- 2.1 These Rules amend the Criminal Procedure Rules 2020, S.I. 2020 No. 759, in ten miscellaneous respects.
- 2.2 They include explicit new provision for independent domestic violence advisors and independent sexual violence advisors. They clarify the application of existing provision for live links. They provide for the correction of court records. They amend the rule about applications to vary the conditions of pre-charge bail. They revise and clarify the rules about prosecution and defence disclosure obligations and include explicit new provision for prosecution disclosure management documents. They provide for the editing of video recordings of pre-trial cross-examination. They revoke rules that supplement unimplemented statutory provisions about defendant's evidence directions. They implement Law Commission recommendations about confiscation and restraint order proceedings. They align the expression of time limits in confiscation and restraint proceedings with the expression of time limits in all other Criminal Procedure Rules. To supplement the provisions of the Economic Crime and Corporate Transparency Act 2023 and the National Security Act 2023 they make extensive amendments to rules about property confiscation and seizure, and to rules about search warrants, production orders and other comparable orders.

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

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

- 3.1 None.

**4. Extent and Territorial Application**

- 4.1 The extent of this instrument (that is, the jurisdiction which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 rules supplement and accommodate (i) provisions of the Criminal Justice Act 2003 and of the Extradition Act 2003 which concern live links in criminal proceedings, (ii) provisions of the Police and Criminal Evidence Act 1984 which concern pre-charge bail, (iii) provisions of the Criminal Procedure and Investigations Act 1996 which impose prosecution and defence disclosure obligations, (iv) provisions of the Youth Justice and Criminal Evidence Act 1999 which concern special measures for witnesses and unimplemented measures for defendant's evidence directions, (v) provisions of the Proceeds of Crime Act 2002 which concern confiscation and restraint order proceedings, (vi) provisions of the Economic Crime and Corporate Transparency Act 2023 which concern seizure and confiscation of cryptoassets and powers of investigation, and (vii) provisions of the National Security Act 2023 which concern powers to authorise searches, powers to require the production of material and other investigative powers.

## **7. Policy background**

*What is being done and why?*

*Witness companions*

- 7.1 Rule 3.8 of the Criminal Procedure Rules, about case preparation and progression, already refers to the court's power to allow someone to keep a witness company in the court room and to give them emotional support where that is in the interests of justice. However, unlike the practice directions that supplement Family Procedure Rules<sup>1</sup>, the Criminal Procedure Rules do not yet refer explicitly to those professional supporters known as independent domestic violence advisors and independent sexual violence advisors ("IDVAs" and "ISVAs") whose services gradually have become more widely available during recent years.

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<sup>1</sup> See [https://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/practice-direction-27c-attendance-of-idvas-and-isvas](https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/practice-direction-27c-attendance-of-idvas-and-isvas).

- 7.2 It was suggested to the Rule Committee that it would promote consistency in dealing with applications for a witness to be accompanied if the existing rule were to be revised and elaborated to make explicit reference to IDVAs and ISVAs. The Committee agreed. Rule 4 of these Amendment Rules amends rule 3.8 of the Criminal Procedure Rules accordingly.

#### *Live links*

- 7.3 A “live link” is an arrangement by which someone can take part in a court hearing by telephone or video link. The Police, Crime, Sentencing and Courts Act 2022 amended the Criminal Justice Act 2003 to allow participants in criminal cases to attend court by live link in more circumstances than before, and made similar amendments to the Extradition Act 2003. The 2022 Act changed the law in England and Wales but did not affect the requirements of other countries’ laws.
- 7.4 In August, 2022, the then existing Criminal Procedure Rules were amended to accommodate the live link provisions that now apply to ordinary criminal proceedings but extradition proceedings were not then included in those rule amendments. Rules 3, 4 and 13 of these Amendment Rules correct that omission by amendments to rules 2.2, 3.1, 3.35 and 50.3 of the Criminal Procedure Rules.
- 7.5 Among other changes the law in England and Wales now allows a person to attend court by live link from abroad if the court here agrees. In many cases permission must be obtained, too, from the authorities in the country from which that person will take part, so as to comply with that country’s laws. It was reported to the Rule Committee that that was not widely understood. For that reason the Committee has made other rule amendments to make it clear that the applicant for a live link direction here must show that they have obtained, or will obtain, any permission required from the authorities for the country from which the live link will be used. Rule 4 of these Amendment Rules amends rule 3.35 of the Criminal Procedure Rules accordingly.

#### *Correction of court records*

- 7.6 The statutory requirements for the sending of a defendant for trial from a magistrates’ court to the Crown Court, and for the committal of a defendant by a magistrates’ court after conviction for sentence in the Crown Court, are complex and interconnected. Provisions of the Magistrates’ Courts Act 1980, the Crime and Disorder Act 1998 and the Sentencing Act 2020 all are involved, and the exact way in which those provisions are used in the magistrates’ court may affect the powers of the Crown Court. The statutory procedures are incorporated in rules in Part 9 of the Criminal Procedure Rules, about allocation and sending for trial, and in Part 28 of the Rules, about committal for sentence and sentencing after committal.
- 7.7 In several decisions of the High Court and Court of Appeal, most recently in the judgment of the Court of Appeal in *R v Butt, R v Jenkins*,<sup>2</sup> those courts have discussed the incidence and effects of mistakes made in the recording of decisions reached in magistrates’ courts, the interpretation of those decisions in the Crown Court, and the application of the statutes that apply. Most of the questions considered now have been resolved by those decisions but it emerged that no present procedure rule applies to the exercise of the power to correct a court record which court staff, or a party to the decision, or the court itself, or another court, can see may be wrong. The Rule Committee agreed to make rules to govern that procedure. Rules 3, 5 and 10 of these

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<sup>2</sup> [\[2023\] EWCA Crim 1131](#).

Amendment Rules amend rules 2.8, 5.4 and 44.3 of the Criminal Procedure Rules to deal with the powers to correct inaccurate records and, if necessary, to substitute a valid decision for one which a court, as it later appears, had no power to make.

*Applications to vary conditions of pre-charge bail*

- 7.8 A person who has been arrested for an offence but not yet charged may be released on police bail subject to a requirement to return to a police station and subject to other conditions in the meantime: conditions about where that person must live, for example, or to prohibit contact with a complainant. Sections 47ZA<sup>3</sup> and 47ZB<sup>4</sup> of the Police and Criminal Evidence Act 1984 limit the period during which that person may be subject to such bail. That period may be extended in specified circumstances on the authority of a senior police or other officer and eventually, if the investigator thinks it necessary to apply for a further extension, on the authority of a magistrates' court. A magistrates' court can also vary bail conditions imposed on the person by the police.
- 7.9 Rule 14.6 of the Criminal Procedure Rules presently requires that an application by a person on pre-charge bail to vary a bail condition must be made to the magistrates' court for the police station to which that person must return. In most cases that will be the most appropriate court. In some circumstances, however, an extension of pre-charge bail may have been authorised by a different magistrates' court: in which case it will be more appropriate, fair and efficient for the application to vary to be made to the court which authorised the extension and has already considered the case. When this was pointed out the Rule Committee agreed to amend the present rule accordingly. Rule 6 of these Amendment Rules does so.

*Disclosure*

- 7.10 The Criminal Procedure and Investigations Act 1996 requires the prosecutor to disclose to the defendant any material in the prosecutor's possession which is not due to be used as evidence against the defendant and which reasonably might be considered capable of undermining the case for the prosecutor or assisting the case for the defendant. The Act requires the defendant to give prescribed details of the proposed defence and of the witnesses for the defendant. The provisions of the Act are supplemented by the rules in Part 15 of the Criminal Procedure Rules.
- 7.11 Encouraged by the Attorney General's *Guidelines on Disclosure*<sup>5</sup> and by case management directions given by courts, during the last few years a prosecution practice has been established by which the prosecutor may describe in a "disclosure management document" the prosecution approach to disclosure and the reasons for that approach. This is especially valuable in a case in which there are many documents to disclose (a complex fraud case, for example) or in a case in which the prosecutor is aware of potentially relevant material held by others. It allows for comment by the defendant on how the prosecutor intends to deal with disclosure.
- 7.12 It was suggested that the Criminal Procedure Rules should refer to that practice explicitly. The Rule Committee agreed, and took the opportunity to revise and clarify the rules in Part 15 about prosecution disclosure and about the statutory obligations on the defence. Rule 7 of these Amendment Rules amends Part 15 of the Criminal Procedure Rules accordingly. An associated amendment made by rule 4 of these

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<sup>3</sup> <https://www.legislation.gov.uk/ukpga/1984/60/section/47ZA>.

<sup>4</sup> <https://www.legislation.gov.uk/ukpga/1984/60/section/47ZB>.

<sup>5</sup> <https://www.gov.uk/government/publications/attorney-generals-guidelines-on-disclosure>.

Amendment Rules to rule 3.19 of the Criminal Procedure Rules, the rule about when prosecution evidence must be served on the defendant, allows Part 15 better to describe the time at which the prosecution obligation to disclose material arises: which depends on the Criminal Procedure and Investigations Act 1996 and on other legislation.

#### *Editing a video recording of pre-trial cross-examination*

- 7.13 Section 28 of the Youth Justice and Criminal Evidence Act 1999<sup>6</sup> provides for the pre-trial video recording of cross-examination of a vulnerable witness in respect of whom that has been ordered by the court. Rules in Part 18 of the Criminal Procedure Rules, about measures to help a witness or defendant to give evidence or otherwise participate, supplement the provisions of the Act.
- 7.14 Sometimes it may be necessary with the court's permission to edit the recording to be used as evidence, for example where a change of circumstances has made part of that recording irrelevant. The Criminal Practice Directions made by the Lady Chief Justice already refer to the possibility of editing<sup>7</sup> but the Criminal Procedure Rules do not. It was reported to the Rule Committee that this sometimes led to uncertainty about the court's powers. It was suggested that the Rules, too, should acknowledge the power to allow editing. The Committee agreed, and rule 8 of these Amendment Rules amends rule 18.8 of the Criminal Procedure Rules accordingly.

#### *Defendant's evidence direction*

- 7.15 Sections 33BA and 33BB of the Youth Justice and Criminal Evidence Act 1999 provide for an intermediary to help a defendant to give evidence. They were added to that Act by the Coroners and Justice Act 2009<sup>8</sup>. They are supplemented by rules 18.14 to 18.17 of the Criminal Procedure Rules, which the Rule Committee made soon after the 2009 Act was passed. However, the 2009 Act amendments have not been brought into force.
- 7.16 In April, 2021, the Committee added new general rules about intermediaries to the Criminal Procedure Rules: rules 18.23 to 18.28. The Explanatory Memorandum published with the Criminal Procedure (Amendment) Rules 2021<sup>9</sup> described the Committee's decision to codify procedural requirements identified in case law by the courts and contained in advice and guidance by then published. For most purposes those new general rules supersede the unimplemented statutory provisions. Recently it was pointed out to the Committee that keeping rules about statutory defendant's evidence directions had begun to cause confusion about which rules should apply on an application to the court for an intermediary. It was suggested that the rules about the unimplemented statutory directions should be removed. The Committee agreed. For that reason, rule 8 of these Amendment Rules revokes the rules in Part 18 of the Criminal Procedure Rules that refer to those statutory directions.

#### *Confiscation and restraint proceedings*

- 7.17 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

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<sup>6</sup> <https://www.legislation.gov.uk/ukpga/1999/23/section/28>.

<sup>7</sup> <https://www.gov.uk/guidance/rules-and-practice-directions-2020#criminal-practice-directions-2023-contents>, at paragraphs 6.3.39 and 6.3.41.

<sup>8</sup> <https://www.legislation.gov.uk/ukpga/2009/25/section/104>.

<sup>9</sup> <https://www.legislation.gov.uk/ukxi/2021/40/memorandum/contents>.

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. In November, 2021, the Law Commission published a report that recommended changes to the law and procedure about confiscation and restraint orders.<sup>10</sup> Some of the Commission’s recommendations were addressed to the Rule Committee.<sup>11</sup>

- 7.18 In response to those recommendations the Committee has rewritten completely rule 33.13 of the Criminal Procedure Rules, which is the main rule about the conduct of confiscation proceedings; amended rule 33.53 about applications by defendants before trial to release for living expenses any property to which a restraint order applies; and rewritten completely the rules about orders for the payment of legal costs by one party to the other in restraint proceedings so as to correspond more closely with comparable statutory provisions that govern costs orders in unexplained wealth order proceedings.<sup>12</sup> Rule 9 of these Amendment Rules amends rules in Part 33 of the Criminal Procedure Rules accordingly, and rule 11 of these Amendment Rules amends the rules about costs in Part 45 of the Criminal Procedure Rules.

***References to time limits in Part 33***

- 7.19 While amending the rules in Part 33 of the Criminal Procedure Rules, as described above, the Rule Committee took the opportunity to make references to time limits in that Part consistent with references in other Criminal Procedure Rules. References to times expressed in days are replaced with references to “business days” as defined in rule 2.2 of the Criminal Procedure Rules, so that the time available for making an application, or giving a notice, will be the same whether or not a weekend or public holiday falls within the time limit. Rule 9 of these Amendment Rules includes the relevant amendments to the Part 33 rules.

***Rules to accommodate new statutory provisions***

- 7.20 The Economic Crime and Corporate Transparency Act 2023 amends the Terrorism Act 2000 and the Proceeds of Crime Act 2002 (i) to allow the court to exercise various powers of seizure and confiscation of property in relation to cryptoassets, and (ii) to allow the court to require the giving of information in prescribed circumstances not only in relation to a specific investigation but also for the purposes of gathering information about criminal activity more generally.
- 7.21 The National Security Act 2023 creates new powers for courts (i) to authorise search for evidence of crime, (ii) to order the production of material that may be evidence of crime, and (iii) to authorise the obtaining of other information in connection with the investigation of crime. In many respects the new powers correspond with existing powers under the Terrorism Act 2000 (which the new Act also amends).
- 7.22 By rules 9 and 12 of these Amendment Rules the Rule Committee has made extensive amendments to rules in, respectively, Part 33 of the Criminal Procedure Rules, about confiscation of the proceeds of crime, and in Part 47 of the Rules, about investigation orders and warrants, to supplement these new statutory provisions and to govern the making of applications to the court for their exercise. While doing so the Rule

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<sup>10</sup> <https://www.lawcom.gov.uk/project/confiscation-under-part-2-of-the-proceeds-of-crime-act-2002/>.

<sup>11</sup> Numbers 10, 11, 12, 13, 14, 15, 20, 33, 45, 48, 55, 90 and 92.

<sup>12</sup> [Section 362U, Proceeds of Crime Act 2002](#).

Committee took the opportunity to clarify the rule in Part 47 about the requirements for the content of a search warrant.

## **8. European Union Withdrawal and Future Relationship**

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 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.

9.2 In accordance with that plan the Rules were consolidated again in 2020. The Committee now intends to make a further consolidation in 2025. Meanwhile, the effects of amendments to the Criminal Procedure Rules 2020 will be published at <https://www.legislation.gov.uk/ukxi/2020/759/contents> and an informal consolidated text will continue to be available to the public, with some additional commentary and explanation, at <https://www.gov.uk/guidance/rules-and-practice-directions-2020>.

## **10. Consultation outcome**

10.1 The Rule Committee fulfilled its statutory obligation to consult as the Committee considers appropriate by 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 at <https://www.gov.uk/guidance/announcements-from-the-criminal-procedure-rule-committee>.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 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.

12.3 A full Impact Assessment has not been prepared for this instrument for those reasons.

## **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: 07811 823574 or email: [jonathan.solly@justice.gov.uk](mailto:jonathan.solly@justice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Ed Lidington, Director of Courts, Criminal and Family Justice, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon. Alex Chalk KC MP, Lord Chancellor and Secretary of State for Justice, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.