

## EXPLANATORY MEMORANDUM TO

### THE CROWN COURT (AMENDMENT) RULES (NORTHERN IRELAND) 2023

2023 No. 68

#### 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.
- 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 (S.R. 1979 No. 90) (“the principal rules”) to take account of amendments made to the Crime (Overseas Production Orders) Act 2019 (c. 5) (“the 2019 Act”) by the Police, Crime, Sentencing and Courts Act 2022 (c. 32) (“the 2022 Act”).
- 2.2 This Statutory Rule makes the following amendments:
  - change to Rule 63O(4) of the NI Crown Court Rules to allow the Secretary of State in Northern Ireland to delegate the service requirement to an appropriate body by regulations (this mirrors the process of delegation by the Secretary of State in England and Wales and the Lord Advocate in Scotland). This allows for operational agility and will provide a degree of future proofing for the overseas production orders mechanism, if required (rule 2(1));
  - correction of an error in 2021 Amendment Rules rule 62P(3) in relation to the service of the notice of application and supporting affidavit for an overseas production order;
  - clarity provided about the responsibility of service with regard to a varied overseas production order. Section 7 of the 2019 Act permits a judge to vary an overseas production order where a defined person makes an application (rule 2(2)(e)); and
  - provision that a court may determine an application for an overseas production order in the absence of any respondent or other person affected if it would prejudice the investigation to adjourn or postpone the application so as to allow the absentee to attend (rule 2(3)).

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

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

- 3.1 The Ministry of Justice has taken action to correct an elucidation issue identified by the Joint Committee on Statutory Instruments (Forty-Sixth Report of Session 2019-21) in respect of rule 62(P)(3) of the Crown Court (Amendment) Rules (Northern Ireland) 2021 (S.R. 2021/16). The Ministry of Justice has consulted the SI Registrar as required by paragraph 4.7.6 of the Statutory Instrument Practice Guidance (5th

edition) and confirms that the Amendment Rules will be issued under the free issue procedure.

- 3.2 These rules were drafted in Northern Ireland by the Lady Chief Justice’s Office and were agreed and made by the Northern Ireland Crown Court Rules Committee. Pursuant to section 53A of the Judicature (Northern Ireland) Act 1978 (1978 c. 23), 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 a matter which is excepted under Schedule 2 of the Northern Ireland Act 1988 (1998 c. 47), the relevant authority is the Lord Chancellor. As the 2019 Act contains excepted matters, the rules must be submitted to the Lord Chancellor.
- 3.3 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.

#### **4. Extent and Territorial Application**

- 4.1 The extent of this instrument (that is, the jurisdiction of whose law the instrument forms part) is Northern Ireland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 makes provision for the practice and procedure to be followed in the Crown Court.

#### **7. Policy background**

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

- 7.1 The Crime (Overseas Production Orders) Act 2019 (“2019 Act”) allows a Crown Court Judge in Northern Ireland, at the request of an investigator in this jurisdiction, to make an overseas production order against a person (in the main a service provider) in another jurisdiction to require them to produce or give access to stored electronic data for the purposes of evidence, subject to conditions set out in Section 4 of the 2019 Act. To enable operational use of overseas production orders a relevant treaty must be in place between the UK and the country in which the service, from whom data is sought, is located. The Police, Crime, Sentencing and Courts Act 2022 amends

the provisions in the Act. The purpose of this Statutory Rule is to accommodate and supplement those statutory amendments as set out in section 2.2.

- 7.2 The 2019 Act received Royal Assent on 12 February 2019, commencement was extended to Northern Ireland on 22 February 2021. The principal rules were amended in 2021 (S.R. 2021 No. 16) (“the 2021 Amendment Rules”) to take account of the requirements of the 2019 Act. In England and Wales, corresponding amendments to the Criminal Procedure Rules 2015 (SI 2015/1490) had been made by the Criminal Procedure (Amendment No. 2) Rules 2019, SI 2019/1119: see paragraph 7.11 of the Explanatory Memorandum published with those 2019 rules.
- 7.3 During implementation planning, a number of practical issues were identified by the Home Office that required amendments to be made to the 2019 Act. These amendments were made by the 2022 Act which received Royal Assent on 28 April 2022. To take account of the amended legislation, amendments were also required to the rules governing the procedure for applying for an order from the Crown Court contained by then within the Criminal Procedure Rules 2020 for England and Wales (SI 2020/759), which amendments were made by the Criminal Procedure (Amendment No. 2) Rules 2022, SI 2022/815: see paragraph 7.25 of the Explanatory Memorandum to those rules. Similar amendments are also required to the Northern Ireland Crown Court Rules, the details of which are outlined at paragraph 2.2.
- 7.4 In addition to the changes identified during implementation, the rules correct a drafting error in Rule 62P(3) of the 2021 Amendment Rules. This error was identified by the Joint Committee for Statutory Instruments, in their Forty-Sixth Report of Session 2019-21 following S.R. 2021 No.16.

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

- 8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

- 9.1 None.

## **10. Consultation outcome**

- 10.1 The rules were proposed by the Department of Justice in Northern Ireland in consultation with the Home Office, which has policy responsibility for the 2019 Act. In proposing the amendments to the principal 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 Lady 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 principal 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 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, public or voluntary sectors is foreseen.

## **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](mailto:Veronique.read3@homeoffice.gov.uk), can be contacted with any queries regarding the instrument.
- 15.2 Ben Archibald, Deputy Director for Criminal Court Process and Procedure at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Mike Freer MP, Parliamentary Under Secretary of State at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.