

**EXPLANATORY MEMORANDUM TO
THE CRIMINAL PROCEDURE RULES 2015**

2015 No. 1490 (L. 18)

1. This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 In accordance with the programme of the Criminal Procedure Rule Committee, these Rules replace with consolidated rules the Criminal Procedure Rules 2014, S.I. 2014 No. 1610, the Criminal Procedure (Amendment) Rules 2015, S.I. 2015 No. 13 and the Criminal Procedure (Amendment No. 2) Rules 2015, S.I. 2015 No. 646. They rearrange the Criminal Procedure Rules to meet requirements of the Joint Committee on Statutory Instruments (see paragraph 3.1 beneath) and to restore the arrangement of the first Criminal Procedure Rules. They include the new and amended rules described beneath; make consequential rule amendments; and include up to date references to relevant legislation. Otherwise, they reproduce the rules that they consolidate and supersede.

2.2 The Criminal Procedure Rules 2015 include new rules about the duty of the parties to criminal proceedings (Part 3); about pre-trial hearings in the Crown Court (Part 3); about the imposition of bail conditions that are to be supervised in another European Union member State, and about the supervision of bail conditions imposed in another such State (Part 14); about time limits for objecting to the introduction in evidence of a written witness statement (Part 16) and about the circumstances in which such a statement need be read aloud (Parts 24 and 25); about the procedure to be followed where there are statutory restrictions on the cross-examination of a witness by an unrepresented defendant (Part 23); about directions to the jury in a Crown Court trial (Part 25); about retrial after acquittal (Part 27); about the procedure to follow where a defendant faces obligatory disqualification from driving, or the obligatory endorsement of his or her driving record (Part 29); about the procedure for making and enforcing European protection orders (Part 31); about representatives, and changes of representative (Part 46); and about forfeiture, restraint and confiscation orders made in response to requests by authorities in other European Union member States (Part 49).

2.3 The Rules amend the rules about the overriding objective (Part 1); about the definitions of terms and the citation of the Criminal Procedure Rules (Part 2); about the service of documents (Part 4); about the making of applications and the giving of notices by electronic means (Part 5); about initial details of the prosecution case (Part 8); about directions for live links for witnesses (Part 18); about expert evidence (Part 19); about information for jurors (Part 26); about applications to remit fines and charges (Part 30); about behaviour orders (Part 31); about confiscation of the proceeds of crime and related proceedings (Part 33); and about appeal in such proceedings (Part 42).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 In its Thirty-first Report of Session 2010-12, published on 8th November, 2011, the Joint Committee on Statutory Instruments reported (a) as requiring elucidation, the empty Parts of the Criminal Procedure Rules 2011, S.I 2011 No. 1709, and (b) as failing to comply with proper drafting practice, the use in the Criminal Procedure Rules 2011 of the word ‘will’ to express expectation where the JCSI had concluded that clarity required an expression of obligation instead. In its Ninth Report of Session 2012-13, published on 8th November, 2012, the JCSI reported as requiring elucidation the continued use in the Criminal Procedure Rules 2012 of the word ‘will’ in the same instances as reported before. The Report referred to consultation on the use of that expression between the Criminal Procedure Rule Committee, the Civil Procedure Rule Committee and the Family Procedure Rule Committee. In its First Special Report of Session 2013-14, entitled ‘Excluding the inert from secondary legislation’, published on 21st May, 2013, the JCSI referred again to that consultation.

3.2 Until now, retaining empty Parts of the Rules (a feature established by the Criminal Procedure Rules 2005 and repeated in the Criminal Procedure Rules 2010, 2011, 2012, 2013 and 2014) in the Rule Committee’s view avoided confusion pending the planned final consolidation of the Criminal Procedure Rules this year, with numeration in order and no empty Parts retained. Consultation conducted by the Rule Committee in previous years among those who use and who publish the Rules (see paragraph 8.1 beneath) indicated that the repeated renumbering of the rules in the meantime would have resulted in a potential for confusion, and a certainty of disproportionate expense, for such users and publishers. This year, however, the empty Parts have been discarded, as the Rule Committee announced.

3.3 In the Criminal Procedure Rules 2013 the word ‘will’ was replaced by the word ‘must’ in those instances reported by the JCSI and in all comparable instances, with the exception of four occurrences in what was Part 73 of those Rules (Appeal to the Court of Appeal under the Proceeds of Crime Act 2002: restraint or receivership orders). The Rule Committee announced that as part of its programme of rule reform and rearrangement of the Criminal Procedure Rules it would replace that Part and amend those rules this year. It has done so.

4. Legislative Context

4.1 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 Court of Appeal, Criminal Division. 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.

4.2 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 government initiatives, and for developments in legislation and in case law. Unless rule changes are needed urgently, the rules now are consolidated annually, in June, and amended if necessary in December, with these revisions coming into force ordinarily on the first Monday in October and on the first Monday in April, respectively, of each year.

4.3 The Criminal Procedure Rules 2015 exercise new powers conferred on the Rule Committee by section 9(2A) of the Criminal Justice Act 1967, inserted by section 80 of the Deregulation Act 2015, which allows the Criminal Procedure Rules to prescribe the time within which objections must be made to the introduction of written witness statements; and by section 12(7ZA) of the Magistrates' Courts Act 1980, inserted by section 81 of the Deregulation Act 2015, which allows the Criminal Procedure Rules to provide for the circumstances in which written material relied upon in a defendant's absence must be read aloud in court.

4.4 The Rules accommodate, by new rules, by rule amendments, or by cross-reference, as appropriate: sections 45 and 45A of the Youth Justice and Criminal Evidence Act 1999, which provide for reporting restrictions in relation to young and vulnerable witnesses; Part 7 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014, S.I. 2014 No. 3141, which provides for the recognition and supervision between European Union member States of bail conditions pending trial; the Criminal Justice (European Protection Order) Regulations 2014, S.I. 2014 No. 3300, which provides for the recognition and enforcement between European Union member States of orders protecting one person from harassment by another; the Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2015, S.I. 2015 No. 861, which provides for the timing of prosecution disclosure of unused material in magistrates' courts; sections 69 to 74 of the Criminal Justice and Courts Act 2015, which prohibit conduct by jurors inconsistent with a fair trial; section 21E of the Prosecution of Offences Act 1985, inserted by section 54 of the Criminal Justice and Courts Act 2015, which provides for applications to remit the criminal courts charge; sections 8, 9 and 10 of the Modern Slavery Act 2015, which provide for slavery and trafficking reparation orders, and section 14 of that Act, which provides for slavery and trafficking prevention orders; sections 4A and 5A of, and Schedules 1 and 2 to, the Female Genital Mutilation Act 2003, which provide for female genital mutilation protection orders and associated reporting restrictions; section 103A of the Sexual Offences Act 2003, and other amendments to that Act made by Schedule 5 to the Ant-social Behaviour, Crime and Policing Act 2014, which replace sexual offences prevention orders with sexual harm prevention orders; sections 21 and 22E of the Serious Crime Act 2007, which amend courts' powers to make and vary serious crime prevention orders; new and amended provisions of the Proceeds of Crime Act 2002 which are added or amended by the Policing and Crime Act 2009 and by the Serious Crime Act 2015 to provide for new powers of seizure of property, for the extension of Crown Court judges' powers to make orders requiring the production of documents to investigators, and for the extension of the Crown Court's powers in confiscation proceedings; and the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 2005, S.I. 2005 No. 3180, and regulations 10 and 15 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014, which allow the Crown Court to give effect to forfeiture, confiscation and restraint orders made in other European Union member States.

5. Territorial extent and Application

5.1 This instrument applies to England and Wales.

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*

Consolidation

7.1 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 possibility of continuing to consolidate the Rules, at annual intervals, the Committee decided to do so: first in the Criminal Procedure Rules 2011, then in the 2012, 2013 and 2014 Rules, and now in these Rules.

Rearrangement of the Criminal Procedure Rules

7.2 As a result of successive amendments since the first Rules were made in 2005, the Criminal Procedure Rules have become less coherently arranged than at the outset and some Parts of the first Rules have been emptied without renumbering them. The JCSI Report cited at paragraph 3.1 above criticised that feature, and the Rule Committee affirmed its intention to re-arrange the Rules, so as to remove empty Parts and to restore the Rules' original coherence, in the 2015 Rules. In accordance with that undertaking, the Rule Committee now has done so. In the appendix to this Explanatory Memorandum, and in the Explanatory Note appended to the Criminal Procedure Rules 2015, there are tables of destinations and derivations showing how the content of the Criminal Procedure Rules 2015 corresponds with the content of the Criminal Procedure Rules 2014.

Citation of the Criminal Procedure Rules in the criminal courts

7.3 Rule 2.3 (References to legislation, including these Rules) now provides for a standard way of referring to the Criminal Procedure Rules ('CrimPR') in the criminal courts.

7.4 Until now there has been no established convention on abbreviated references to the Criminal Procedure Rules, with the result that they often are cited as the 'CPR', as are the Civil Procedure Rules. From the context, it is usually clear which rules are meant, but to avoid the risk of confusion, and to promote consistency of practice, the Rule Committee decided to include a rule dealing with the subject. It is not possible for the Criminal Procedure Rules to alter the Parliamentary convention by which a statutory instrument must provide for its citation by reference to its title, which must include the year in which it is made, and the Rules do not purport to do so. However, the Rule Committee concluded that it would be advantageous for rules governing the practice and procedure of the criminal courts to provide for their citation in those courts in a convenient and consistent manner.

Case management: communication between the parties

7.5 Rule 3.3 (The duty of the parties) now imposes on the parties an explicit duty to communicate with each other for the purpose of establishing whether the defendant is likely to plead guilty or not guilty; what is agreed and what is likely to be disputed; what information, or other material, is required by one party of another, and why; and what is to be done, by whom, and when.

7.6 In his *Review of Efficiency in Criminal Proceedings* published on 23rd January, 2015, Sir Brian Leveson, the President of the Queen's Bench Division of the High Court, at paragraphs 33 to 34 recommended that "the Criminal Procedure Rules should place a duty of direct engagement between identified representatives who have case ownership responsibilities ... The Criminal Procedure Rules need to make clear that the parties are under a duty to engage at the first available opportunity". Comparable recommendations for criminal cases in Scotland would be given effect by a Bill now before the Scottish Parliament. The Rule Committee studied both and has given effect to Sir Brian's recommendation by this amendment.

Case management: preparation for Crown Court trial

7.7 Rule 3.13 (Pre-trial hearings: general rules) now requires a plea and trial preparation hearing in the Crown Court. Rules 3.19 (Defence trial advocate) and 3.26 (Use of Welsh language at trial) are amended in consequence, to refer to that new hearing.

7.8 The Senior Presiding Judge, the Chief Magistrate and others, with Her Majesty's Courts and Tribunals Service and the Ministry of Justice, have introduced in magistrates' courts and in the Crown Court new arrangements for the handling of criminal cases under which prosecutors are asked to distinguish between cases in which the defendant is thought likely to plead guilty and cases in which that is not thought likely. Case listing arrangements then can be made that make more efficient use of the court time available. These new arrangements have been described in, among other places, the judgment of the Court of Appeal in *R v CW and MM* [2015] EWCA Crim 906, at paragraphs 32 to 34 and 40 to 43. The arrangements anticipate that, in the Crown Court, a single pre-trial hearing, instead of two or more, will be sufficient in many cases, and that that hearing will take place earlier than the present main pre-trial hearing, known as the plea and case management hearing. The new hearing will be known as the plea and trial preparation hearing. The Rule Committee expects that a practice direction to be made by the Lord Chief Justice will set out the details of when a plea and trial preparation hearing should take place; what the court will expect of the parties at that hearing; and in what circumstances a further case management hearing should be arranged. The Committee has changed rule 3.13 to accommodate these new arrangements.

Service of documents

7.9 Amendments to the rules in Part 4 (Service of documents) make new provision about service by electronic means; remove the restrictions that have applied until now on serving some documents by any method other than post or personal delivery; and make new provision about service of documents on parties' legal representatives and advocates.

7.10 Rule 4.6 (Service by electronic means) now allows for electronic service not only by sending a document to the recipient, for example by email, but also by depositing a document at a website address to which the recipient can gain access, for

example by using a password that she or he has been given. The Rule Committee was told that arrangements for website service are likely to be introduced soon by Her Majesty's Courts and Tribunals Service and the Crown Prosecution Service. The purpose of such arrangements will be to allow for improved electronic case management by the courts, in which prosecuting authorities and defendants, or their representatives, will be able to take part online. At the request of Her Majesty's Courts and Tribunals Service, the Committee has amended the rule in preparation for these new arrangements. For the same reason, rule 4.11 (Date of service) now allows for electronic service to have effect on the same business day that a document is sent or deposited, as long as that takes place by 2.30pm (to give the recipient adequate time within which to take account of the document before the next day); and rule 4.13 (Court's power to give directions about service) is amended in consequence.

7.11 Consequent also on the changes described above, and for the same reasons, to allow for electronic service in as many circumstances as possible rule 4.7 (Documents that must be served by specified methods) now requires service of a document by handing it over only where that document is a notice alleging contempt of court (because failure to respond to such a notice may result in the alleged contemnor's punishment), and now requires service by post only where that is required by the road traffic legislation that the rule supplements. Otherwise, if service by other means, for example by electronic means, is possible (the person serving the document would need to have a correct electronic address for the recipient), then that will be permitted by the Criminal Procedure Rules.

7.12 Consequent, too, on the changes described above, and to accommodate the changes made by the new rules in Part 46 (Representatives) described beneath (see paragraphs 7.37 and 7.38), rule 4.3 (Service by handing over a document) is amended and new rule 4.10 (Documents that may not be served on a legal representative) is added: to allow for service of documents on an advocate at court, which otherwise would not be valid service under the Rules, and to list the documents that cannot validly be served only on a person's legal representative or advocate (because each of the listed documents is one that ought to be brought to the recipient's personal attention, not via a lawyer).

Applications and notices by electronic means

7.13 Rule 5.1 (Applications, etc. by forms or electronic means) now allows for applications and notices, and for other information needed by the court, to be submitted by electronic means where arrangements have been made for that to be done.

7.14 This change, too, is in preparation for the introduction of the new electronic case management arrangements described in paragraph 7.10 above. When those arrangements become available, the new rule will require the parties to use them and to supply information online. Until then, the various prescribed forms still must be used (and still can be served electronically, by email, as before).

Reporting restrictions

7.15 Recently, new statutory reporting restrictions have been created, under the Youth Justice and Criminal Evidence Act 1999 (as amended) and under the Female Genital Mutilation Act 2003 (as amended). To provide for applications under the new section 45A of the 1999 Act (lifetime restriction against identifying a witness or victim under 18), rule 6.4 (Reporting and access restrictions) has been amended. (Rule

6.5 (Varying or removing restrictions) applies to any application to lift the reporting restriction under the 2003 Act without needing amendment.)

Initial details of the prosecution case

7.16 Rule 8.1 (Initial details of the prosecution case; When this Part applies) is amended so that the rules in Part 8 now will apply in all cases as they begin in a magistrates' court, irrespective of the type of offence. Rule 8.3 (Content of initial details) now distinguishes between (i) cases in which the defendant has been detained after being charged, and (ii) cases in which the defendant has been released on bail after being charged, to attend court at a later date.

7.17 As part of the new arrangements described at paragraph 7.8 above, the Senior Presiding Judge and the Chief Magistrate have agreed with the prosecuting authorities that more information will be provided at the outset in a case in which the prosecutor does not expect the defendant to plead guilty than in a case in which a guilty plea is expected; and they have agreed on the types of information to be supplied in all cases, so as to give the defendant sufficient relevant information about the prosecution case, at the earliest possible opportunity. At the request of the Senior Presiding Judge and the Chief Magistrate, the Rule Committee agreed to amend the rules to accommodate these new arrangements.

European supervision orders

7.18 The European Union Framework Decision to which Part 7 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 gives effect in England and Wales allows one European Union member State to monitor a defendant's compliance with bail conditions imposed in another such State. New rules 14.16 (Bail condition to be enforced in another EU member State) and 14.17 (Enforcement of measure imposed in another EU member State) supply the necessary procedure for the criminal courts, and there are consequential amendments to rule 14.1 (Bail and custody time limits; When this Part applies) and to the notes to rule 14.2 (Exercise of court's powers to which this Part applies) and at the end of Part 14. There are consequential amendments, too, to rule 39.8 (Appeal to the Court of Appeal about conviction or sentence; Application for bail pending appeal of retrial), which governs procedure in the Court of Appeal.

Written witness statements: time limits for objections and reading material aloud

7.19 Rule 16.4 (Written witness statement in evidence) now sets the time limits for objecting to written witness statements served by another party for use in evidence under section 9 of the Criminal Justice Act 1967. Rule 24.5 (Trial and sentence in a magistrates' court; Evidence of a witness in writing), rule 24.15 (Trial and sentence in a magistrates' court; Duty of justices' legal adviser) and rule 25.12 (Trial and sentence in the Crown Court; Evidence of a witness in writing) all are amended to provide for the circumstances in which written witness statements and, in the case of written guilty pleas in magistrates' courts, other written material, too, must be read aloud in the courtroom.

7.20 Under section 9 of the Criminal Justice Act 1967, a written witness statement can be used in evidence in criminal proceedings instead of the witness giving the evidence orally as long as various procedural and other conditions and requirements are met. One condition is that the party who wants to rely on the written statement must have served it on the other parties in advance, and no-one has objected within the statutory time limit. Until now, the time limit for objection has been 7 days,

irrespective of the circumstances. Until now, one requirement has been that the written statement must be read aloud at the trial, irrespective of whether anyone is present who does not already have a copy of the statement. Under section 12 of the Magistrates' Courts Act 1980 a defendant can plead guilty in writing, without attending court, where (i) the offence alleged can only be tried in a magistrates' court (and so is not one serious enough to be sent to the Crown Court for trial), and (ii) documents setting out the facts of the offence, and explaining the procedure, have been sent to the defendant by the prosecutor. Like section 9 of the 1967 Act, until now section 12 of the 1980 Act has required that the written material must be read aloud to the court, even if the members of the court have copies and no-one else is present. Section 80 of the Deregulation Act 2015 amends section 9 of the 1967 Act, to remove the inflexible 7 day statutory time limit for objecting and to allow the Criminal Procedure Rules to set the time limit instead; to remove the inflexible statutory requirement for reading aloud; and to remove from the 1967 Act other purely procedural requirements that are already in the Criminal Procedure Rules anyway. Section 81 of the Deregulation Act 2015 amends section 12 of the 1980 Act to remove the inflexible statutory requirement for reading aloud. The result is that the Rules now can set time limits for objecting to the use of written witness statements that do away with any need for 'holding' objections, later withdrawn, which need not have been made in the first place and which may bring witnesses to court in person unnecessarily; and the Rules now can prescribe circumstances in which written statements and other written material need not be read aloud.

7.21 In the exercise of these new powers, the Rule Committee has prescribed what Committee members regard as practicable and fair time limits, and ones that can be adjusted by the court to meet the circumstances of an individual case; and has prescribed the circumstances in which written witness statements and other written material must be read aloud, namely whenever any member of the public, including any reporter, is present to hear, but not otherwise.

Expert evidence

7.22 Rule 19.2 (Expert evidence; Expert's duty to the court) now requires an expert witness, as part of her or his duty to the court, to help the court in some of the same ways as a party to the case, by complying with directions (for example, as to the time by when a report must be served), and by warning the court of any significant failure to act as required by a direction (for example, by warning of substantial delay in the preparation of a report).

7.23 In response to observations by the Court of Appeal in its judgment in *R v Reynolds, R v Rosser* [2014] EWCA Crim 2205, and in response to reports by Rule Committee members of increasing difficulties in obtaining expert reports within the same times as before, the Committee agreed that an expert's implicit duty to the court to give a realistic estimate of the time within which expert evidence can be prepared, and to adhere to that estimate, should be made explicit.

Restriction on cross-examination by a defendant

7.24 The rules in Part 23 (Restriction on cross-examination by a defendant) replace the rules in Part 31 of the Criminal Procedure Rules 2014 in order to supplement Chapter II of the Youth Justice and Criminal Evidence Act 1999 (Protection of Witnesses from Cross-Examination by Accused in Person).

7.25 The current rules were adopted in the first Criminal Procedure Rules from the Crown Court Rules 1982 and since have remained substantially unchanged. Although the statutory provisions which the current rules supplement have features in common with other measures introduced by the 1999 Act to assist vulnerable witnesses to give their best evidence, until now the procedure for which the current rules provide has not been aligned with the rules that supplement those other provisions (now in Part 18 of the Criminal Procedure Rules 2015: Measures to assist a witness or defendant to give evidence). The Rule Committee decided to take this opportunity to revise the rules and bring them into alignment with those other rules. In revising them, the Committee took account, in particular, of observations by Her Majesty's Courts and Tribunals Service, by magistrates' legal advisers and by the Crown Prosecution Service about best practice in the making of applications and in the appointment by the court of representatives for the purpose of cross-examination.

Directions to the jury

7.26 Rule 25.14 (Trial and sentence in the Crown Court; Directions to the jury and taking the verdict) now requires the judge at a jury trial (i) to give the jury directions about the law at any time at which that will help the jurors to evaluate the evidence that they hear, and (ii) when summing up the evidence for them, to do so only to such extent as is directly relevant and necessary.

7.27 Sir Brian Leveson's *Review of Efficiency in Criminal Proceedings*, cited at paragraph 7.6 above, at paragraphs 306 and 310 recommended that, "When appropriate, a Judge should be prepared to provide such directions as will assist the jury to evaluate the evidence either after the opening or prior to it being given. Directions on the approach to identification evidence provide one example. ... The Judge should remind the jury of the salient issues in the case and (save in the simplest of cases) the nature of the evidence relevant to each issue. This need be only in summary form to bring the detail back to the minds of the jury, including a balanced account of the issues raised by the defence. It is not necessary to recount all relevant evidence." The Rule Committee has given effect to Sir Brian's recommendations by these amendments.

Misconduct by a juror

7.28 Rule 26.3 (Provision of information for jurors) is amended in consequence of the creation by the Criminal Justice and Courts Act 2015 of new offences that a juror may commit. Rule 26.5 (Surrender of electronic communication devices by jurors) is added to supplement the new power which that Act creates for the court to order the temporary confiscation of jurors' mobile telephones and similar devices.

Retrial after acquittal

7.29 The rules in Part 27 (Retrial after acquittal) replace the rules in Parts 40 and 41 of the Criminal Procedure Rules 2014.

7.30 The rules deal with two separate statutory powers. The first, under the Criminal Procedure and Investigations Act 1996, allows the High Court to quash an acquittal and order a retrial where it appears likely that the acquitted defendant would not have been acquitted but for 'interference with or intimidation of a juror or witness (or potential witness) in any proceedings which led to the acquittal', and where retrial would not be contrary to the interests of justice. It applies to any acquittal in the Crown Court or a magistrates' court. The second, under the Criminal Justice Act 2003, allows the Court of Appeal to quash an acquittal, in England and Wales, or to declare

that an acquittal outside the United Kingdom either is no bar to a trial in England and Wales or, if it is, that a trial may proceed nonetheless, where there is ‘new and compelling evidence’ and where retrial is in the interests of justice. This second provision applies only to acquittals and retrials in the Crown Court, and only where the offence concerned is one of those serious crimes listed in the 2003 Act. An application to the Court of Appeal can be made only under the personal authority of the Director of Public Prosecutions. The current rules have remained unchanged since their adoption in the first Criminal Procedure Rules from the Crown Court (Criminal Procedure and Investigations Act 1996) (Tainted Acquittals) Rules 1997 and from the Criminal Justice Act 2003 (Retrial for Serious Offences) Rules 2004.

7.31 The Rule Committee decided to take this opportunity to revise and simplify the rules. In revising them, the Committee took account, in particular, of observations by Her Majesty’s Courts and Tribunals Service and by the Crown Prosecution Service about best practice in the conduct of applications to the Court of Appeal.

Representations about driving disqualification or endorsement

7.32 Rule 29.1 (Road traffic penalties; Representations about obligatory disqualification or endorsement) is added to provide for the representations that a defendant driver may wish to make when facing obligatory disqualification from driving, or the obligatory endorsement of his or her driving record, in the circumstances for which the Road Traffic Offenders Act 1988 provides.

7.33 Under the 1988 Act, conviction for some offences, or conviction for an offence where the defendant driver has committed road traffic offences before, can require the court to disqualify the defendant, or endorse his or her driving record, unless there applies one of the special reasons or mitigating circumstances for which the Act provides. It was reported to the Rule Committee that courts’ practice in dealing with such cases differed, and that it would be helpful for a rule to prescribe a procedure which would ensure that each defendant had the same fair opportunity to explain whether he or she thought there were any such special reasons or mitigating circumstances in his or her case. The Rule Committee agreed to make such a rule.

European protection orders

7.34 The European Union Directive to which the Criminal Justice (European Protection Order) Regulations 2014 give effect in England and Wales allows a European Union member State to enforce a prohibition or restriction imposed in another such State on one person for the benefit of another. New rules 31.9 (European protection order to be given effect in another EU member State) and 31.10 (Giving effect to a European protection order made in another EU member State) supply the necessary procedure for the criminal courts, and there are consequential amendments to rule 31.1 (Behaviour orders; When this Part applies) and rule 31.2 (Behaviour orders: general rules).

Confiscation and related proceedings

7.35 The rules in Part 33 (Confiscation and related proceedings) reproduce the rules in Parts 56, 57, 58, 59, 60 and 61 of the Criminal Procedure Rules 2014. They include a new rule 33.14 (Application for compliance order), and amendments to rule 33.13 (Statements in connection with confiscation orders) and to rule 33.70 (Application to punish for contempt of court), which supplement provisions made by the Serious Crime Act 2015 about shared interest property determinations and about compliance orders. The rules include also amendments to rules 33.15 to 33.19, which are about

confiscation orders, to accommodate provisions made by the Modern Slavery Act 2015 about slavery and trafficking reparation orders. Rule 48.9 (Contempt of court; Initial procedure on failure to comply with court order, etc.) is amended, too, in consequence of the introduction of compliance orders.

Confiscation and related proceedings: appeal to the Court of Appeal

7.36 The rules in Part 42 (Appeal to the Court of Appeal in confiscation and related proceedings) reproduce the rules in Parts 71, 72 and 73 of the Criminal Procedure Rules 2014. They include amendments to rules 42.11, 42.14, 42.15, 42.16, 42.17, 42.18, 42.19 and 42.20 to supplement the rights of appeal, against shared interest property determinations and against compliance orders, which are created by the Serious Crime Act 2015.

Representatives

7.37 The rules in Part 46 (Representatives) substantially reproduce, as rule 46.1 (Functions of representatives and supporters), what was rule 2.4 of the Criminal Procedure Rules 2014, and include new rules about (i) giving notice of the appointment of a legal representative, and (ii) applying to the court to change the legal representative assigned under a legal aid order.

7.38 It was reported to the Rule Committee that changes in the availability of legal aid have made private representation, changes in private representation and applications to change legal aid representation more common than before. Until now, the Criminal Procedure Rules have contained no rules about these subjects because no such rules were thought necessary. Given current circumstances, the Committee agreed that now there should be such rules.

Overseas forfeiture, restraint and confiscation orders

7.39 New rule 49.11 (Overseas forfeiture orders), new rule 49.12 (Overseas restraint orders) and new rule 49.13 (Overseas confiscation orders) are added to Part 49 (International co-operation). Under the European Union Framework Decisions to which the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 2005 and regulations 8 to 10 and 13 to 15 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 give effect in England and Wales, a European Union member State can be asked to assist a court or other authority in another such State which is engaged in the forfeiture of property involved in a crime, or in the restraint or confiscation of the proceeds of crime. The new rules govern the procedure on applications to the Crown Court made under the 2005 Order or under the 2014 Regulations.

Other amendments

7.40 The Criminal Procedure Rules 2015 include the other less substantial amendments listed in this and in the next two paragraphs. Rule 1.1 (The overriding objective) is amended to omit the description of the Criminal Procedure Rules as 'new'. The Rules now being 10 years old, the Rule Committee decided that that description was no longer appropriate. Rule 2.1 (When the Rules apply) is amended to provide for the transition from the Criminal Procedure Rules 2014 to these Rules. Rule 2.2 (Definitions) now includes definitions of 'advocate' and 'legal representative' because the new rules in Part 4 (Service of documents) and Part 46 (Representatives) now use both those expressions and distinguish between their functions. The note to rule 6.1 (Reporting, etc. restrictions; When this Part applies) omits references to statutory reporting restrictions that no longer apply in criminal proceedings, and

includes references to new statutory reporting restrictions, including those cited in paragraph 7.15 above. Rules 9.9 and 9.13 (Adult defendant: guilty plea; Young defendant) are amended to make it clear that the effect of a defendant indicating a guilty plea, where those rules apply, will be the same as the defendant pleading guilty at a trial in a magistrates' court. Rule 15.2 (Prosecution disclosure) and the associated notes include references to the new disclosure Code of Practice cited at paragraph 4.4 above. Rules 18.23 and 18.26 (Measures to assist a witness or defendant to give evidence: Live link directions) are amended to allow a court on its own initiative to receive evidence from a witness using a live link (a CCTV connection between the court room and the witness) where there is no objection or where the defendant is absent. Rules 28.1 and 28.5 (Reasons for not following usual sentencing requirements; Application to vary or discharge a compensation, etc. order) allow for the new statutory slavery and trafficking reparation orders cited at paragraph 4.4 above. Rule 30.5 (Application to reduce a fine, vary payment terms or remit a courts charge) now provide for an application to remit the new statutory criminal courts charge (again, see paragraph 4.4 above). Rule 31.1 (Behaviour orders; When this Part applies) and the note to the rule now omit references to orders that no longer apply and include references to new types of behaviour order, including those cited in paragraph 7.34 above. Rule 34.1 (Appeal to the Crown Court; When this Part applies) now omits references to orders that no longer apply. The notes to rules 47.1 and 47.15 (Investigation orders and warrants; When this Part applies; Content of application for a production order) are amended in consequence of statutory amendments that allow a Crown Court judge to make a production order in relation to a detained cash investigation under the Proceeds of Crime Act 2002. The glossary omits expressions that no longer appear in the Rules.

7.41 In response to the reports by the Joint Committee on Statutory Instruments cited at paragraph 3.1 above, the words 'must' or 'may', as appropriate, have been substituted for the word 'will' in rules 42.14(1), 42.19(2) and 42.20(2), (3).

7.42 The following rules, and notes to rules ('n'), are amended (i) to bring up to date the cross-references they contain, both generally and in consequence of the re-arrangement of the Rules, and (ii) to align their expression with corresponding rules and notes: 3.1(n), 3.5(n), 3.9(n), 3.13(n), 3.21(n), 3.24, Part 3 end note, 4.3, 4.4, 4.4(n), 4.5, 4.6, 4.7, 5.5, 5.6, 5.8(n), 6.1(n), 6.2(n), 6.5, 6.10, 7.1(n), 7.2(n), 7.4(n), 9.1, 9.2, 9.2(n), 9.5, 9.6, 9.7(n), 9.8(n), 9.9, 9.11, 9.12, 9.13, 9.13(n), 10.1(n), 11.2, 11.4, 11.4(n), 11.5(n), 11.6, 11.6(n), 11.8, 11.9, 11.10, 11.11, 12.1(n), Part 13 introductory note, 14.6, 14.7, 14.8, 14.9, 14.9(n), 15.8, 15.9, 17.1, 17.2(n), 17.3, 17.4, 17.5, 17.7, 18.3(n), 18.18, Part 18 end note, 19.3, 19.4, 19.4(n), 19.8, 20.2(n), 20.3, 20.4, 21.2, 21.2(n), 21.3(n), 21.4(n), 22.5, 22.6, 22.6(n), 24.1, 24.1(n), 24.2, 24.2(n), 24.3, 24.4(n), 24.5, 24.5(n), 24.8, 24.9, 24.9(n), 24.11, 24.11(n), 24.12, 24.13, 24.13(n), 24.14, 24.15, 24.16, 24.17, 24.18, 24.18(n), 25.1(n), 25.2(n), 25.4, 25.6(n), 25.9(n), 25.10, 25.11(n), 25.12, 25.12(n), 25.14, 25.14(n), 25.15, 25.16, 25.16(n), 25.17, 25.18, 26.1(n), Part 28 introductory note, 28.1(n), 28.4, 28.4(n), 28.6(n), 28.8(n), Part 29 introductory note, 29.2, 29.2(n), 30.1, 31.2, 31.2(n), 31.3, 31.3(n), 31.4(n), 31.5(n), 31.6(n), 32.4, 33.1, 33.2, 33.3, 33.4, 33.5, 33.6, 33.7, 33.9, 33.11, 33.12, 33.15, 33.16, 33.17, 33.18, 33.19, 33.20, 33.22, 33.23, 33.24, 33.26, 33.27, 33.30, 33.31, 33.32, 33.33, 33.38, 33.46, 33.48, 33.49, 33.50, 33.51, 33.52, 33.54, 33.56, 33.57, 33.58, 33.59, 33.61, 33.64, 33.65, 33.67, 33.68, 33.69, 33.70, 34.2(n), 34.4, 34.7, 34.8(n), 34.9(n), 35.2(n), 35.5(n), 36.1, 36.1(n), 36.3(n), 36.5(n), 36.6(n), 36.7, 36.8, 36.8(n), 36.10(n), 37.1(n), 37.7, 37.8(n), 38.1(n), 38.2(n), 38.3(n), 38.4(n), 38.5(n), 38.6(n), 38.8, 38.8(n), 38.10, 38.11(n), 39.1(n), 39.2(n), 39.4(n), 39.5, 39.7, 39.7(n), 39.8(n),

39.9, 39.11(n), 40.1(n), 40.7, 40.9(n), 41.1(n), 41.7(n), 42.1, 42.2, 42.3, 42.4, 42.5, 42.6, 42.7, 42.8, 42.9, 42.10, 42.11, 42.12, 42.13, 42.14, 42.15, 42.16, 42.17, 42.18, 42.19, 42.20, 43.1, 43.1(n), 43.2(n), 43.4, 45.1, 45.1(n), 45.2, 45.2(n), 45.3, 45.4(n), 45.5(n), 45.6, 45.6(n), 45.7, 45.7(n), 45.8(n), 45.9, 45.9(n), 45.10(n), 45.11, 45.12, 45.13, 47.1, 47.1(n), 47.6, 47.6(n), 47.7, 47.8, 47.9, 47.10, 47.11, 47.12, 47.13, 47.14, 47.14(n), 47.15, 47.17, 47.18, 47.19, 47.20, 47.21, 47.22, 47.27(n), 47.32, Part 47 Section 8 introductory note, 47.34, 47.35(n), 47.36, 48.1, 48.1(n), 48.2, 48.3, 48.4, 48.5(n), 48.6, 48.8, 48.9, 48.9(n), 48.10, 48.11, 48.12, 48.13, 48.16, 48.17, 49.5(n), 49.7(n), 49.8(n), 50.1, 50.3(n), 50.5(n), 50.6, 50.6(n), 50.7, 50.9, 50.9(n), 50.11, 50.12, 50.13, 50.13(n), 50.14, 50.17, 50.17(n), 50.18, 50.20, 50.21, 50.21(n), 50.22(n), 50.23(n), 50.24, 50.24(n) and 50.29.

Bringing the new rules into force

7.43 These Rules come into force on Monday 5th October, 2015, following the convention explained at paragraph 4.2 above. To effect the transition from the Criminal Procedure Rules 2014, rule 2.1(3) preserves any right or duty at that date existing under those rules.

- ***Consolidation***

7.44 See paragraph 7.1 above. An informal consolidated text will continue to be available to the public free of charge on the Ministry of Justice website at: <http://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu>

8. Consultation outcome

8.1 On the desirability of consolidating the Criminal Procedure Rules at regular intervals, during 2009 the Rule Committee consulted with members of the judiciary, with bodies representing the legal professions, with commercial publishers of the text of the Criminal Procedure Rules, with the Parliamentary Committees then charged with their scrutiny, and with relevant government departments and agencies. No opposition was expressed to consolidation in principle. Several of those consulted endorsed the Committee's view that it would be important to identify in exactly what respect consolidated rules amended the rules that they replaced; and that it would be appropriate to use for that purpose the Explanatory Note and the Explanatory Memorandum published with the Rules. Some publishers and representatives of the legal professions cautioned against any significant re-arrangement of the Rules, for example by renumbering the constituent Parts to accommodate the omission of those that had become redundant, before the Committee's initial programme of reform was completed in 2015.

8.2 On the rearrangement of the Criminal Procedure Rules to remove the empty Parts and to restore the coherence of the first Rules, the Rule Committee gave due weight to the views of the Joint Committee on Statutory Instruments expressed in the Report cited at paragraph 3.1 above. In addition, between February and May, 2015, the Rule Committee consulted with editors and publishers of works that include the text of the Criminal Procedure Rules by inviting observations on the Committee's detailed plans for the rearrangement of the Rules. Responses were received from three which noted the Committee's plans and expressed gratitude for advance notice of their implementation, and from one with some suggestions for editorial amendments of which the Rule Committee took account and made some detailed editorial adjustments in consequence.

8.3 On other rule amendments, the Rule Committee fulfilled its statutory obligation to consult as the Committee considers appropriate (see paragraph 4.1 above) by inviting and reviewing suggestions and observations solicited by its members from among the groups from which each is drawn, including the Criminal Bar Association and the Law Society, and by inviting and reviewing suggestions and observations by government departments and other authorities directly affected by rules of criminal procedure.

9. Guidance

9.1 Amendments to the Criminal Procedure Rules are drawn to the attention of participants in the criminal justice system by correspondence addressed by the Committee secretariat 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 Her Majesty's Courts and Tribunals Service, within the principal prosecuting authorities, and among local criminal justice boards.

9.2 In addition, 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>

10. Impact

10.1 These rules have 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 because they include new rules 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 small businesses.

12. Monitoring and review

12.1 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. Twice a year the Committee receives and considers statistical information about criminal case management gathered by Her Majesty's Courts and Tribunals Service.

12.2 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.

12.3 Representatives of Her Majesty’s 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.

13. Contact

Jonathan Solly at the Ministry of Justice can answer any queries regarding the instrument. Telephone: 020 3334 4031, or e-mail: jonathan.solly@justice.gsi.gov.uk.

Appendix: destination and derivation tables

The Parts of the Criminal Procedure Rules 2015 correspond with those of the Criminal Procedure Rules 2014 as follows:

<i>Destinations</i>		<i>Derivations</i>	
<i>2014 Rules</i>	<i>2015 Rules</i>	<i>2015 Rules</i>	<i>2014 Rules</i>
1	1	1	1
2	2 and 46	2	2
3	3	3	3
4	4	4	4
5	5	5	5
6	47	6	16
7	7	7	7
8	12	8	10
9	9	9	9
10	8	10	14
12	11	11	12
14	10	12	8
16	6	13	18
17	50	14	19
18	13	15	22
19	14	16	27
22	15	17	28
27	16	18	29
28	17	19	33
29	18	20	34
31	(23)	21	35
32	49	22	36
33	19	23	(31)
34	20	24	37
35	21	25	38
36	22	26	39
37	24	27	(40 and 41)
38	25	28	42
39	26	29	55
40	(27)	30	52
41	(27)	31	50
42	28	32	44
44	32	33	56, 57, 58, 59, 60 and 61
50	31	34	63
52	30	35	64
55	29	36	65
56	33	37	66
57	33	38	67
58	33	39	68
59	33	40	69
60	33	41	70
61	33	42	71, 72 and 73
62	48	43	74

<i>Destinations</i>		<i>Derivations</i>	
<i>2014 Rules</i>	<i>2015 Rules</i>	<i>2015 Rules</i>	<i>2014 Rules</i>
63	34	44	75
64	35	45	76
65	36	46	Rule 2.4
66	37	47	6
67	38	48	62
68	39	49	32
69	40	50	17
70	41		
71	42		
72	42		
73	42		
74	43		
75	44		
76	45		

Corresponding rules within corresponding Parts retain their numbers within those Parts, so that, for example, rule 29.10 of the Criminal Procedure Rules 2014 (Content of application for a special measures direction) becomes rule 18.10 of these Rules.

Parts 11, 13, 15, 20, 21, 23, 24, 25, 26, 30, 43, 45, 46, 47, 48, 49, 51, 53, and 54 of the Criminal Procedure Rules 2014 contained no rules and are omitted from the Criminal Procedure Rules 2015. Part 31 of the Criminal Procedure Rules 2014 (Restriction on cross-examination by a defendant acting in person) is omitted, but the rules it contained are replaced by the rules in Part 23 of the Criminal Procedure Rules 2015 (Restriction on cross-examination by a defendant). Parts 40 and 41 of the Criminal Procedure Rules 2014 (Tainted acquittals; Retrial following acquittal for serious offence) are omitted, but the rules they contained are replaced by the rules in Part 27 of the Criminal Procedure Rules 2015 (Retrial after acquittal). Rule 2.4 of the Criminal Procedure Rules 2014 (Representatives) is reproduced as rule 46.1 of the Criminal Procedure Rules 2015 (Functions of representatives and supporters).

The rules in Part 33 of the Criminal Procedure Rules 2015 (Confiscation and related proceedings) correspond with the rules in Parts 56, 57, 58, 59, 60 and 61 of the Criminal Procedure Rules 2014 from which they derive as follows:

<i>2014</i>	<i>2015</i>	<i>2014</i>	<i>2015</i>	<i>2014</i>	<i>2015</i>	<i>2014</i>	<i>2015</i>
56.1	33.64	57.9	–	58.9	33.21	59.8	33.29
56.2	33.65	57.10	–	58.10	33.22	59.9	33.30
56.3	33.66	57.11	33.9	58.11	33.23	59.10	33.31
56.4	33.67	57.12	33.10	58.12	33.24	60.1	33.56
56.5	33.68	57.13	33.11	58.13	33.25	60.2	33.57
56.6	33.69	57.14	33.12	58.14	33.26	60.3	33.58
57.1	33.1	58.1	33.13	58.15	33.27	60.4	33.59
57.2	33.2	58.2	33.14	59.1	33.51	60.5	33.60
57.3	33.3	58.3	33.15	59.2	33.52	60.6	33.61
57.4	33.4	58.4	33.16	59.3	33.53	60.7	33.62
57.5	33.5	58.5	33.17	59.4	33.54	60.8	33.63
57.6	33.6	58.6	33.18	59.5	33.55	61.1	33.32
57.7	33.7	58.7	33.19	59.6	33.70	61.2	33.33
57.8	33.8	58.8	33.20	59.7	33.28	61.3	33.34

<i>2014</i>	<i>2015</i>	<i>2014</i>	<i>2015</i>	<i>2014</i>	<i>2015</i>	<i>2014</i>	<i>2015</i>
61.4	33.35	61.9	33.40	61.14	33.45	61.19	33.47
61.5	33.36	61.10	33.41	61.15	33.46	61.20	33.48
61.6	33.37	61.11	33.42	61.16	–	61.21	33.49
61.7	33.38	61.12	33.43	61.17	–	61.22	33.50
61.8	33.39	61.13	33.44	61.18	–		

Rules 57.9 and 57.10 of the Criminal Procedure Rules 2014, which concerned expert evidence in confiscation and related proceedings, are omitted. Those rules are superseded by the rules in Part 19 of the Criminal Procedure Rules 2015 (Expert evidence). Rules 61.16, 61.17 and 61.18 of the Criminal Procedure Rules 2014, which concerned appointment and change of solicitor in restraint and receivership proceedings, are omitted. Those rules are superseded by the rules in Part 46 of the Criminal Procedure Rules 2015 (Representatives).

The rules in Part 42 of the Criminal Procedure Rules 2015 (Appeal to the Court of Appeal in confiscation and related proceedings) correspond with the rules in Parts 71, 72 and 73 of the Criminal Procedure Rules 2014 from which they derive as follows:

<i>2014</i>	<i>2015</i>	<i>2014</i>	<i>2015</i>	<i>2014</i>	<i>2015</i>	<i>2014</i>	<i>2015</i>
71.1	42.1	71.6	42.6	72.1	42.11	73.3	42.16
71.2	42.2	71.7	42.7	72.2	42.12	73.4	42.17
71.3	42.3	71.8	42.8	72.3	42.13	73.5	42.18
71.4	42.4	71.9	42.9	73.1	42.14	73.6	42.19
71.5	42.5	71.10	42.10	73.2	42.15	73.7	42.20