

**EXPLANATORY MEMORANDUM TO**  
**THE CRIMINAL PROCEDURE (AMENDMENT) RULES 2019**

**2019 No. 143 (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 Her Majesty.

**2. Purpose of the instrument**

2.1 These Rules amend the Criminal Procedure Rules 2015, S.I. 2015 No. 1490, in seven principal respects.

2.2 They amend the rules about (i) service of documents on court offices, (ii) the means by which information concerning criminal cases may be supplied to the public by court staff, (iii) publishing details of imminent court hearings, (iv) information that a private prosecutor must give a magistrates' court when applying for a summons, and (v) information that an expert witness must give the court. They add new rules about (i) the procedure for withholding confidential information that an expert witness otherwise might be required to reveal, and (ii) the presentation of allegations in some extradition cases.

2.3 In addition, they make miscellaneous other minor amendments and corrections to keep the Criminal Procedure Rules up to date.

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

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

3.1 None.

*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.

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**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.

## 7. Policy background

*What is being done and why?*

*Finding the right court office for the service of documents*

- 7.1 In the Criminal Procedure Rules, 'service' of documents (which may be in paper or electronic form) means their transmission to the intended recipient by a means for which the Rules provide (e.g. by personal delivery, or by post, or by email or uploading). Rule 3 of these Rules amends rule 4.3 (service by handing over a document) and rule 4.4 (service by leaving or posting a document) of the Criminal Procedure Rules. The current rules require service on a court officer to be directed to 'the office at which that court's business is administered by court staff'. The amended rules will identify that office as 'the office at the address advertised by the Lord Chancellor as the place at which that court's business is administered'.
- 7.2 When the Criminal Procedure Rules about service first were made the then assumption was that no court would sit at a place at which there was not also an administrative office. Since then, however, taking advantage of new technology and in the interests of more efficient court administration, in many places the administrative offices for more than one court have been amalgamated, so that the location of the office at which a particular court's business is administered may not be self-evident. Notices in or near courtrooms will explain how to contact the relevant administrative office, and contact and other information is published online by HM Courts and Tribunals Service at: <https://courtribunalfinder.service.gov.uk/search/>.
- 7.3 Prompted by the judgment of the High Court in the case of *Begum v Luton Borough Council* [2018] EWHC 1044 (Admin),<sup>1</sup> which concerned the delivery of an important document to a security officer at a court building where there was no court office, the

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<sup>1</sup> The judgment is available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2018/1044.html>.

Rule Committee decided to change the rule the better to correspond with contemporary circumstances.

### *Information from court records*

#### *Information about pending cases*

- 7.4 Rule 4 of these Rules amends rule 5.8 of the Criminal Procedure Rules, which is the rule about the supply to the public, including journalists, of information about criminal cases. The current rule (a) allows for specified information from court records to be supplied only by word of mouth, and (b) requires the publication of hearing dates and other specified details only in relation to cases due to be heard in public in a courtroom, not in relation to cases due to be dealt with without a hearing under sections 16A to 16D of the Magistrates' Courts Act 1980 and rule 24.9 of the Criminal Procedure Rules (a procedure by which a magistrate can try some types of case in the defendant's absence and without a court hearing, unless the defendant objects). The amended rule will allow for specified information from court records to be supplied in writing, including in the form of a written certificate or written extract, if the request for that information is in writing. It will require specified details of all pending cases to be published, not only those due to be heard in a courtroom.
- 7.5 It was reported to the Rule Committee that members of the public who apply for information which can be supplied by word of mouth under rule 5.8 often confuse that rule with another one, rule 5.9, which provides for the supply of written certificates of the results of cases for use in other legal proceedings and in some other special circumstances. If the rule 5.8 criteria for supplying information are satisfied then usually there will be no reasonable objection to court staff supplying that information in writing, if that is what the enquirer wants; so the Committee agreed to amend rule 5.8 to make that possible, to help minimise any confusion that otherwise might arise and to allow court staff to meet reasonable requests from members of the public.
- 7.6 As well as publishing information about cases due to be heard in a courtroom, HM Courts and Tribunals Service soon will be able to publish online information about cases awaiting determination without a hearing under the Magistrates' Courts Act 1980 and rule 24.9. The Rule Committee agreed to extend the scope of rule 5.8 to acknowledge and authorise what now is possible.

#### *Information in an application for a summons*

- 7.7 A prosecution brought by a private individual or body begins with an application to a magistrates' court to issue a summons. Rule 5 of these Rules amends rule 7.2 of the Criminal Procedure Rules, the rule that governs the making of such an application. The current rule requires a prosecutor who is not a public authority to give certain information in the application. That information includes their grounds for accusing the defendant of the alleged offence, details of any other relevant prosecution, or proposed prosecution, of the defendant, and a declaration about the accuracy of that information. The current rule exempts from those requirements a private prosecutor who is represented by a lawyer. The amended rule removes that exemption.
- 7.8 The Rule Committee made the current rule in order to codify requirements previously set out in case law. It came into force in 2018. It includes the exemption described above, despite some Committee members' preference that there should be none. Shortly after the new rule came into force the High Court gave judgment in the case

of *R (Kay) and Another v Leeds Magistrates' Court* [2018] EWHC 1233 (Admin),<sup>2</sup> in which a private prosecutor was found to have withheld relevant information from his application for a summons even though he was represented by a solicitor. After consulting with the Law Society's Criminal Law Committee and with the recently formed Private Prosecutors' Association, the Rule Committee decided that it would impose no significant burden on private prosecutors, and would help to enforce the duty of candour which the High Court had held to apply, to remove the exemption in the rule.

### ***Information about an expert witness***

#### ***Withholding in the public interest information that an expert witness could give***

- 7.9 Rule 6 of these Rules amends rule 19.2 (Expert's duty to the court) and rule 19.3 (Introduction of expert evidence) of the Criminal Procedure Rules to clarify the existing requirements for candour by expert witnesses and by those who introduce expert evidence. The current rules require the disclosure of anything 'which might reasonably be thought capable of detracting substantially from the credibility of the expert'. The amended rules will require the disclosure of anything 'which might reasonably be thought capable of (i) undermining the reliability of the expert's opinion, or (ii) detracting from the credibility or impartiality of the expert'.
- 7.10 In addition, rule 6 of these Rules adds a new rule 19.9 to the Criminal Procedure Rules to supply a procedure where the court is asked for permission to withhold in the public interest information that expert evidence otherwise might include, for example information about criminal investigative techniques.
- 7.11 The Rule Committee made rules 19.2 and 19.3 in their current terms in 2014, in response to recommendations by the Law Commission in its report on 'Expert Evidence in Criminal Proceedings in England and Wales', Commission report 325.<sup>3</sup> In 2018 the Forensic Science Regulator wrote to the Committee raising concerns that some expert witnesses within the Regulator's purview on occasion have failed to provide those who commission them, or the courts, with fair and accurate accounts of their qualifications and expertise. She asked the Committee to review how the rules are expressed. Having done so, the Committee concluded that the current rules allow for uncertainty about what should be disclosed, and by whom. It received anecdotal reports from its members of, on the one hand, experts who recognised no obligation to disclose serious criticism by the Court of Appeal and, on the other, experts who thought that they were required to disclose, in one case, fixed penalty notices for parking infractions and, in another, details of matrimonial proceedings, where neither was in any way material to the evidence that they were due to give. The Committee decided to amend the rules accordingly. It has asked the Lord Chief Justice by means of the Criminal Practice Directions made by him to give examples of matters that ought to be disclosed.
- 7.12 The judgment of the Court of Appeal in *R v Kelly* [2018] EWCA Crim 1893<sup>4</sup> concerned the extraction of messages from an electronic device despite the encryption used. The prosecution did not want their expert witness to give details of how that had been done, and argued that in that particular case the technique was irrelevant to what

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<sup>2</sup> The judgment is available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2018/1233.html>.

<sup>3</sup> The report is available at: <https://www.lawcom.gov.uk/project/expert-evidence-in-criminal-proceedings/>

<sup>4</sup> The judgment is available at: <http://www.bailii.org/ew/cases/EWCA/Crim/2018/1893.html>.

was in issue. The Court of Appeal held that courts have a power to allow a party who introduces expert evidence to withhold some of the information that otherwise might be revealed, if it is in the public interest to do so and, where that party is the prosecutor, as long as that is not unfair to the defendant. At present there is no prescribed procedure for making such an application to a trial court. The Committee decided that a procedure should be supplied.

#### *Formulation of charges in extradition cases*

- 7.13 Rule 9 of these Rules amends rule 50.4 of the Criminal Procedure Rules, the rule about case management in extradition cases, to require the representative of the requesting state to take reasonable steps to ensure that the requested defendant can understand what is alleged and, in particular, to identify the equivalent domestic offence where the alleged conduct abroad has to correspond with an offence under the law of England and Wales.
- 7.14 The judgment of the High Court in the case of *Tamas Biri* [2018] EWHC 50 (Admin)<sup>5</sup> concerned a defendant who had been convicted of various offences in Hungary, some of which by reason of their descriptions fell within the definition of an ‘extradition offence’ in the Extradition Act 2003 while others did not. Those others would constitute extradition offences only if the conduct alleged would have amounted to an offence under English and Welsh law if it had occurred in this jurisdiction. The High Court recommended that in such a case, so as to avoid the confusion which it found had occurred, a charge should be drafted to specify the alleged conduct and to demonstrate what is said to be the equivalent domestic offence, where such an equivalence is required. The Rule Committee accepted that recommendation and has added that requirement to the current rule.

#### *Miscellaneous corrections*

- 7.15 These Rules make consequential and other corrections to the cross-references contained in rules 5.4 (in the note to the rule), 5.9 (in the heading and in the note to the rule), 24.9 and 34.7 of the Criminal Procedure Rules; either because of other changes made by these Rules, or because the Rule Committee has noticed an earlier uncorrected error.

### **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 intends to effect further such consolidations in future

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<sup>5</sup> The judgment is available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2018/50.html>.

but, in response to representations by publishers and others, the Committee has decided not to do so again until 2020, thus reverting to its initial plan to consolidate at 5 yearly intervals. In the meantime, 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-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.
- 10.2 In addition, in connection with the amendment to rule 7.2 of the Criminal Procedure Rules the Committee invited and acted on observations of the Law Society's Criminal Law Committee and of the Private Prosecutors' Association: see paragraph 7.7 above.

## **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 maintain rules and procedures that are already current and introduce new rules and procedures that give effect to established best practice.
- 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, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 David Gauke, the Lord Chancellor, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.