

EXPLANATORY MEMORANDUM TO
THE CRIMINAL PROCEDURE (AMENDMENT) RULES 2022

2022 No. 45 (L. 2)

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 2020, S.I. 2020 No. 759, in seven principal respects.
- 2.2 They provide for the exercise of a criminal court's power to give directions for a witness companion. They require notice of a prosecution to be given to a parent or guardian of a young defendant. They supply procedures to follow on committal for sentence from a magistrates' court to the Crown Court. They encourage the timely entry of any written guilty plea that a defendant may wish to enter where the entry of such a plea is possible. They encourage written as well as oral directions for jurors about the law. They impose a time limit for an application for costs in restraint or receivership proceedings. They supply procedures for giving notice of some types of appeal that may affect the enforcement of a confiscation order and the payment of compensation to a victim from the proceeds of such an order.

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

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Sections 68 to 72 of the Courts Act 2003 provide for a Criminal Procedure Rule Committee of 18 members to make rules that govern the practice and procedure of the criminal courts, that is, magistrates' courts, the Crown Court, the High Court, in an extradition appeal, and the criminal division of the Court of Appeal. Section 69 requires the Committee to make rules that are simple and simply expressed, and that help make the criminal justice system accessible, fair and efficient. Section 72 requires the Committee to consult such persons as they consider appropriate before making rules. Members of the Rule Committee are drawn from among all the groups involved in the criminal justice system: the judiciary, including the magistracy, the

legal professions, prosecutors, the police, voluntary organisations and the Ministry of Justice.

- 6.2 The first rules made by the Rule Committee were the Criminal Procedure Rules 2005. In those Rules, the Committee consolidated, organised and began to simplify rules of criminal procedure that before then had been contained in nearly 50 separate statutory instruments, and added notes that cross-referred to other relevant criminal justice legislation. Since then, the Committee has continued to revise and simplify those procedure rules in accordance with its statutory objective, while at the same time providing for new initiatives and for developments in legislation and in case law. Unless rule changes are needed urgently, the rules now are amended, if necessary, in June and in December, with the changes coming into force ordinarily on the first Monday in October and on the first Monday in April, respectively, of each year.
- 6.3 These rules supplement section 70 of the Proceeds of Crime Act 2002 and sections 14 to 20 and 24 of, and paragraph 11 of Schedule 16 to, the Sentencing Act 2020 (provisions that govern committal for sentence from a magistrates' court to the Crown Court). By the amendment of an existing rule these rules exercise the power conferred by section 52(1) of the Senior Courts Act 1981 to authorise the Crown Court to award costs in restraint and receivership proceedings. These rules exercise the power conferred by section 141(2) of the Sentencing Act 2020 to provide for the way in which a magistrates' court responsible for enforcing a compensation order is to deal with a payment received where the entitlement of the beneficiary of the order is suspended.

7. Policy background

What is being done and why?

Witness companions

- 7.1 Where a witness is eligible for assistance on grounds of age or incapacity, or on grounds of fear or distress about testifying, and gives evidence by live link in accordance with a special measures direction under the Youth Justice and Criminal Evidence Act 1999, then section 24 of the Act and rule 18.10 of the Criminal Procedure Rules allow for the witness to be accompanied. The Act does not apply where such a witness gives evidence in person in court. It has become court practice to allow such a witness to be supported by a companion nonetheless where that furthers the overriding objective in Part 1 of the Rules, but that practice is not yet explicitly acknowledged by the Rules.
- 7.2 It was reported to the Rule Committee that it would help courts and witness companions if there were such an acknowledgement of the court's powers. The Committee agreed to amend the rules accordingly. Rule 3 of these Rules amends rules 3.3 and 3.8 of the Criminal Procedure Rules to provide for the relevant duties of the parties and of the court respectively.

Notice of prosecution for a parent or guardian

- 7.3 Section 34A of the Children and Young Persons Act 1933 requires criminal courts in specified circumstances to require the parent or guardian of a young defendant to attend court with that young person. To give effect to that requirement it has been practice for a long time to send to the parent or guardian a copy of the summons or

requisition to attend court which is delivered to the defendant. Although the Criminal Procedure Rules refer to that practice the Rules do not yet require it.

- 7.4 Proposed amendments to section 34A of the 1933 Act that would be made by the Judicial Review and Courts Bill now before Parliament prompted the Rule Committee to reconsider that omission. The Committee decided to amend the rules to impose that requirement. Rule 5 of these Rules amends rule 7.4 of the Criminal Procedure Rules accordingly.

Committal for sentence

- 7.5 In some cases, a magistrates' court must, or can, send a defendant to the Crown Court for trial. In some circumstances a magistrates' court which convicts a defendant must, or can, commit that defendant for sentence to the Crown Court so that a more severe sentence can be imposed than a magistrates' court has the power to pass. In some cases, the circumstances in which a magistrates' court sends the defendant for trial or commits the defendant for sentence affects the sentencing power of the Crown Court. Part 9 of the Criminal Procedure Rules deals with allocation and sending for trial. In Parts 24 and 28 of the Rules, which deal with magistrates' court trial and special sentencing procedures respectively, the rules refer to committal for sentence. However, those rules are less explicit than they might be about the statutory provisions and about the relationship between sending and committal.
- 7.6 In three appeals heard during 2021, *R v Jessemey*¹, *R v Gould and Others*² and *R v Jex and Others*³, the Court of Appeal, criminal division, dealt with cases in which misunderstandings and mistakes during sending for trial and committal for sentence had confined the sentencing powers of the Crown Court unintendedly and inappropriately. At paragraph 2 of the judgment in *R v Gould* the court described the procedures as "governed by a formidably complicated battery of statutory provisions which have been supplemented and amended by Parliament frequently over many years". In response to those recent cases and members' own experiences the Rule Committee decided to elaborate the rules explicitly to incorporate the relevant procedures and to draw attention to the statutory provisions and their effects. Rules 6, 7(b) and 9 of these rules amend Parts 9, 24 and 28 of the Criminal Procedure Rules accordingly. Rule 4 of these Rules amends rule 5.4 of the Criminal Procedure Rules explicitly to require the recording of a statement or opinion of the magistrates' court which affects the Crown Court's powers.

Time limit for entry of written guilty plea

- 7.7 Under section 12 of the Magistrates' Courts Act 1980 a defendant may give written notice of a guilty plea, without attending court, if the crime alleged is a summary offence (that is, one that can be tried only in a magistrates' court) and if specified information has been delivered to the defendant with the summons or requisition to attend. The Act allows the defendant to give such a notice of guilty plea at any time before "the time ... appointed for the trial" but if court staff receive the notice too late to inform the court then that may impede the fair and efficient administration of justice. If the trial is adjourned then the defendant may be required unnecessarily to

¹ [2021] EWCA Crim 175, available at <https://www.bailii.org/ew/cases/EWCA/Crim/2021/175.html>

² [2021] EWCA Crim 447, available at <https://www.bailii.org/ew/cases/EWCA/Crim/2021/447.html>

³ [2021] EWCA Crim 1708, available at <https://www.bailii.org/ew/cases/EWCA/Crim/2021/1708.html>

attend a postponed hearing, and the defendant may not receive the sentencing discount that otherwise might have been available.

- 7.8 Rule 24.8 of the Criminal Procedure Rules incorporates the statutory procedure. Proposed amendments to section 12 of the 1980 Act that would be made by the Judicial Review and Courts Bill now before Parliament prompted the Rule Committee to discuss that rule. The Committee agreed that a procedural time limit for giving written notice of guilty plea would be a useful encouragement to a defendant to act promptly, even though the rule could not override the Act. Rule 7(a) of these Rules amends rule 24.8 of the Criminal Procedure Rules to require such a notice “as soon as practicable and in any event no later than the business day before the hearing date”.

Written directions for jurors

- 7.9 Rule 25.14 of the Criminal Procedure Rules codifies the very long-established practice requiring a Crown Court judge at a trial to give directions about the law and a summary of the evidence, to help the jury reach its verdict. The present rule requires the judge to give directions about the law “at any time at which to do so will assist jurors to evaluate the evidence” but it does not explicitly require the established practice of giving such directions with the final summary of evidence. The present rule acknowledges the possibility of the judge giving “directions, questions or other assistance in writing” but it does not require or encourage written directions. In the case of *R v Grant*⁴ the Court of Appeal, criminal division, dealt with a complaint that a lack of written directions had led to an unsafe conviction. The court decided that, “The short answer to the complaint that the verdicts are unsafe because the judge decided not to provide written directions is that although it is now expected that judges will provide the directions in law or, at the very least, a route to verdict in all but the simplest of cases, the failure to do so does not render the verdict(s) unsafe as a complaint standing on its own. There would need to be some additional feature of sufficient seriousness to lead to that result. ... However, we respectfully suggest that this is a matter that should be considered afresh by the Criminal Procedure Rule Committee, namely as to whether the essentially permissive approach within the present Rules and Practice Directions in this regard should become more directive, bearing in mind the strength and the consistency of the observations on the need for written directions in law and a written route to verdict that are to be found in the numerous decisions of this court.”⁵
- 7.10 The Rule Committee discussed that judgment and the others to which the court had referred. It considered academic research from this and other jurisdictions. It received advice from Professor Thomas QC, Professor of Judicial Studies at the Faculty of Laws, University College London. It canvassed the views of Crown Court judges, among others. The Committee decided to require the giving of directions “orally and, as a general rule, in writing as well”, using an expression conveying presumption which is already used in the Criminal Procedure Rules and which has been construed and approved in judgments in 2008 and 2019.⁶ Rule 8 of these Rules amends rule 25.14 of the Criminal Procedure Rules accordingly.

⁴ [2021] EWCA Crim 1243, available at <https://www.bailii.org/ew/cases/EWCA/Crim/2021/1243.html>

⁵ At paragraphs 47 and 50 of the judgment.

⁶ See [R v H \[2008\] EWCA Crim 483](#) at [11] and [R v SA \[2019\] EWCA Crim 144](#) at [52].

Costs applications in restraint or receivership proceedings

- 7.11 In restraint and receivership proceedings the Crown Court can make orders to assist in the confiscation of proceeds of crime. Rule 33.47 of the Criminal Procedure Rules allows the court to make an order in such proceedings for the payment of legal costs, using the power conferred on the Rules by section 52 of the Senior Courts Act 1981. However, by contrast with the main procedure rules about costs in criminal cases in Part 45 of the Rules, rule 33.47 imposes no explicit time limit for making an application. It was reported to the Rule Committee that sometimes applications under the rule are made long after the restraint or receivership proceedings in which those costs were incurred, which is unfair to the party against whom the order is sought and which results in an inefficient use of court time.
- 7.12 The Committee agreed that a time limit should apply and that any application for costs must be made “during the proceedings, or as soon as practicable following the conclusion of the proceedings, and in any event within 28 days of that conclusion”, subject to an extension of time in the court’s discretion. Rule 10 of these Rules amends rule 33.47 of the Criminal Procedure Rules accordingly.

Notice of appeals affecting confiscation and compensation orders

- 7.13 At the end of a Crown Court case the court can make an order under the Proceeds of Crime Act 2002 confiscating the proceeds of a convicted defendant’s crimes. In some cases, the court will have to determine the extent of the defendant’s financial interest in a shared asset – a family home, for example – before deciding the amount of the confiscation order. In some circumstances the court can make a compensation order under the Sentencing Act 2020 in favour of a victim or victims of the defendant’s crimes and in some circumstances the court can order the payment of that compensation out of the confiscated proceeds of crime. Finally, the decisions that the Crown Court makes can be the subject of appeal, not only by the defendant but also by a person whose financial interest in a shared asset has been determined. If there is an appeal in a case in which a compensation order has been made then the compensation recipients are not entitled to be paid until the appeal concludes. The result of all this is that there may be competing claims against the same funds, first in the Crown Court and again on appeal.
- 7.14 In the case of *R v Moore (Parker, interested party)*⁷ the Court of Appeal, criminal division, dealt with an appeal about a determination of financial interests in a house that was to be sold to meet a confiscation order. The outcome of the appeal was that 32 victims were compensated in part for the consequences of a fraud but one, whose existence had not emerged until late in the proceedings, received no compensation at all. The Court of Appeal criticised, among other things, a lack of adequate arrangements for making sure that everyone who would be affected by the appeal, including the office responsible for enforcing the Crown Court’s orders, knew enough about the progress of the appeal to be able to act accordingly. As the Court of Appeal put it,⁸ “This is a systemic deficiency which can lead to injustice, as the present case demonstrates, and which ought to be considered on any future assessment of the provisions of POCA or the Criminal Procedure Rules. At the very least there ought to be a system in place whereby the Magistrates’ Court is formally notified of the status of any appeal and kept updated, and a record is kept”.

⁷ [2021] EWCA Crim 956, available at <https://www.bailii.org/ew/cases/EWCA/Crim/2021/956.html>

⁸ At paragraph 53 of the judgment.

7.15 In response to that judgment, and in collaboration with the Registrar of Criminal Appeals and the National Court Enforcement Service of HM Courts and Tribunals Service, the Rule Committee decided to make rules to require (i) the giving of notice of such an appeal to anyone whose financial interest or entitlement might be affected, so that they can make representations if they wish, (ii) the giving of notice of the progress of the appeal to the enforcing court staff, and (iii) the withholding, pending the outcome of the appeal, of any payment of compensation the recipient's entitlement to which is suspended in the meantime. Rule 11 of these Rules amends accordingly the rules in Part 42 of the Criminal Procedure Rules about appeal in such cases.

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 <http://www.legislation.gov.uk/ukxi/2020/759/contents/made> 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 An 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 can be contacted with any queries regarding the instrument.

15.2 Ed Lidington, Director of Court Recovery, Criminal and Family Justice, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon. Dominic Raab MP, Deputy Prime Minister, Lord Chancellor and Secretary of State for Justice, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.