

**EXPLANATORY MEMORANDUM TO**  
**THE CRIMINAL PROCEDURE (AMENDMENT) RULES 2023**

**2023 No. 44 (L. 1)**

**1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 These Rules amend the Criminal Procedure Rules 2020, S.I. 2020 No. 759, in twelve miscellaneous respects.
- 2.2 They supplement provisions of the Police, Crime, Sentencing and Courts Act 2022 that amend other statutory provisions about (i) extending pre-charge bail, and (ii) sexual harm prevention orders. They amend the rules about service of documents on court offices to remove the requirement separately to notify court staff where a document is served by delivery to the court's own electronic system. They amend the rules about the provision of information by court staff to reporters and members of the public (i) to clarify the circumstances in which information about bail decisions must be given, (ii) to require the provision of warning that reporting restrictions may apply to any further publication of information supplied by court staff, and (iii) to clarify the distinction between requests for information under the authority of the rules alone and requests for information under one of the statutory provisions that applies. They amend the rules about starting a prosecution to elaborate on references to the statutory time limits that apply in some cases. They amend the rules about applications for witness orders (i) to remove the prohibition against making an application to a magistrates' court for such an order to be withdrawn where the witness had made no representations against the application for the order but had been aware of it, and (ii) to achieve consistency of expression with other rules. They correct an error in the description of a time limit in a rule about applications to extend pre-charge bail, omit superfluous words from a rule about costs and from a rule about applications for search warrants, and clarify the court officer's duty in relation to applications for such warrants and for other investigation orders.

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

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

- 3.1 In its Thirteenth Report of the Parliamentary Session 2022 – 23, published on 21<sup>st</sup> October, 2022, the Joint Committee on Statutory Instruments reported for defective drafting rules 5(d), 19(c), 21(d), 23(a) and 24 of the Criminal Procedure (Amendment No. 2) Rules 2022, S.I. 2022/815.
- 3.2 Rules 23(a) and 24 of those Amendment Rules included errors which are corrected by rules 10 and 11(b) of these Rules. The Rule Committee is grateful to the Joint Committee for pointing them out.

- 3.3 Having carefully considered the reported defect in rule 5(d) of those Amendment Rules the Rule Committee respectfully disagreed with the Joint Committee and decided to maintain the present formulation of the rule amended by that rule. In the Rule Committee's view the Joint Committee had overlooked the possibility of a court conducting a hearing in which at least one party takes part in person or by live link, thus making the event a hearing, but to which at least one other party contributes contemporaneously by electronic means in writing and not, therefore, by live link as defined by the Criminal Procedure Rules 2020.
- 3.4 Having carefully considered the reported defects in rules 19(c) and 21(d) of those Amendment Rules the Rule Committee respectfully disagreed with the Joint Committee and decided to maintain the present formulation of the notes amended by those rules. In the Rule Committee's view the Joint Committee had overlooked the significance of the references in those notes to a respondent within the contemplation of rule 31.5 of the Criminal Procedure Rules 2020.

#### **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 and accommodate (i) section 45 of, and Schedule 4 to, the Police, Crime, Sentencing and Courts Act 2022 which amend provisions of the Police

and Criminal Evidence Act 1984 governing the grant and extension of pre-charge bail, and the provisions of Chapter 3 of Part 10 of the 2022 Act which amend provisions of the Sentencing Act 2020 about sexual harm prevention orders and provide for the supervision and electronic monitoring of a person made subject to such an order. (ii) section 17 of the Criminal Appeal Act 1995, section 115 of the Crime and Disorder Act 1998 and article 7 of the Age of Criminal Responsibility (Scotland) Act 2019 (Consequential Provisions and Modifications) Order 2021, each of which requires the provision of information from court records to specified authorities in specified circumstances, and (iii) section 97 of the Magistrates' Courts Act 1980 which allows a magistrates' court to order a witness to attend court.

## **7. Policy background**

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

#### *Pre-charge bail*

- 7.1 A person who has been arrested for an offence but not yet charged may be released on police bail subject to a requirement to return to a police station and subject to other conditions in the meantime. Sections 47ZA<sup>1</sup> and 47ZB<sup>2</sup> of the Police and Criminal Evidence Act 1984 limit the period during which that person may be subject to such bail. That period may be extended in specified circumstances on the authority of a senior police or other officer and eventually, if the investigator thinks it necessary so to apply, on the authority of a magistrates' court. Amendments to the 1984 Act made by the Police, Crime, Sentencing and Courts Act 2022 lengthened the time for which such bail could be given and made other adjustments to the statutory provisions about pre-charge bail. The new, longer, period, and the new provisions for its extension, apply only to people arrested on or after 28<sup>th</sup> October, 2022.
- 7.2 To accommodate those changes rules 3 and 7 of these Rules amend Parts 2 and 14 of the Criminal Procedure Rules accordingly, with a transitional provision in Part 2 and an amended description of the statutory provisions in Part 14. While making those amendments the Rule Committee noticed that the statutory time limit had been misdescribed in rule 14.18 of the Criminal Procedure Rules and corrected that error.

#### *Service of documents on court offices*

- 7.3 Part 4 of the Criminal Procedure Rules governs the “service” of documents, meaning the ways in which documents can be delivered to other parties in criminal proceedings and to the court. One way in which a document may be served is by uploading to an electronic repository to which the person to be served has access. HM Courts and Tribunals Service presently maintains two such repositories, known as the Crown Court Digital Case System<sup>3</sup> and the Criminal Justice System Common Platform.<sup>4</sup> Where the intended recipient is the court the service of a document may require action by court staff – for example, arranging for a judge to consider an application – or may have the effect only of placing in the court's electronic file a document for future use. To ensure that the intended recipient is aware that a document has been served by uploading the rules presently require the sender also to notify the recipient.

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/1984/60/section/47ZA>.

<sup>2</sup> <https://www.legislation.gov.uk/ukpga/1984/60/section/47ZB>.

<sup>3</sup> <https://www.gov.uk/guidance/crown-court-digital-case-system-guidance>.

<sup>4</sup> <https://www.gov.uk/guidance/hmcts-common-platform-view-or-manage-a-case>.

- 7.4 It was reported to the Rule Committee that new electronic arrangements soon would be made to alert court staff to documents served by uploading to the Criminal Justice System Common Platform where action by those staff was required; thus obviating the need for notice to be given separately, relieving senders of documents to the court of the additional burden of giving such separate notices, and relieving court staff of the burden of sifting large numbers of such notices to distinguish between those requiring action and those merely announcing that a document for future use had been filed. The Committee was asked to amend the rules to accommodate those new arrangements and agreed to do so.
- 7.5 Rule 4 of these Rules amends rules 4.6 and 4.11 of the Criminal Procedure Rules accordingly to allow the requirement for separate notice to court staff to be waived in instances to be identified in instructions for the use of the Common Platform.

***Information from court records***

- 7.6 Rules 5.8, 5.9 and 5.10 of the Criminal Procedure Rules provide for access by the parties themselves and by reporters and members of the public to information held by the court. Rule 5.12 provides for applications for information from court records made under other legislation that confers on a specified person or authority a right to specified information in specified circumstances.
- 7.7 It was reported to the Rule Committee that those requesting information sometimes failed to appreciate the distinction between occasions on which other legislation applied and occasions on which it did not, so that requests for information sometimes were submitted without the details appropriate to the request. The Committee was asked to amend the rules to emphasise the distinction and agreed to do so. Reports also indicated that one particular type of request for information, namely a request for the outcome of proceedings concerning the grant or withholding of bail by the court, on occasion was apt to be misunderstood. The Committee agreed to amend rule 5.8 to help obviate such misunderstandings. In addition, it was reported that HM Courts and Tribunals Service had adopted a practice of warning recipients of information from court staff that the supply of that information did not of itself indicate that its publication – in social media, for example – was permitted. The Committee was asked to impose a requirement for that practice to be followed and agreed to do so.
- 7.8 Rule 5 of these Rules amends rules 5.8 and 5.12 of the Criminal Procedure Rules accordingly.

***Time limit for starting a prosecution***

- 7.9 Rule 7.2 of the Criminal Procedure Rules governs the procedure on an application to a magistrates' court for the issue of a summons alleging an offence. The rule refers to circumstances in which a statutory time limit applies to the making of such an application and requires the applicant prosecutor to demonstrate that the application is made in time if there is such a time limit. The usual time limit for starting a prosecution of a summary offence (meaning, an offence that can be tried only in a magistrates' court) is imposed by section 127 of the Magistrates' Courts Act 1980 and is 6 months from the date of the alleged offence. However, the legislation that creates the offence may prescribe a different time limit and that time limit may be calculated by reference to a date other than the date of the alleged offence, for example the date on which the prosecutor became aware of sufficient information to prosecute.

- 7.10 In the case of *London Borough of Barking and Dagenham v Argos Ltd*<sup>5</sup> the High Court decided that where a time limit that applied ran from the date of the alleged offence then the recital of that date alone was sufficient to demonstrate whether the application had been made in time or not. In a subsequent case, *R (Chopstix Trading Ltd) v Luton Magistrates' Court*<sup>6</sup>, the court made the same point. Paragraph 11 of that latter judgment begins, "In relation to compliance with the rule, it is not necessary for the application to state explicitly what the time limit is where legislation imposes such a limit in order for the application to demonstrate that it is in time. The application for a summons is directed to the court. So long as the court can glean from the application information necessary to establish whether the application is in time there will be compliance with the rule."
- 7.11 In paragraph 44 of the *Argos* case judgment the High Court added, "If the Criminal Procedure Rule Committee choose to reconsider rule 7.2(3)(b)(i) in the light of this judgment, that rule might specifically require a prosecutor in a case to which a time limit other than the section 127 MCA 1980 time limit applies to say what that time limit is, and why the information is within it." In response to that observation the Rule Committee decided to elaborate on the note to the rule that describes the statutory time limit and accordingly rule 6 of these Rules replaces the relevant paragraph of the note to rule 7.2 of the Criminal Procedure Rules.

***Application to withdraw a witness summons***

- 7.12 Section 97 of the Magistrates' Courts Act 1980<sup>7</sup> allows a magistrates' court to issue a summons for a proposed witness to attend court to give evidence. Similar powers are conferred on the Crown Court by sections 2 to 4 of the Criminal Procedure (Attendance of Witnesses) Act 1965<sup>8</sup>, but with some differences. Those differences include the circumstances in which a witness may apply for such a summons to be withdrawn on the grounds that the witness has no relevant evidence to give. Under the 1965 Act, in the Crown Court a witness who wants the court to withdraw the summons must have been unaware of the original application for it. Under the 1980 Act, in magistrates' courts that limitation does not apply. The rules in Part 17 of the Criminal Procedure Rules govern applications under both Acts and for consistency of procedure the rules impose on applications to magistrates' courts the same restrictions that apply by statute to applications to the Crown Court.
- 7.13 It was reported to the Rule Committee that on occasions the rule impeded a justifiable application by a witness who had been aware of the application for the summons but who had not then made representations against it, perhaps because they had been unable sufficiently quickly to take advice. The rule for the Crown Court is constrained by the statutory provision and so cannot be changed but the Committee agreed to change the rule for magistrates' courts to remove the impediment. The rules in Part 17 of the Criminal Procedure Rules were made in 2006. While making this amendment the Committee took the opportunity to bring the expression of the rules up to date.
- 7.14 Rule 8 of these Rules amends rules 17.7 and 17.8 of the Criminal Procedure Rules accordingly.

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<sup>5</sup> [2022] EWHC 1398 (Admin), available at <https://caselaw.nationalarchives.gov.uk/ewhc/admin/2022/1398>.

<sup>6</sup> [2022] EWHC 3141 (Admin), available at <https://caselaw.nationalarchives.gov.uk/ewhc/admin/2022/3141>.

<sup>7</sup> <https://www.legislation.gov.uk/ukpga/1980/43/section/97>.

<sup>8</sup> <https://www.legislation.gov.uk/ukpga/1965/69/section/2> and following pages.

### *Sexual harm prevention orders*

- 7.15 Part 31 of the Criminal Procedure Rules sets out standard procedures for dealing with court orders that the rules call ‘behaviour orders’: meaning orders for which a number of Acts provide, which can be made on a defendant’s conviction (and in some cases on acquittal), and which impose prohibitions and requirements on the defendant’s conduct to deter future offending. Chapter 3 of Part 10 of the Police, Crime, Sentencing and Courts Act 2022 amends provisions of the Sentencing Act 2020 about sexual harm prevention orders. Among other things, those amendments allow courts under that legislation to impose requirements as well as prohibitions on a person made subject to such an order, and allow courts to order the supervision and electronic monitoring of such a person. The new supervision and monitoring provisions correspond with those made by the Domestic Abuse Act 2021 in relation to domestic abuse protection orders.
- 7.16 The Rule Committee agreed to amend rules in Part 31 to accommodate the amended and new statutory provisions and to consolidate references to supervision and monitoring provisions in the notes to the rules. Rule 9 of these Rules amends rules 31.3 and 31.10 of the Criminal Procedure Rules accordingly.

### *Corrections and clarification*

- 7.17 By rules 10 and 11(b) of these Rules the Rule Committee has corrected errors in the Criminal Procedure Rules occasioned by a previous amendment: see paragraph 3 above. While considering potential future rule amendments not made by these Rules the Rule Committee noticed that the obligation imposed on court officers by rule 47.3 of the Criminal Procedure Rules was unclear: applications delivered to such officers under the rules in Part 47 must be either kept by them or the keeping delegated to another person in accordance with that rule. Rule 11(a) of these Rules amends that rule accordingly.

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

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

## **9. Consolidation**

- 9.1 When it made the Criminal Procedure Rules 2005 the Committee declared its intention to effect after 5 years a legislative consolidation of those Rules with such amendments as had been made by then, and it did so in the Criminal Procedure Rules 2010. Having consulted on the desirability of continuing to consolidate the Rules at regular intervals, the Committee decided to do so: at first annually, between 2010 and 2015, then in 2016 reverting to the plan to consolidate at 5 yearly intervals.
- 9.2 In accordance with that plan the Rules were consolidated again in 2020. The Committee now intends to make a further consolidation in 2025. Meanwhile, the effects of amendments to the Criminal Procedure Rules 2020 will be published at <https://www.legislation.gov.uk/ukxi/2020/759/contents> and an informal consolidated text will continue to be available to the public, with some additional commentary and explanation, at <https://www.gov.uk/guidance/rules-and-practice-directions-2020>.

## **10. Consultation outcome**

- 10.1 The Rule Committee fulfilled its statutory obligation to consult as the Committee considers appropriate by inviting and reviewing suggestions and observations solicited by its members from among the groups from which each is drawn.

## **11. Guidance**

- 11.1 Amendments to the Criminal Procedure Rules are drawn to the attention of participants in the criminal justice system by correspondence addressed to members of the judiciary, to other relevant representative bodies (for example, the Law Society and the Bar Council) and to the editors of relevant legal journals; as well as by publicity within HM Courts and Tribunals Service, within the principal prosecuting authorities, and among local criminal justice boards.
- 11.2 News of changes to the Rules and of the effect of those changes is published at <https://www.gov.uk/guidance/announcements-from-the-criminal-procedure-rule-committee>.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector because these Rules maintain rules and procedures that are already current and introduce new rules and procedures that give effect to other legislation or established best practice.
- 12.3 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](mailto: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.