

**EXPLANATORY MEMORANDUM TO**  
**THE CRIMINAL PROCEDURE (AMENDMENT NO. 2) RULES 2024**

**2024 No. 842 (L. 12)**

**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.

**2. Declaration**

- 2.1 The Rt Hon. Shabana Mahmood MP, Lord Chancellor and Secretary of State for Justice, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Ed Lidington, Director of Courts, Criminal and Family Justice, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

**3. Contact**

- 3.1 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.

**Part One: Explanation, and context, of the Instrument**

**4. Overview of the Instrument**

*What does the legislation do?*

- 4.1 These Rules amend the Criminal Procedure Rules 2020, S.I. 2020 No. 759, in the following principal respects. They substitute new rules about the allocation and sending of cases for trial in the Crown Court to govern the operation of an online written procedure under new statutory provisions, which new rules (i) define circumstances in which the new written procedure may not be used, (ii) define criteria for sending an offence for trial because of its connection with another offence, and (iii) include detailed requirements for explanations to defendants. They require the publication of information about cases dealt with by the new online written arrangements that correspond, as nearly as may be, with existing rules about the publication of information concerning cases heard in a court room. They clarify the extent of the information about alleged offences and about conditions of bail that must be published and supplied on request. They acknowledge the court's power to prohibit the supply of specified information without a specific court order. They allow an authorised court officer to decide whether or not to issue a summons in the Crown Court. They codify the established practice by which courts take into account for sentencing purposes confidential information about assistance given to investigators by a defendant and distinguish between that practice and the comparable statutory procedure. They supplement statutory provision that confers new rights of appeal about domestic abuse protection orders. They supplement statutory provision for the reference to the Court of Appeal of disputes about the interpretation or application of case law that evolved under the influence of European Union law. They accommodate new statutory powers to extend the retention periods for fingerprints, DNA samples

and DNA profiles. They clarify the rules about appeals to the High Court in extradition cases by (i) supplying new procedures to encourage the prompt provision of information needed by the court, and (ii) incorporating the interpretation in case law of the statutory time limit for appeal.

*Where does the legislation extend to, and apply?*

- 4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

## 5. Policy Context

*What is being done and why?*

*Allocation and sending for trial*

- 5.1 Part 9 of the Criminal Procedure Rules applies to the exercise of a magistrates' court's powers under the Magistrates' Courts Act 1980 and the Crime and Disorder Act 1998 to send a defendant for trial in the Crown Court, or to retain the case for trial in the magistrates' court, according to the classification of the offence, the defendant's age, and specified other circumstances. The Part 9 rules apply also to the exercise of a magistrates' court's powers to commit a convicted defendant for sentence in the Crown Court, and to the exercise of the Crown Court's power in some circumstances to send a defendant back to a magistrates' court for trial. The present statutory provisions are amended extensively by the Judicial Review and Courts Act 2022, to allow allocation and sending for trial to take place in writing, without a court hearing, and to include a new right for the defendant to require Crown Court trial without a full allocation procedure first taking place. In future, allocation and sending for trial may take place at a hearing, as it does now, or it may take place online, in writing; and, depending on the circumstances, procedure that begins in writing may continue at a hearing, and vice versa. As well as governing procedure at an allocation and sending hearing in a magistrates' court, in future Criminal Procedure Rules will govern the new written procedure, too; which will be available online if the defendant has a legal representative. The 2022 Act gives two new powers to Criminal Procedure Rules, (i) a power to define circumstances in which a new written procedure may not be used, and (ii) a power to define criteria for sending an offence for trial because of its connection with another offence. Explanatory Notes published with the 2022 Act<sup>1</sup> describe the amendments that it makes in more detail.
- 5.2 To accommodate the various potential combinations of circumstance that in future may arise the Rule Committee has substantially replaced the Part 9 rules, amending existing rules and adding to them. The new rules include provision for these features:
  - (a) circumstances in which the court need not initiate, or pursue, written procedures:
    - (i) amendments to the Crime and Disorder Act 1998 require magistrates' courts to adopt written procedures for sending proceedings but the relevant statutory provisions "have effect subject to any provision in Criminal Procedure Rules ... about circumstances in which [*that statutory requirement*] does not apply".<sup>2</sup> Such circumstances are prescribed by new rules 9.8(2)(a), 9.8(6) and 9.23(3). Where the court otherwise would have to send for trial by the written procedure

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<sup>1</sup> See paragraphs 33 – 38 at <https://www.legislation.gov.uk/ukpga/2022/35/notes/division/3/index.htm>.

<sup>2</sup> See sections 51(1) and (2A) to (2E), and 51A(A1) and (3A) to (3E) of the amended 1998 Act.

that statutory obligation is disapplied if (i) a hearing is imminent, or (ii) before sending the court requires a hearing to consider bail, to collect or consider information required for the purposes of case management, because the defendant appears to have no legal representative (or having had a legal representative appears no longer to have one), or in any other circumstance which the court thinks makes it necessary to convene a hearing. For a young defendant, these same exceptions apply to the youth allocation procedure under new rule 9.19.

- (ii) amendments to the Magistrates' Courts Act 1980 require magistrates' courts to adopt written procedures for allocation proceedings, "But Criminal Procedure Rules may make provision about circumstances in which [*the obligation to use written procedures*] does not have effect".<sup>3</sup> Such circumstances are prescribed by new rules 9.10 and 9.19. Where the court otherwise would have to allocate for trial by the written procedure that statutory obligation is disapplied if a hearing is imminent (in practice, in any case in which the defendant has been arrested and is brought to court in custody, and in any case in which a guilty plea and sentencing in the magistrates' court was anticipated before the defendant was given bail by the police).
- (b) offence connected with another offence. Present sections 51(3) to (12) and 51A(4) to (10) of the Crime and Disorder Act 1998 list criteria by reference to which in a case in which one offence is sent to the Crown Court for trial another offence, or other offences, may, and sometimes must, be sent, too, without requiring allocation. Some of those criteria depend upon the occasion or occasions upon which the several offences are sent, giving rise to considerable complexity. Amendments to those two sections made by the 2022 Act require Criminal Procedure Rules to "make provision about situations where (a) a condition in subsection (2) [*the sending conditions*] is met in relation to an alleged offence, and (b) any other alleged offence is, or appears to be, related (in such a way as is specified in the Rules) to the alleged offence referred to in paragraph (a)".<sup>4</sup> Those powers are exercised by new rule 9.2(3) and (4).
- (c) explanations for defendants. The present statutory provisions require the court to explain allocation and sending procedures to the defendant. The present rules incorporate and elaborate on those requirements. The new statutory provisions will require more such explanations, some prescribed by statute and others delegated to Criminal Procedure Rules. At a hearing, explanations of why questions are about to be asked and choices offered can be adapted to the circumstances and to the defendant. In written procedures that is not possible and circumstances and choices may be complex. The Rule Committee decided to include detailed requirements for what must be explained to a defendant.

5.3 Rule 7 of these Rules, with Schedule 1, replaces Part 9 of the Criminal Procedure Rules accordingly.

***Publication of information about written allocation and sending proceedings***

5.4 Rule 5.11 of the Criminal Procedure Rules presently applies to cases due to be heard in public and to cases due to be dealt with without a hearing under the single justice procedure in magistrates' courts. The rule requires the publication of specified information about each case, including the identities of the prosecutor and defendant

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<sup>3</sup> See sections 17ZA(2), 17ZB(2), 17ZC(2) and 24ZA(2) of the amended 1980 Act.

<sup>4</sup> See sections 51(3A) and (3B) and 51A(4A) and (4B).

and the statement of the alleged offence. In a case that is allocated and sent for trial under the new written procedures described in paragraph 7.1 above there will not be a hearing until the defendant attends for trial and sentencing in a magistrates' court, or at the Crown Court. To maintain the public availability of information about those cases the Rule Committee decided to amend the present rule to require publication during the written procedure of the same information as would be published in relation to an allocation and sending hearing. Rule 6(d) of these Rules therefore amends rule 5.11 of the Criminal Procedure Rules to that effect.

***Provision of information about alleged offences and conditions of bail***

- 5.5 Rule 5.8 of the Criminal Procedure Rules requires the supply by court staff to members of the public on request of information from court records about, among other things, the offence or offences alleged in a case, and about whether the court has granted bail. Rule 5.11 requires the publication of that information in the circumstances to which that rule applies. Already court staff correctly interpret those requirements to exclude as disproportionate (i) the narrative particulars of the alleged offence that usually will identify a victim, and (ii) details of any condition of bail imposed which may include a defendant's home address and other personal details. However, it was reported to the Rule Committee that occasionally doubts arose about the extent of the information required by the present rules to be supplied and published. The Rule Committee agreed to clarify those two exclusions. Rule 6(b)(v) and (vi) and (d)(i) and (ii) of these Rules amends rules 5.8 and 5.11 of the Criminal Procedure Rules to that effect.

***Prohibition against information supply without court order***

- 5.6 Rule 5.8 of the Criminal Procedure Rules lists the categories of information from court records that must be supplied by court staff to members of the public on request. Information that is not in that list may be supplied only if a judge or magistrate so orders, under rule 5.10 of the Criminal Procedure Rules. Occasionally there may be a reason why information that usually must be supplied on request ought not be supplied without a court order. At present, however, the Criminal Procedure Rules make no provision for that possibility; unlike, for example, rule 5.4C(4), (5), (6) of the Civil Procedure Rules.<sup>5</sup> This omission was pointed out to the Rule Committee. The Committee agreed that (i) a criminal court has power to impose a prohibition against the supply of information from that court's records without first a judicial consideration of the request, and (ii) the Criminal Procedure Rules should supply a suitable procedure accordingly. Rule 6(b) and (c) of these Rules amends rules 5.8 and 5.10 to supply that procedure, and rule 6(a) of these Rules amends rule 5.4 of the Criminal Procedure Rules to require the recording of any such order.

***Summons to attend breach of community order, etc. proceedings in the Crown Court***

- 5.7 Part 32 of the Criminal Procedure Rules supplies the procedure on an application to the court for a defendant to be dealt with for alleged failure to comply with an order on sentence to which that Part applies. The defendant must attend the hearing of such an application and the power of the Crown Court to require attendance by issuing a summons is provided for by section 80 of the Senior Courts Act 1981. The decision to issue a summons is a judicial function, but one that involves little discretion. It was suggested to the Rule Committee that it would be appropriate for Criminal Procedure Rules to authorise the delegation of the function to a court officer authorised for the purpose under section 67B of the Courts Act 2003. The Committee agreed. Rule 4 of

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<sup>5</sup> See <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part05#5.4C>.

these Rules therefore adds that function to the list in rule 2.7 of the Criminal Procedure Rules.

***Assisting an investigator: confidential information for a sentencing court***

- 5.8 Rule 28.11 of the Criminal Procedure Rules supplies a procedure that supplements (i) sections 74 and 388 of the Sentencing Act 2020, about an application to the Crown Court to reduce a defendant’s sentence for assisting or agreeing to assist a police or other investigator, and (ii) section 387 of the 2020 Act, about an application to the Crown Court to increase a defendant’s sentence for failing to give assistance that had been promised and that was taken into account in sentencing. In addition to that statutory scheme criminal courts have inherent powers to reduce a defendant’s sentence where that defendant has assisted an investigator or prosecutor before being sentenced. However, the Criminal Procedure Rules presently supply no procedure to supplement the exercise of that inherent power. The case of *R v Royle and Others*<sup>6</sup> in the Court of Appeal drew attention to that omission and the Rule Committee decided to make a rule to fill the gap. Rule 8 of these Rules amends Part 28 of the Criminal Procedure Rules for that purpose.

***Appeal about a decision on the variation or discharge of a domestic abuse protection order***

- 5.9 The Domestic Abuse Act 2021 creates domestic abuse protection orders to protect people connected with a defendant from domestic abuse, or the risk of domestic abuse. In a criminal case an order can be made on the conviction or the acquittal of a defendant. Under section 44 of the Act a defendant, a person for whose protection an order has been made and the police each can apply for the variation or discharge of an order. On such an application rule 31.5 of the Criminal Procedure Rules supplies a special procedure the purpose of which is to reduce to a minimum the need for correspondence between a defendant and a protected person, to minimise the risk of further conflict. Under section 46 of the Act a protected person and the police can appeal against a decision made on an application to vary or discharge a domestic abuse protection order.
- 5.10 Part 34 of the Criminal Procedure Rules applies to an appeal from a magistrates’ court to the Crown Court. It was pointed out to the Rule Committee that the rules in Part 34 included nothing equivalent to the special procedure under rule 31.5, which special procedure would be as useful on an appeal as on the application which had led to that appeal. The Committee agreed. Rule 9 of these Rules amends rule 34.2 of the Criminal Procedure Rules accordingly.

***Reference of assimilated EU case law to the Court of Appeal***

- 5.11 As amended by the Retained EU law (Revocation and Reform) Act 2023, the European Union (Withdrawal Agreement) Act 2020 allows for the determination of questions about the interpretation and application of “assimilated case law” by the reference of points of law to the Court of Appeal.<sup>7</sup> The 2020 Act provides, too, for the

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<sup>6</sup> [\[2023\] EWCA Crim 1311](#); judgment of 13<sup>th</sup> November, 2023.

<sup>7</sup> In summary, “assimilated case law” means case law that magistrates’ courts and the Crown Court are bound to apply but the interpretation and application of which is affected by the withdrawal of the United Kingdom from the European Union and from the jurisdiction of the European Court of Justice. The full statutory definition provides that “assimilated case law” means (a) assimilated domestic case law, and (b) assimilated EU case law, and that “assimilated domestic case law” means any principles laid down by, and any decisions of, a court or tribunal in the United Kingdom, as they have effect immediately before IP completion day and so far as they (a) relate to anything to which section 2 or 3 of *[the 2020 Act]* applies, and (b) are not excluded by section 5 or Schedule 1, (as those principles and decisions are modified by or under *[the 2020]* Act or by other domestic law from time to time);” and “assimilated EU case law” means any principles laid down by, and any decisions of, the European Court, as they have effect in EU law immediately before IP completion day and so far as they (a)

potential intervention of UK Law Officers in proceedings about such case law in that court.

- 5.12 Part 41 of the Criminal Procedure Rules already applies to references to the Court of Appeal under other legislation. Part 43 already applies to the procedure in that court on the initial stages of a further appeal to the Supreme Court. Part 36 already applies to potential interventions under other legislation. The Rule Committee decided to provide for these new types of reference and intervention by elaborating on existing rules. Accordingly, rules 10, 12 and 13 of these Rules amend rules in Parts 36, 41 and 43 respectively of the Criminal Procedure Rules.

***Orders for the retention of fingerprints, etc.***

- 5.13 Schedule 6 to the National Security Act 2023 provides for, among other things, the taking and retention of fingerprints and DNA samples from a person arrested under the Act. The Schedule provides for applications by the police to a magistrates' court to extend the period for which such fingerprints and samples, and DNA profiles derived from such samples, may be retained; and for appeals to the Crown Court against a magistrates' court's decision.
- 5.14 Section 5 of Part 47 of the Criminal Procedure Rules already applies to corresponding applications and appeals under provisions of the Police and Criminal Evidence Act 1984 and of the Terrorism Act 2000. The rules govern the procedure by which such applications and appeals must be made. The Rule Committee decided to provide for the new types of application and appeal by extending that procedure. Rule 14 of these Rules amends rules 47.42 and 47.45 of the Criminal Procedure Rules to that effect.

***Extradition appeals***

- 5.15 Part 50 of the Criminal Procedure Rules governs procedure in extradition proceedings in magistrates' courts and on an appeal to the High Court by the alleged fugitive or by the requesting state. The rules supplement the provisions of the Extradition Act 2003.
- 5.16 On an appeal the 2003 Act requires the High Court to give permission before the appeal can be fully considered. To be able to do so, the court needs to know why the appellant says that the magistrates' court's decision was wrong, and needs other information about the case. High Court judges responsible for the administration of extradition appeals reported to the Rule Committee that appellants frequently omitted important details. Such an omission, and the extent of the High Court's power to deal with that omission on that occasion, had been the subject of the judgment in *Kurta v Poland, Al-Jaban v Belgium*<sup>8</sup>. The judges asked that the Criminal Procedure Rules should be elaborated to specify in detail the information required and to provide explicitly for the procedure that must be followed where such information was requested but not supplied. The Rule Committee agreed to do so. Rule 15 of these Rules amends rule 50.20 of the Criminal Procedure Rules accordingly.
- 5.17 In another High Court judgment, *Da Cruz and Another v Portugal*<sup>9</sup>, the court drew attention to the effect of the short statutory time limit (7 days) for appeal. That time limit has been interpreted by the courts to mean that an appeal notice which is formally sent ("served") by email will be in time even if the email is sent after the court office has closed and just before midnight on the last day allowed by the 2003 Act. The Rule Committee decided that the effect of that interpretation should be

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relate to anything to which section 2 or 3 applies, and (b) are not excluded by section 5 or Schedule 1, (as those principles and decisions are modified by or under this Act or by other domestic law from time to time)".

<sup>8</sup> [2022] EWHC 1906 (Admin); judgment of 22<sup>nd</sup> July, 2022.

<sup>9</sup> [2024] EWHC 417 (Admin); judgment of 27<sup>th</sup> February, 2024.



codified in the Criminal Procedure Rules. For that reason, rule 5 of these Rules amends rule 4.11 of the Criminal Procedure Rules, the rule about the date on which a document is treated as served.

## **6. Legislative and Legal 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) provisions of the Judicial Review and Courts Act 2022 which amend the Magistrates' Courts Act 1980 and the Crime and Disorder Act 1998 to allow a case to be allocated and sent for trial by online written arrangements, (ii) section 80 of the Senior Courts Act 1981 which allows the court in some circumstances to issue a summons to a defendant to attend court, (iii) provisions of the Domestic Abuse Act 2021 which allow for appeal in relation to a domestic abuse protection order by a person protected by that order, (iv) provisions of the Retained EU law (Revocation and Reform) Act 2023 which amend the European Union (Withdrawal Agreement) Act 2020 to allow for the determination of disputes about the interpretation and application of assimilated case law, (v) provisions of the National Security Act 2023 which allow for the collection and retention of fingerprints and DNA samples and profiles, and (vi) provisions of the Extradition Act 2003 which impose time limits on the exercise of rights of appeal under that Act.
- 6.4 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.
- 6.5 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>.

## **7. Consultation**

### *Summary of consultation outcome and methodology*

- 7.1 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.

## **8. Applicable Guidance**

- 8.1 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.
- 8.2 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>.

## **Part Two: Impact and the Better Regulation Framework**

## **9. Impact Assessment**

- 9.1 A full Impact Assessment has not been prepared for this instrument for the reasons given beneath.
- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies because these rules do not apply to the activities undertaken by them (the rules govern procedure in criminal courts).
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 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.

## **10. Monitoring and review**

### *What is the approach to monitoring and reviewing this legislation?*

- 10.1 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.
- 10.2 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.

- 10.3 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.
- 10.4 The instrument does not include a statutory review clause.

### **Part Three: Statements and Matters of Particular Interest to Parliament**

#### **11. Matters of special interest to Parliament**

- 11.1 None.

#### **12. European Convention on Human Rights**

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

#### **13. The Relevant European Union Acts**

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”). It does however relate to the withdrawal of the United Kingdom from the European Union because the procedure rule amendments described at paragraphs 5.11 and 5.12 above accommodate statutory amendments to the 2018 Act made by the 2023 Act.