

## **EXPLANATORY MEMORANDUM TO**

### **The Crown Court (Amendment) Rules (Northern Ireland) 2013**

#### **S.R. 2013 No. 82**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under sections 52(1) and 53A of the Judicature (Northern Ireland) Act 1978 and Articles 17(5), 21BA(9) and 39(1) of the Criminal Evidence (Northern Ireland) Order 1999 and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1. The Rules amend the Crown Court Rules (Northern Ireland) 1979 ("the principal Rules") to prescribe the procedure for making an application for the examination of a witness, or an accused, through an intermediary under the relevant provisions in the Criminal Evidence (Northern Ireland) Order 1999; and rectify an error relating to costs in criminal cases.

#### **3. Background**

- 3.1. Intermediaries: When commenced, Article 17 of the Criminal Evidence (Northern Ireland) Order 1999 ("the 1999 Order") will allow for a witness, and Article 21BA of the 1999 Order will allow for an accused, to be examined through an intermediary in criminal proceedings.
- 3.2. The role of the intermediary is to communicate any questions to the witness and relay the witness's answers back to the person who asked the question. The intermediary may also explain the question to the witness as far as necessary in order to allow the witness to understand it. A declaration must be made by the intermediary before they act stating that they will discharge their function to the best of their ability.
- 3.3. Examination of accused through an intermediary – the Court can allow for the accused to be examined through an intermediary if: the accused is under 18 and their ability to participate effectively in proceedings is compromised by their level of intellectual ability or social functioning; or the accused suffers from a mental disorder or has significant impairment of intelligence or social functioning and for that reason is unable to participate effectively in the proceedings; and the direction is necessary in order to ensure that the accused receives a fair trial.
- 3.4. The Rules prescribe the procedure for applying to the Court for the use of an intermediary for either the witness or the accused. The Rules also set out the declaration which must be made by the intermediary before acting.
- 3.5. In respect of the use of intermediaries, a pilot scheme will initially operate in the Crown Court sitting at Belfast and at the associated committal stage in the magistrates' courts.

- 3.6. Costs in criminal cases: The Rules also rectify an error in relation to costs in criminal cases by removing the phrase “under these Rules” from rule 3 and revoking rule 48. Rule 3 refers to an order for costs “under these Rules”, but the principal Rules do not provide for such an order (orders for costs are made under the Costs in Criminal Cases Act (Northern Ireland) 1968 (“the Act”). Rule 48 amends section 7 of the Act so that rules of court may provide for the taxation of costs as well as for rates or scales of payment, but since an Act cannot be amended by secondary legislation, the rule is legally dubious and, as a matter of law, should be disregarded. Powers under section 52 of the Judicature (Northern Ireland) Act 1978 are already wide enough to allow rules to provide for taxation.

#### **4. Consultation**

- 4.1. Due to the procedural and technical nature of the Rules, a consultation was not considered necessary. The Rules have, however, been made by the Crown Court Rules Committee which is chaired by the Lord Chief Justice and comprises members of the judiciary and the legal profession.

#### **5. Equality Impact**

- 5.1. The Department of Justice screened the Rules in accordance with its equality scheme and in compliance with section 75 of the Northern Ireland Act 1998. It was decided that the Rules were to be “screened out”. No adverse equality impact was identified.

#### **6. Regulatory Impact**

- 6.1. The Rules will not have any regulatory impact on businesses, voluntary sector or charities. The main stakeholders will be those public bodies implementing and enforcing the Rules. They are supportive of the changes.

#### **7. Financial Implications**

- 7.1. None.

#### **8. Section 24 of the Northern Ireland Act 1998**

- 8.1. The proposed Rules are considered to be compliant with section 24 of the Northern Ireland Act 1998, including Community Law and Convention Rights as defined in the Human Rights Act 1998.

#### **9. EU Implications**

- 9.1. None.

#### **10. Parity or Replicatory Measure**

- 10.1. The Rules are procedural in nature and the policy was determined in the 1999 Order and the Justice Act (Northern Ireland) 2011.

#### **11. Additional Information**

- 11.1. None.