

**EXPLANATORY MEMORANDUM TO THE  
CRIMINAL APPEAL (PROSECUTION APPEALS) RULES (NORTHERN  
IRELAND) 2005**

**2005 No. 159**

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs (Northern Ireland Court Service) and is laid before Parliament by Command of Her Majesty.

**2. Description**

- 2.1 The Rules are made in exercise of the powers conferred under section 55 of the Judicature (Northern Ireland) Act 1978 and Article 32 of the Criminal Justice (Northern Ireland) Order 2004. The Rules regulate the practice and procedure which will apply in the Court of Appeal in relation to the new prosecution right of appeal against terminating rulings by a judge of the Crown Court under Article 17 of the 2004 Order. The Rules will come into operation on 18<sup>th</sup> April 2005.

**3. Matters of special interest to the Joint Committee on Statutory Instruments/Select Committee on Statutory Instruments**

- 3.1 None.

**4. Legislative Background**

- 4.1 Part IV of the Criminal Justice (Northern Ireland) Order 2004 (which makes provision in Northern Ireland comparable to that contained in Part 9 of the Criminal Justice Act 2003 for England and Wales) gives the prosecution an interlocutory right of appeal to the Court of Appeal against certain judicial rulings made in trials on indictment in the Crown Court. These cover terminating rulings, including those that are terminating in and of themselves (such as rulings of no case to answer) and those that the prosecution consider to be fatal to their case (i.e. if it were not for the right of appeal they would offer no or no further evidence). This general right of appeal is set out in Article 17 of the 2004 Order. In most situations, it will only be possible for the prosecutor to appeal under this Article against a single ruling. However, there is one exception. If the ruling is a ruling of no case to answer, the prosecutor may nominate other rulings that relate to the offence to also be the subject of the appeal.
- 4.2 Where the prosecution fails to obtain leave to appeal or abandons the appeal, the prosecution must agree that an acquittal will follow. In addition, if the Court of Appeal was to confirm a ruling made by a judge, then it must order the acquittal of the defendant(s) for the offence(s) which is (are) the subject of the appeal.

- 4.3 There are also provisions, in Articles 21 and 22 of the 2004 Order, which give the prosecution a right of appeal against evidentiary rulings that significantly weaken the prosecution case. However, these will not be implemented until a later date and thus the Rules are not concerned with these types of appeals.

## **5. Extent**

- 5.1 The instrument extends to Northern Ireland only.

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

- 6.1 Not applicable.

## **7. Policy background**

- 7.1 Under current legislation the defendant has a right of appeal at the end of the trial against both conviction and sentence but the prosecution has no equivalent right of appeal against an acquittal, whether the result of a jury's decision or a judge's ruling that has the effect of bringing the trial to an early end. As set out above, Part IV of the 2004 Order creates a new interlocutory prosecution appeal against judicial rulings in the Crown Court that are either terminating in themselves or de facto terminating in that the prosecution consider to be fatal to their case (i.e. if it were not for the right of appeal they would offer no or no further evidence). Leave to appeal must be obtained from either the judge or the Court of Appeal. Depending on the circumstances the judge will decide whether the appeal follows either an expedited route, where the trial is adjourned pending the conclusion of the appeal, or a non-expedited route, where any jury that has been empanelled may be discharged.
- 7.2 Where the Court of Appeal concludes that the trial judge's ruling was wrong, the case which would otherwise be lost, will either continue in the Crown Court or be the subject of a fresh trial, depending on which appeal route is ordered.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities, or voluntary bodies.

## **9. Contact**

- 9.1 Geraldine Fee at the Northern Ireland Court Service (telephone: 028 9041 2250); e-mail: geraldinefee@courtsni.gov.uk) can answer any queries about this instrument.