EXPLANATORY MEMORANDUM TO

The Attorney General's Human Rights Guidance (Northern Ireland Courts and Tribunals Service – Support for Victims and Witnesses) Order (Northern Ireland) 2014

SR 2014 No. 274

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the the Attorney General for Northern Ireland to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under the powers conferred by section 8(3)(c) of the Justice (Northern Ireland) Act 2004 and is subject to the negative resolution procedure.

2. Purpose

2.1. The Statutory Rule brings into operation human rights guidance for the Northern Ireland Courts and Tribunals Service (in relation to support for victims and witnesses) by the Attorney General for Northern Ireland on the exercise of Northern Ireland Courts and Tribunals Service functions in a manner consistent with international human rights standards.

3. Background

3.1. Section 8(1) of the Justice (Northern Ireland) Act 2004 obliges the Attorney General for Northern Ireland to issue guidance for criminal justice organisations on the exercise of their functions in a manner consistent with international human rights standards. This Statutory Rule brings into operation guidance for the Northern Ireland Courts and Tribunals Service in relation to support for victims and witnesses, as required by section 8(3)(c) of the 2004 Act.

4. Consultation

4.1. The Attorney General has consulted with the Advocate General pursuant to section 8(1A) and section 8(5A) of the Justice (Northern Ireland) Act 2004.

5. Equality Impact

5.1. The Attorney General for Northern Ireland is not listed as a public authority for the purpose of section 75 of the Northern Act 1998.

5.2. The Statutory Rule provides for the coming into force of the guidance under section 8 of the Justice (Northern Ireland) Act 2004. This guidance is based upon international human rights standards and therefore the principles of equality and non-discrimination form a central component of the guidance which the Statutory Rule brings into operation.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment is not required.

7. Financial Implications

7.1. Not applicable.

8. Section 24 of the Northern Ireland Act 1998

8.1. It is the view of the Attorney General that this Statutory Rule is compliant with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. The Attorney General is making the Statutory Rule in fulfilment of a legal requirement under section 8 of the Justice (Northern Ireland) Act 2004.

10.2. The Statutory Rule applies to Northern Ireland only. There is no corresponding Great Britain Statutory Instrument.

11. Additional Information

11.1. The text of the guidance is attached to this Explanatory Memorandum at Annex A.

ANNEX A

HUMAN RIGHTS GUIDANCE FOR THE NORTHERN IRELAND COURTS AND TRIBUNALS SERVICE IN RELATION TO SUPPORT FOR VICTIMS AND WITNESSES

INTRODUCTION

1. Human rights standards are designed to make life better for individuals and communities and they should not be, and not be viewed as, burdens to competent professionals conscientiously carrying out their duties. When competent professionals are working diligently to the high standards set by their own disciplines they will almost invariably comply with human rights standards. This guidance is designed to assist professionals by offering them a framework within which their own professional standards can safely operate. By following this guidance those to whom it is addressed can be confident that their work is compliant with international human rights standards.

2. This guidance is without prejudice to the requirement on all public authorities to comply with their obligations under section 6 of the Human Rights Act 1998 and with EU Law.

THIS GUIDANCE IS ADDRESSED TO THE NORTHERN IRELAND COURTS AND TRIBUNALS SERVICE

3. While based on international standards of human rights law, this guidance is intended to be focused on those areas of most relevance and assistance to the Northern Ireland Courts and Tribunals Service (NICTS). Guidance under section 8 of the Justice (Northern Ireland) Act 2004 is not designed to be static or unduly rigid. It will be revised in light of adjustments in human rights standards and the experience both of those to whom it is addressed and the public.

INTERNATIONAL STANDARDS

4. This guidance is based on international human rights standards, in particular the:

    - European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR);
    - Charter of Fundamental Rights of the European Union;
    - International Covenant on Civil and Political Rights;
    - United Nations Basic Principles of Justice for Victims of Crime and Abuse of Power;
    - United Nations Office for Drug Control and Crime Prevention (UNODC) Handbook of Justice for Victims on the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;
    - Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime;
    - Resolution of the Council of the European Union on a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings ('The Budapest Roadmap') 2011;
    - Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence;
    - Council of Europe Recommendation (2006) 8 on assistance to crime victims;

- Council of Europe Recommendation (1987) 21 on assistance to victims and the prevention of victimisation;
- Council of Europe Convention on Action Against Trafficking in Human Beings;
- United Nations Convention on the Rights of the Child;
- United Nations Economic and Social Council resolution 2005/20 on Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime;
- United Nations Convention of the Rights of People with Disabilities;
- Rome Statute of the International Criminal Court;
- Council of Europe Recommendation (95) 12 on the management of criminal justice;
- Council of Europe Recommendation (2002) 5 on the protection of women against violence;
- Council of Europe Recommendation (97) 13 concerning intimidation of witnesses and the rights of the defence;
- Council of Europe Recommendation (2005) 9 on the protection of witnesses and collaborators of justice;
- Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations (30 March 2011);
- Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims;
- Office of the High Commissioner for Human Rights 'Rabat Plan of Action on the prohibition of advocacy of national,

racial or religious hatred that constitutes incitement to discrimination, hostility or violence' adopted 5 October 2012;

- UN Resolution 65/228 of 31 March 2011 on strengthening crime prevention and criminal justice responses to crime against women.

VICTIMS AND WITNESSES

5. This guidance is focused on the role of the NICTS in supporting victims and witnesses. While primarily concerned with victims and witnesses in criminal proceedings, it is recognised that victims and vulnerable witnesses may also require support in civil proceedings. For example, victims of, or witnesses to, domestic violence may attend the Domestic or Family Proceedings Courts for civil remedies under the Family Homes and Domestic Violence (NI) Order 1998 or the Children (NI) Order 1995.

6. International standards require that the perspective of the victim in the justice system be taken into account and that the rights of the victim and the rights of the accused be balanced. By giving evidence witnesses play a vital role in the justice system. It is therefore important that the needs of witnesses are taken into consideration so that they are not discouraged from attending court.

7. All victims and witnesses should be treated with dignity and respect, and should expect to be so treated by the NICTS.

8. Some victims and witnesses may be particularly vulnerable as a result of their personal characteristics and the nature, or circumstances of the crime. Individuals are also vulnerable

where they are at risk of secondary and repeat victimisation, intimidation or retaliation.

THE NICTS ROLE

9. The NICTS as an agency of the Department of Justice is responsible for the management and maintenance of Courthouses and Court facilities in Northern Ireland and provides administrative support to Courts and Tribunals. The following guidance recognises that the NICTS co-operates with other agencies including the Police Service of Northern Ireland (PSNI), the Public Prosecution Service (PPS), Victim Support Northern Ireland (VSNI), the National Society for the Prevention of Cruelty to Children (NSPCC), legal representatives and the Judiciary, in providing services to victims and witnesses.

Individual Assessment

10. Individuals with one or more of the following characteristics may be more likely to be vulnerable, and to require additional support:

    a) Children;

    b) Women;

    c) Those with a disability or special educational needs including difficulties understanding or communicating;

    d) Members of minority groups;

    e) Those who require an interpreter or translator;

    f) Victims of trafficking;

    g) Victims of gender-identity based crime;

h) Victims of domestic and sexual violence;

i) Victims of violent crime including bereaved families;

j) Victims of hate crime; or

k) Victims or witnesses of terrorism or organised crime.

11. The NICTS should work closely with other agencies to ensure that once an individual has been assessed as having specific needs, that those needs so far as they fall within the responsibility of NICTS are consistently met.

Training

12. NICTS staff coming into personal contact with victims or witnesses should receive initial and ongoing awareness training on the issues facing these groups attending court, at a level appropriate to their contact with them. This should include training on:

a) Treating victims and vulnerable witnesses with respect and in a sensitive manner, tailored, as far as possible, to their individual needs in order to reduce the risk of further victimisation while at Court;

b) Awareness of the negative effect of crime on victims;

c) Understanding that certain victims and witnesses are more likely to be vulnerable because of their personal characteristics, and the nature and circumstances of the crime;

d) Understanding their role in co-operating with other agencies to provide support to victims and witnesses; and

e) Equality and non-discrimination.

Special Measures

13. Where an application for 'special measures' is made on behalf of a victim or witness, the NICTS should promptly provide the required facilities pursuant to any court order. Where special measures are ordered, or in any other case where NICTS is made aware that an individual has been assessed as needing additional support measures, this should be communicated to those staff members likely to come into contact with the individual in order to ensure consistent support and awareness of that person's potential vulnerability.

Separation from the Accused or from any Potential Source of Threat

14. Insofar as is practicably possible, victims and vulnerable witnesses should be kept separate from the accused or any potential source of threat. This includes:

    a) Arranging where necessary for victims and witnesses involved to enter the Court building through different doors or at different times from those who may be a potential source of threat;

    b) Separate waiting areas. In new and renovated buildings, plans should include provision for separate waiting areas and toilets;

    c) Separate waiting facilities that are safe, and private rooms being made available for children;

    d) Special consideration being given to whether the facilities for those with a disability are adequate to ensure any necessary separation; and

e) A designated room being made available for distressed victims or witnesses to retire to after giving evidence to enable them to regain their composure in private.

Privacy

15. The privacy of victims and witnesses should be respected. Where possible, consultation rooms should be made available to allow victims and witnesses to speak privately to legal representatives. Priority should be given to victims and vulnerable witnesses.

16. Child victims and witnesses should have their privacy respected as a matter of primary importance.

Waiting time at Court

17. Delay in Court proceedings and the amount of time a victim or vulnerable witness spends at Court can have a negative impact on the victim or witness and can increase the risk of secondary victimisation. The NICTS should co-operate with other agencies to ensure a victim or vulnerable witness spends the minimum time necessary at Court and does not attend Court unnecessarily. This includes ensuring, as far as possible, that while at Court the victim or vulnerable witness is kept informed about their case in a timely and accurate manner.

Provision of Information and Communication

18. Victims have a right to be heard and to participate in proceedings. NICTS should, within the limits of its

responsibilities, provide information on facilities and services in main user languages in all court venues.

19. In the event that an interpreter has not been arranged in advance, NICTS should ensure that there is a system in place to permit a victim or witness to communicate their need to NICTS staff who can then bring the issue to the attention of the appropriate agency as early as possible. This may involve use of a system for identifying the language spoken and assisting the victim or witness to obtain an interpreter through use of a telephone or other service.

Delay

20. Timely disposal of criminal cases is the entitlement of the entire community including defendants, victims and witnesses. Timeliness is at the centre of a properly functioning justice system and is a requirement of international human rights standards. For the NICTS, the application of these principles should take the following form:

    a) The NICTS should co-operate, where appropriate, with the PPS, defence representatives, the PSNI and the judiciary to facilitate the timely listing and disposal of cases.

    b) All persons in the NICTS whose work may affect the timeliness of proceedings should carry out their work with due care and efficiency.

Co-operation with Victim/Witness Support Organisations

21. The NICTS should co-operate with non-governmental victim and witness support agencies to, as far as practicably possible, ensure that court facilities and services for victims and

vulnerable witnesses are tailored to an individual's specific needs.

Data Collection

22. The NICTS should co-operate with other agencies and bodies such as the Department of Justice and Criminal Justice Inspection Northern Ireland (CJI) to monitor the experience and research the needs of victims and vulnerable witnesses within the justice system.

Disability

23. Individuals with a disability have a right to respect for their inherent dignity, autonomy and personal independence. The NICTS should ensure that Court facilities enable people with disabilities to fully and effectively participate in Court proceedings. In line with its domestic obligations under the Disability Discrimination Act 1995, facilities should be accessible for people with disabilities. Training should be provided that is appropriate for the level of direct or indirect contact between officials and victims and witnesses in order to prevent discrimination on the basis of an individual's disability.

Children

24. Children who come into contact with the justice system as victims or witnesses are particularly vulnerable. Special attention should be paid to children in the justice system and the best interests of any child victim or witness should be a primary focus.

GENERAL

25. The NICTS should ensure that the above guidance is circulated to all staff and to ensure awareness of and adherence to, the above standards.

26. The NICTS should also make this guidance available to the agencies with responsibility for victims and witnesses to make them aware of the standards to which the NICTS is held and to ensure a co-ordinated approach in attaining these standards.

27. It is similarly important that the general public is aware of the standards. This guidance should be made available to others who may have an interest in, or who may be affected by, the work of the NICTS.

28. Regard must be had to this guidance when making or reviewing contractual or other agreements with other statutory agencies.

REVIEW AND MONITORING

29. Difficulties encountered in the application of this guidance by the NICTS should be notified to the Attorney General as soon as possible.

30. The Attorney General will formally seek the views of the NICTS on the review or amendment of this guidance annually. It is open to the NICTS to suggest revision or amendment of this guidance at any time.

John F Larkin QC

Attorney General for Northern Ireland