EXPLANATORY MEMORANDUM TO

THE CRIMINAL APPEAL (OFFENDERS ASSISTING INVESTIGATIONS AND PROSECUTIONS) RULES (NORTHERN IRELAND) 2008

SR 2008 No.23

1. This explanatory memorandum has been prepared by Ministry of Justice (Northern Ireland Court Service) and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument makes provision in relation to appeals arising from provisions governing the discounting of sentences of offenders offering assistance to prosecutors and investigators under Chapter 2, Part 2 of the Serious Organised Crime and Police Act 2005 and the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006.

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

3.1 None.

4. Legislative Background

4.1 Chapter 2 of Part 2 of the Serious Organised Crime and Police Act 2005 creates a statutory framework to clarify and strengthen common law provisions providing immunity and sentencing reductions for offenders co-operating with the investigation and prosecution of criminal colleagues. Under section 74, the Crown Court can, at the instance of a specified prosecutor, review the sentence of a person who has given, agrees to give, or has failed to give assistance to prosecuting authorities. By virtue of sub-section (8) either a defendant or specified prosecutor may, with the leave of the Court, appeal against the decision of the Crown Court on an application for review of a sentence.

4.2 Parts 4 and 5 of the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006 make provision in relation to appeals under section 74(8) of the 2005 Act including provision as to bail, evidence, the rights of the offender to be present at the hearing of an appeal and court powers.

4.3 By virtue of sections 55 and 55A of the Judicature (Northern Ireland) Act 1978, the Supreme Court Rules Committee is empowered to make rules prescribing practice and procedure before the Court of Appeal. This instrument, which represents the most recent exercise of those powers, makes provision in relation to the procedure to be followed in applications under section 74(8) of the 2008 Act and Part 4 and 5 of the 2006 Order.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland only.

6. European Convention on Human Rights

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

7. Policy background

7.1 These Rules prescribe procedure in relation to an appeal or application for leave to appeal by an offender or specified prosecutor of the decision of the Crown Court in relation to the sentence of an offender who gives, or agrees to give further assistance to prosecutors or who receives a reduced sentence on the basis of assistance offered but knowingly fails to give such assistance. The Rules also prescribe procedure for making an application for leave to appeal the decision of the Court of Appeal to the House of Lords.

7.2 These rules are procedural in nature and are therefore of limited public interest. It is not considered that the amendments made by these rules are politically or legally important.

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.

8.2 This instrument has no impact on the public sector.

9. Contact

9.1 Peter Luney at the Northern Ireland Court service (Policy and Legislation Division) (Tel: (028) 90412282 or email peterluney@courtsni.gov.uk) can answer any queries regarding this instrument.