EXPLANATORY MEMORANDUM TO

THE CRIMNAL APPEAL (PROSECUTION APPEALS) (BANNING ORDERS) RULES (NORTHERN IRELAND) 2011

S.R 2011 No. 419

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 This Statutory Rule is made under sections 55 and 55A of the Judicature (Northern Ireland) Act 1978 and is subject to negative resolution.

2. Purpose

2.1 The draft Criminal Appeal (Prosecution Appeals) (Banning Orders) Rules (Northern Ireland) 2011 ("the Rules"), once enacted, will prescribe the procedures relating to a prosecution appeal to the Court of Appeal against the failure of a Crown Court to make a banning order. Banning orders will be introduced by sections 41-49 of the Justice Act (Northern Ireland) 2011 ("the 2011 Act").

3. Background

3.1 Part 4 of the 2011 Act deals with 'Sport'. Chapter 1 states that, for the purposes of banning orders, a 'regulated match' is a reference to a match involving association football which is played in Northern Ireland.

Banning Orders

3.2 Section 41 of the 2011 Act provides that a banning order will be made on conviction for any offence of violence or disorder which the court is satisfied was-

- committed while travelling to or from a regulated match.
- committed entering or leaving a regulated match.
- motivated by a regulated match.

The court must make a banning order in those circumstances unless it is satisfied that to do so would not help to prevent violence or disorder at or in connection with any regulated matches. A banning order can be made by either the magistrates' courts and the Crown Court (depending on the court dealing with the proceedings).

3.3 Section 42 provides the content of a banning order (i.e. it prohibits the person from entering any premises for the purpose of attending regulated matches). Furthermore, it imposes requirements on the defendant such as reporting to a police station within 5 days of the order being made; notifying the Chief Constable of any change of name or address; and notifying the Chief

Constable when applying to terminate the order. Where a defendant has been sentenced to imprisonment, these requirements will be suspended until the person is released from custody.

3.4 Section 45 states that where a banning order is made in addition to a sentence of imprisonment taking immediate effect, it must last for between 6 and 10 years. In any other case, it must last for between 3 and 5 years.

3.5 Section 46 allows the court to impose additional requirements above and beyond those already stated in section 42. Furthermore, the person subject to the order or the prosecutor may apply to have these additional requirements varied (so as to impose, replace or omit any such requirements).

3.6 Section 47 prescribes that once the order has had effect for at least two-thirds of its duration, the person subject to the order may apply to the court which made it to have it terminated. The court may terminate it from a specified date or refuse to terminate it. Any further termination application may not be made until 6 months after the day of the last refusal.

3.7 Section 48 prescribes whom the chief clerk shall send any banning orders and termination of banning orders. It states that banning orders should be served on:

i. the person to whom it relates;
ii. the Chief Constable and any prescribed person;
iii. the police station to which the banned person is to report; and
iv. if person is in custody, the person in whose custody he is detained

A terminating order should be served on all of the above with the exception of the police station (and an order varying a banning order is not provided for at all).

3.8 Section 49 makes it an offence to fail to comply with any requirement imposed by a banning order. If found guilty a person is liable to a term of imprisonment not exceeding 6 months and/or a fine not exceeding level 5 on the standard scale.

Prosecution Appeal

3.9 Section 43 allows the prosecution a right of appeal against the failure of a court to make a banning order (where leave is granted by the Court of Appeal or the judge who decided not to make the banning order grants a certificate that the decision is fit for appeal). Where the court which failed to make the order was the Crown Court, an appeal lies to the Court of Appeal. A banning order made on appeal will be treated as if it were made by the court from which the appeal was brought.

The draft Rules

3.10 The draft Rules are modelled on the Criminal Appeal (Prosecution Appeals) Rules (Northern Ireland) 2005 (‘the 2005 Rules’) which prescribe the

procedures for an appeal by the prosecution against the ruling of the Crown Court under Article 17 of the Criminal Justice (Northern Ireland) Order 2004.

3.11 Draft rule 3 states that the prosecution must serve their notice of appeal on the proper officer, the chief clerk and the defendant not more than 28 days after the Crown Court has failed to make a banning order. This time may be extended on application.

3.12 Draft rule 4 provides the procedure for the response of the defendant. The defendant shall serve his response within 7 business days of the service of the appeal. Again, this may be extended on application.

3.13 Draft rule 5 concerns the attendance of the defendant at the hearing of the appeal (or application for leave to appeal).

3.14 Draft rules 6 and 7 prescribe the procedure for the provision of documents and other exhibits to the prosecution and defendant and how proceedings may be abandoned before a hearing, respectively.

3.15 Draft rules 8 and 9 prescribe which applications may be heard by the proper officer and how notice of hearing and determinations of the Court are disseminated.

316 Draft rule 10 states that the proper officer may require the chief clerk to furnish the Court with relevant information when required.

3.17 Finally, draft rule 11 prescribes how service of documents are to be effected. Whilst most documents can be served personally, by recorded delivery or fax, a notice of appeal must be served personally on the defendant (unless otherwise directed).

3.18 There are a number of forms which relate to:

v. The notice of appeal or application for leave of court (Form1);
vi. Response of the defendant (Form 2);
vii. Notice of abandonment of proceedings (Form 3); and
viii. Determination by the proper officer or a single judge (Form 4).

4. Consultation

4.1 Due to the representative nature of the Court of Judicature Rules Committee (which makes the rules which are then allowed by the Department of Justice) and the fact that the rules are procedural in nature (and are therefore of limited public interest) no formal consultation was considered necessary on this occasion.

5. Equality Impact

5.1 This Statutory Rule has been screened for any possible impact on equality of opportunity affecting the groups listed in section 75 of the Northern Ireland Act 1998 and no adverse or differential aspects were identified.

6. Regulatory Impact

6.1 This Statutory Rule does not require a Regulatory Impact Assessment as it does not impose any additional costs or savings on business, charities or voluntary bodies.

7. Financial Implications

7.1 This Statutory Rule does not have any financial implications.

8. Section 24 of the Northern Ireland Act 1998

8.1 It is the view of the Department of Justice that this Statutory Rule is compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 The Criminal Procedure Rules in England and Wales provide Rules for a prosecutor who wants to appeal to the Court of Appeal in England and Wales under section 14A(5A) of the Football Spectators Act 1989 (Part 68). The Rules do not replicate those in England and Wales but they are somewhat similar.

11. Additional Information

11.1 Not applicable.