EXPLANATORY MEMORANDUM TO

THE CROWN COURT (AMENDMENT NO. 2) RULES (NORTHERN IRELAND) 2011

S.R 2011 No 420

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 52(1) and 53A of the Judicature (Northern Ireland) Act 1978 and is subject to negative resolution.

2. Purpose

2.1 The Crown Court Rules (Northern Ireland) 1979 (S.R. 1980 No.90) ("the principal Rules") govern practice and procedure in the Crown Court in Northern Ireland.

2.2 This instrument amends the Crown Court Rules (Northern Ireland) 1979 to –

- provide the procedure for an application to disapply or disapply in part the primary rule in Article 9 of the Criminal Evidence (Northern Ireland) Order 1999 ("the 1999 Order"); and

- make a minor technical amendment to Form 6 of the principal Rules to ensure the witness' views are expressed when applying for a supporter to accompany him/her in the live link facility.

3. Background

<u>Disapplying the primary rule</u>

3.1 Article 4 of the 1999 Order provides that witnesses may be eligible for assistance on grounds of age or incapacity. In particular, Article 4 (1) (a) states that a witness is eligible for assistance if under the age of 17 ("a child witness") at the time of the hearing. (Section 7 of Justice Act (Northern Ireland) 2011 ("the 2011 Act"), when commenced on 1 January 2012, will extend these provisions to those under the age of 18).

3.2 Article 9 (3) of the 1999 Order contains the 'primary rule' that the Court must give a special measures direction for a child witness. This means the use of video recorded evidence in chief and the use of live link facilities (for any evidence given by the witness that is not given by means of video recording). The primary rule is currently subject to three limitations:

- that the Department of Justice has confirmed by notice that the facilities are available in the district;

- if the Court is of the opinion that it is not in the interests of justice to admit the recording (or part of it); and
- that the Court is not satisfied that compliance with the primary rule would maximise the quality of the witness' evidence.

3.3 Section 8 of the 2011 Act will insert a new Article 9(4)(ba) into the 1999 Order. This introduces a fourth limitation on the primary rule in that the witness may inform the Court of the witness' wish that the rule should not apply or should only apply in part. If the Court is satisfied that not complying with the rule would not diminish the quality of the witness' evidence then it may disapply or disapply in part the 'primary rule'.

3.4 Draft rule 2(1) inserts new rule 44CBA into the principal Rules to prescribe the procedure for witnesses who do not wish to take advantage of the 'primary rule'.

3.5 Draft rule 2(4) amends rule 44CD of the principal Rules. This rule prescribes the procedure for opposing an application for a special measures direction to allow a child witness to give evidence by live link. By virtue of the amendments made by the 2011 Act, paragraph (3) is no longer required as the special criteria for a child in need of special protection will be removed. As a result, a minor amendment is also required in relation to paragraph (2) (which refers to paragraph (3)). Additionally, the provision in rule 44CD(4), that a witness only be accompanied at the live link "by persons acceptable to a Judge" is no longer needed as this will be entirely governed by primary legislation (section 10 of the 2011 Act).

Accompanying a witness giving evidence by live link

3.6 Article 12 of the 1999 Order states that a special measures direction may provide for the witness to give evidence by means of a live link. Practically, this will involve someone accompanying a witness whilst they are giving evidence. At present, there is no primary legislation to allow for such a person to accompany the witness.

3.7 Section 10 of the 2011 Act will insert paragraphs (1A) and (1B) into Article 12 of the 1999 Order. Paragraph (1A) will allow the Court to provide for a specified person to accompany the witness while the witness is giving evidence by live link. Furthermore, paragraph (1B) states that the Court must have regard to the wishes of the witness when determining who may accompany the witness.

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3.8 Draft rule 2(5) amends the special measures application in Form 6. Part 2 of the form relates to the details required when applying for evidence to be given through a live link. Details required include the name of the person who it is proposed will accompany the witness; the occupation of this person; the relationship (if any) of this person to the witness; and the grounds why it is believed that this person should accompany the witness. This amendment to

Form 6 ensures that the applicant provides the witness' views when requesting that a certain person should accompany the witness when giving evidence by live link.

4. Consultation

4.1 Due to the representative nature of the Crown Court 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 guidance for practitioners who wish to avail of measures to assist a witness to give evidence in criminal proceedings (Part 29). The principal Rules do not replicate those in England and Wales but they are somewhat similar.

11. Additional Information

11.1 Not applicable.