EXPLANATORY MEMORANDUM TO THE
CROWN COURT (AMENDMENT) RULES (NORTHERN IRELAND) 2005

2005 No. 80

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 52(1) of the Judicature (Northern Ireland) Act 1978 and Articles 16 and 35 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 ("the 2004 Order").

2.2 The Rules specify the procedure for giving notice or making application to adduce –

- evidence of bad character under Part II of the 2004 Order; and
- hearsay evidence under Part III of that Order.

2.3 The Rules will come into operation on 18th 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 II of 2004 Order (which makes provision in Northern Ireland comparable to that contained in Chapter 1 of Part 11 of the Criminal Justice Act 2003 for England and Wales) introduces reforms enabling courts to hear about a defendant's previous convictions and other misconduct, where these are relevant to the case and provided their probative value outweighs their prejudicial effect. Part II sets out the circumstances in which this evidence can be given, in order to clarify this area of the law and encourage the admission of this evidence where it will properly assist the courts. The intended approach is inclusionary, but with safeguards to enable courts to exclude evidence that court have such an adverse effect on the fairness of the proceedings that it ought not to be admitted. Part II also provides safeguards for witnesses against attacks on their character, where such attacks cannot be justified either as important explanatory evidence or as having substantial probative value in relation to the matter at issue.

4.2 Part III of 2004 Order (which makes provision in Northern Ireland comparable to that contained in Chapter 2 of Part 11 of the Criminal Justice Act 2003 for England and Wales) is intended, so far as necessary, to codify the law relating to the admissibility of out of court statements in criminal proceedings. It aims

to simplify the law and to provide greater certainty as to the circumstances when such evidence will be admitted. The main provisions (in Articles 18 and 19) remove the old common law rule against the admission of hearsay evidence and provide that such evidence will be admissible (on behalf of the prosecution and defence) provided certain safeguards are met. Part III also provides the court with an additional statutory discretion to allow an out of court statement to be admitted as evidence where it would be in the interests of justice to do so.

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 The Rules specify relevant information that must be contained in notices of intention or applications for leave to adduce bad character evidence and hearsay evidence. They also specify the procedure for opposing the admission of such evidence. The Rules set out time limits within which notice must be given and applications made.

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.