EXPLANATORY MEMORANDUM TO

The Magistrates' Courts (Amendment No 2) Rules (Northern Ireland) 2014

SR 2014 No. 221

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (detailed above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made in exercise of the powers conferred by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981 and is subject to the negative resolution procedure.

2. Purpose

2.1. These Rules insert a new Rule 52N (Assistance with communication for a defendant who does not speak English or who has a hearing or a speech impediment) to codify the procedure supplementing a defendant's common law right to interpretation and translation, where needed for a fair trial and to give effect to the requirements of Directive 2010/64/EU of the European Parliament and of the Council of 20th October 2010 on the right to interpretation and translation in criminal proceedings ("the Directive").

2.2. These Rules also amend Rule 149K to make it clear that, while an application for a third party witness in criminal proceedings will normally be made in writing, it may also be made orally in the circumstances set out in paragraph (8).

3. Background

3.1. This instrument makes changes relating to interpretation and translation services to the Magistrates' Courts Rules (Northern Ireland) 1984 in consequence of the Directive.

3.2. A right to interpretation for defendants who do not speak or understand English in criminal proceedings in Northern Ireland has long been recognised at common law. It is the court's responsibility to satisfy itself that the interpretation is adequate. The court also has the inherent power to order written translations.

3.3. The European Convention on Human Rights contains guarantees that bear on interpretation and translation and the Directive facilities the application of that right in practice.

3.4. The amendment codifies the procedure where the defendant needs interpretation, that is, where he or she does not speak or understand English. The right to interpretation includes appropriate assistance for persons with hearing or speech impediments.

3.5. The amendment creates a procedure to ascertain whether a defendant needs interpretation; a power for the court to deal with complaints about the provision of interpretation or translation and a requirement for the court to record where interpretation is used and where a defendant waives the right to translation.

3.6. The amendment to Rule 149K will allow applications for a third party witness summons in criminal proceedings to be made orally in certain circumstances.

4. Consultation

4.1 The amendments made by these rules were proposed by the Department of Justice to give administrative effect to the Directive. There was no formal public consultation on the terms of the amendment as the changes largely codify existing arrangements for interpretation and translation services to ensure they meet the obligations of the Directive. The Rule has been made by the Magistrates' Courts Rules Committee which is chaired by the Lord Chief Justice and comprises members of the judiciary and the legal profession.

4.2 The amendment to Rule 142K was proposed by the Magistrates' Courts Committee. There was no consultation as it concerns a minor amendment to court procedure.

5. Equality Impact

5.1 The proposed changes have been the subject of an equality screening exercise. We believe the introduction of these new arrangements will be beneficial and will have no adverse effect in section 75 terms. The arrangements will enhance the right of foreign nationals and those with a speech or hearing impediment to a fair trial.

5.2 The proposed amendment to Rule 149K has not been screened as it is a minor change to the administrative arrangements of the Court.

6. Regulatory Impact

6.1. These rules have no impact on business, charities or voluntary bodies.

6.2. These rules have no impact of themselves on the public sector, because they largely codify rules of law already current.

7. Financial Implications

7.1 Interpretation and translation services are already provided by the court and it is anticipated that this amendment should not incur any additional costs. The court may decide that an oral interpretation or oral summary, instead of a written translation, may be sufficient because it would not prejudice the fairness of proceedings. The amendment therefore provides a waiver to the right to the translation of essential documents, provided that a person does so voluntarily after receiving legal advice or having full knowledge of the consequences and gives their fully informed consent.

8. Section 24 of the Northern Ireland Act 1998

8.1 The proposal is considered to be compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1 This rule gives effect to the requirements of Directive 2010/64/EU of the European Parliament and of the Council of 20th October 2010 on the right to interpretation and translation in criminal proceedings.

10. Parity or Replicatory Measure

10.1 The Directive applies to all jurisdictions of the United Kingdom. Similar amendment to court rules has been made for England and Wales and Scotland.

11. Additional Information

11.1 Not applicable.