EXPLANATORY MEMORANDUM TO

THE RULES OF THE COURT OF JUDICATURE (NORTHERN IRELAND) (AMENDMENT No.3) RULES 2012

S.R. 2012 No. 431

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. These Rules amend the Rules of the Court of Judicature (Northern Ireland) 1980 ("the 1980 Rules") to take account of comments made by the Examiner of Statutory Rules in relation to the Rules of the Court of Judicature (Northern Ireland) (Amendment) Rules 2012.

2.2 The Rules of the Court of Judicature (Northern Ireland) (Amendment) Rules 2012 inserted a reference to bail under section 91 of the Justice Act (Northern Ireland) 2011 ("the 2011 Act") into Order 79, the 1980 Rules to provide for enforcement of a breach of bail granted under that provision – in essence a breach of compassionate bail granted by a magistrates' court.

3. MATTER OF SPECIAL INTEREST

3.1 As above, these Rules take account of comments made by the Examiner of Statutory Rules, in his 5 October Report, in relation to the Rules of the Court of Judicature (Northern Ireland) (Amendment) Rules 2012.

4. BACKGROUND

4.1 Previously, applications for compassionate bail could only be made in the Crown Court or High Court. No power to grant compassionate bail existed in the magistrates' courts.

4.2 Due to the increasing number of bails being dealt with by the High Court over recent years, and the consequent strain being placed on High Court resources, the Lord Chief Justice requested that the magistrates' courts be given the power to deal the compassionate bail applications. Accordingly, relevant provision was taken in section 91 of the 2011 Act.

4.3 Section 91, which commenced on 11 June 2012, provides a magistrates' court with the power to grant compassionate bail. An application for compassionate bail

will be able to be made at either the magistrates' court which remanded the defendant into custody or a magistrates' court in the same county court division.

4.4 When devising the operational arrangements around section 91, it became clear that there was a gap in the legislation around enforcement of breaches of bail granted under section 91.

4.5 The Rules of the Court of Judicature (Northern Ireland) (Amendment) Rules 2012 amended Order 79, rule 11 of the 1980 Rules to make it clear on the face of the principal Rules that the High Court and the Court of Appeal each had the power to deal with a breach of bail granted by a magistrates' court under section 91. This was intended as a "work-around" until such times as the primary legislation could be amended.

4.6 The Examiner considered the Rule and took the view that the enforcement of a breach of magistrates' court bail by the High Court is a two stage process (albeit that the two stages will be dealt with simultaneously).

4.7 First, there has to be an application by the prosecutor (or surety) to the High Court for the review, under its inherent jurisdiction, of the order of the magistrates' court under section 91 of the 2011 Act. In essence, the High Court is removing the decision of the magistrates' court into the High Court under its supervisory jurisdiction.

4.8 Secondly, there is the decision, or perhaps more properly the discretion, of the High Court whether or not to exercise its jurisdiction on the application of the prosecutor (or surety), including the power to recommit to custody and issue an arrest warrant.

4.9 The Examiner took the view that, as drafted, the amendment made in the Rules of the Court of Judicature (Northern Ireland) (Amendment) Rules 2012 did not fully reflect the intention of the first element and suggested that it would be preferable to have an expanded provision. The Examiner helpfully suggested an amendment to the Rules to better reflect the actual position.

4.10 This amendment was put to the Court of Judicature Rules Committee who considered and decided to accept the Examiner's proposed amendment.

4.11 Accordingly, the Rules of the Court of Judicature (Northern Ireland) (Amendment No.3) Northern Ireland 2012 put in place the Examiner's proposed amendment which focuses on the discretion of the High Court whether or not to assume its inherent jurisdiction to review the order of the magistrates' court.

5. CONSULTATION

5.1 Due to the procedural and technical nature of the Rules, a consultation was not considered necessary. The Rules have, however, been made by the Court of Judicature Rules Committee which is chaired by the Lord Chief Justice and comprises members of the Judiciary and the legal profession.

6. EQUALITY IMPACT

6.1 The Department of Justice screened the Rules in accordance with the Equality Scheme and in compliance with section 75 of the Northern Ireland Act 1998. It was decided that the Rules were to be "screened out" without mitigation or an alternative policy to be adopted. Although males between the ages of 18-29 were disproportionately affected this was because of the increased likelihood of their involvement in breaches of the criminal law.

7. REGULATORY IMPACT

7.1 The Rules will not affect any law-abiding citizens or businesses. The voluntary sector and charities should not be affected. The main stakeholders will be those public bodies implementing and enforcing the Rules. They are supportive of the changes.

8. FINANCIAL IMPLICATIONS

8.1 None.

9. SECTION 24 OF THE NORTHERN IRELAND ACT 1998

9.1 The proposed Rules are considered to be compliant with section 24 of the Northern Ireland Act 1998, including Community Law and Convention Rights as defined in the Human Rights Act 1998.

10. EU IMPLICATIONS

10.1 None.

11. PARITY OR REPLICATORY MEASURES

11.1 None.

12. ADDITIONAL INFORMATION

12.1 The Department would like to thank the Examiner for his assistance in this matter.