

**EXPLANATORY MEMORANDUM TO
THE CRIMINAL APPEAL (RETRIAL FOR SERIOUS OFFENCES) RULES
(NORTHERN IRELAND) 2005**

2005 No 158

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 55 of the Judicature (Northern Ireland) Act 1978 and section 93 of the Criminal Justice Act 2003 (“the 2003 Act”). The Rules regulate the procedure governing the provisions enabling the re-trial for certain serious offences after an acquittal. 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 10 of the 2003 Act reforms the law relating to double jeopardy. It permits applications to be made to the Court of Appeal for retrials for a number of serious offences (“qualifying offences”) where new and compelling evidence has come to light and it is in the interests of justice to do so. The Act sets out measures relating to the re-investigation of serious, “qualifying” offences; provisions relating to arrest, charge, and bail and custody; and the procedures for making applications for retrial to the Court of Appeal.

4.2 Section 76 allows a prosecutor to apply to the Court of Appeal for an order that quashes a person’s acquittal and orders him to be retried for the qualifying offence. Applications to the Court of Appeal require the personal consent of the Director of Public Prosecutions (DPP). (The DPP must also give personal consent before taking certain steps in the re-investigation of cases where new and compelling evidence has come to light.) The Court must make an order quashing an acquittal and ordering a retrial if it considers that the requirements set out in section 78 and 79 are met. The Court must dismiss an application where it is not satisfied as to those two factors.

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 As set out above, Part 10 of the 2003 Act reforms the law relating to double jeopardy by permitting retrials in respect of a number of very serious offences, where there has been an acquittal in court but where new and compelling evidence has subsequently come to light. At present the law does not permit a person who has been acquitted or convicted of an offence to be retried for that same offence. This risk of retrial is known as “double jeopardy”. There are two principles arising from the common law which prevent this. The first is known by the legal terms *autrefois acquit* and *autrefois convict*. These principles provide a bar to the trial, in respect of the same offence, of a person who has previously been either acquitted or convicted of that offence. In addition, the courts may consider it an abuse of process for additional charges to be brought, following an acquittal or conviction, for different offences which arose from the same behaviour or facts. There are certain exceptions to this rule.

7.2 The reform of the law contained in Part 10 of the Act is in line with, but drawn more widely than, recommendations of the Law Commission and those set out in Lord Justice Auld's review of the Criminal Courts, published in 2001. Examples of new evidence might include DNA or fingerprint tests, or new witnesses to the offence coming forward. The measures amend the law to permit the police to re-investigate a person acquitted of serious offences in these circumstances, to enable the prosecuting authorities to apply to the Court of Appeal for an acquittal to be quashed, and for a retrial to take place where the Court of Appeal is satisfied that the new evidence is highly probative of the case against the acquitted person.

7.3 The measures provide safeguards aimed at preventing the possible harassment of acquitted persons in cases where there is not a genuine question of new and compelling evidence, and apply only in respect of the offences listed in Schedule 5 to the 2003 Act, which are offences carrying a maximum sentence of life imprisonment, and for which the consequences for victims or for society as a whole are particularly serious.

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.