

**EXPLANATORY MEMORANDUM TO  
THE CROWN COURT (AMENDMENT) RULES (NORTHERN IRELAND) 2006**

**Statutory Rule 2006 No 499.**

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 This instrument amends the Crown Court Rules (Northern Ireland) 1979 (S.R 1979. No.90) to prescribe the practice and procedure to be followed on an application –

- for trial without a jury under section 44 of the Criminal Justice Act 2003 where the judge is satisfied that there is a real and present danger of jury tampering;
- for trial by jury of sample counts only under section 17 of the Domestic Violence, Crime and Victims Act 2004, where the judge is satisfied that it would be impracticable to try all the counts by jury and that each count to be tried by the jury can be regarded as a sample of counts which could accordingly be tried without a jury; and
- for leave for a witness (other than the accused) who is outside the United Kingdom to give evidence by live link.

**3. Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments.**

3.1 None

**4. Legislative Background**

*Trial without jury where danger of jury tampering*

4.1 Part 7 of the 2003 Act sets out the circumstances in which criminal trials that currently take place on indictment in the Crown Court before a judge and jury will in future be conducted by a judge sitting alone.

4.2 Section 44 of the 2003 Act provides for a trial to be conducted without a jury where there is a real and present danger of jury tampering, or continued without a jury where the jury has been discharged because of jury tampering.

4.3 In order for a trial to be conducted without a jury, the court must be satisfied that the risk of jury tampering would be so substantial (notwithstanding any steps, including police protection, that could reasonably be taken to prevent it) as to make it necessary in the interests of justice for the trial to be conducted without a jury. In trials already under way, where the jury has been discharged because of jury tampering, the trial will continue without a jury unless the judge considers it necessary in the interests of

justice to terminate the trial. In that event, he may order a retrial, and if he does he will have the option of ordering that the retrial should take place without a jury.

#### *Trial by jury of sample counts*

- 4.4 Sections 17 – 21 of the 2004 Act introduce a new two-stage procedure for trying cases involving multiple counts, whereby only the sample counts would be tried by a jury and, in the event of a conviction, the trial of the remaining counts would be tried by a judge sitting alone.
- 4.5 Section 17 of the 2004 Act makes provision for the prosecution to apply for part of a trial on indictment in the Crown Court to proceed in the absence of a jury. Before granting such an application, the judge must be satisfied that :
- the number of counts included in the indictment is likely to mean that a trial by jury involving all of those counts would be impracticable.
  - if an order were made, each count or group of counts which would be able to be tried with a jury can be regarded as samples of other counts in the indictment, which could accordingly be tried without a jury; and
  - it is in the interests of justice for part of the trial to proceed in the absence of a jury.

#### *Evidence of witness by live link from outside United Kingdom*

- 4.6 Article 80A of the Police and Criminal Evidence (Northern Ireland) Order 1989 (*as inserted by Article 31 of the Criminal Justice (Northern Ireland) Order 2003*) provides that a witness outside the United Kingdom may give evidence by way of live link in certain specified criminal proceedings, including trials on indictment before the Crown Court.

## **5. Extent**

- 5.1 This instrument applies to Northern Ireland only

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

#### *Trial without jury where danger of jury tampering*

- 7.1 The rationale for the provisions carried in the Criminal Justice Act 2003 is designed to reform court procedure to ensure that criminal trials are run more efficiently and to reduce the scope for abuse of the system. It aims to make trials faster and improve the management of cases through the courts. Part 7 of the Act provides for judge-alone trial in cases involving threats and intimidation of juries.
- 7.2 The trial without jury provisions in relation to jury tampering only operate where the judge is satisfied that the risk of jury tampering is so substantial as to make it necessary in the interests of justice for the trial to be conducted without a jury.

### *Trial by jury of sample counts*

- 7.3 The Law Commission Report “The Effective Prosecution of Multiple Offending”, Report Number 277, published in October 2002, recommended a two-stage procedure for trying cases involving sample counts whereby only the sample counts would be tried by a jury. Sections 17 to 21 of the 2004 Act give effect to this recommendation.

### *Evidence of witness by live link from outside United Kingdom*

- 7.4 The evidence by live link provisions inserted into the 1989 Order by the Criminal Justice (Northern Ireland) Order 2003, are intended to facilitate the taking of evidence from witnesses outside the UK through the use of live television links without requiring the personal attendance of those witnesses.

### *Crown Court (Amendment) Rules (Northern Ireland) 2006*

- 7.5 The Northern Ireland Crown Court Rules Committee is responsible for making Rules regulating the practice and procedure of proceedings in the Crown Court. The Committee includes members of the judiciary as well as representatives from both the Law Society and the Bar. Before the Rules were made by the Committee, they were made available publicly on the Court Service website; were provided to the legal professions, the Public Prosecution Service and the Northern Ireland Human Rights Commission for consideration.
- 7.6 The Rules are procedural in nature and are therefore of limited public interest. It is not considered that the provisions contained in these Rules are politically or legally important.

## **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.
- 8.2 This instrument has no impact on the public sector.

## **9. Contact**

- 9.1 **Peter Luney** at the Northern Ireland Court Service (Policy and Legislation Division) Tel: (028) 90412282 or e-mail: [peterluney@courtsni.gsi.gov.uk](mailto:peterluney@courtsni.gsi.gov.uk) can answer any queries regarding the instrument.