

EXPLANATORY MEMORANDUM TO
THE CRIMINAL APPEAL (AMENDMENT) (NORTHERN IRELAND)
RULES 2009

S.R. 2009 No. 210

1. 1.1 This Explanatory Memorandum has been prepared by the Ministry of Justice (Northern Ireland Court Service) and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 These Rules amend the Criminal Appeal (Northern Ireland) Rules 1968 (S.R.1968 No.218) ('the principal Rules') to prescribe the procedure relating to applications for the use of live links under Part III of the Criminal Justice (Northern Ireland) Order 2004 ('the 2004 Order'), and Article 83 of the Criminal Justice (Northern Ireland) Order 2008 ('the 2008 Order').
3. **Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 Part III of the 2004 Order provides for witnesses other than the defendant to give evidence in the Court of Appeal through a live link in the following proceedings:
 - an appeal;
 - the hearing of a reference under section 10 or 12 of the Criminal Appeal Act 1995 (references by the Criminal Cases Review Commission); and
 - a hearing before the Court of Appeal under section 80 of the Criminal Justice Act 2003 (application for retrial for serious offences).
 - 4.2 Part III also sets out the factors the court must consider and the circumstances in which a live link direction may be rescinded.

4.3 Article 83 of the 2008 Order amends the Criminal Appeal (Northern Ireland) Act 1980 to enable the Court of Appeal, provided the appellant consents, to give a live link direction that the appellant is to attend any proceedings, at which he is expected to be in custody but is entitled to be present, through a live link.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

7.1 Prior to the commencement of Part III of the 2004 Order and Article 83 of the 2008 Order live links were available in the Court of Appeal under:

- Article 80A of the Police and Criminal Evidence (Northern Ireland) Order 1989 (Evidence through live link for witnesses other than the accused outside the UK); and
- Part II of the Criminal Evidence (Northern Ireland) Order 1999 (Special measures directions in case of vulnerable and intimidated witnesses);

7.2 No procedure was prescribed in the Court of Appeal in relation to those provisions as it was considered that the pre-hearing case management process was sufficiently flexible to allow applications to be made on an *ad hoc* basis on those rare occasions when a witness would require to use a live link. Similarly, no procedure is now prescribed for applications under the 2004 Order or the 2008 Order; however, these Rules make some minor amendments to Forms 2, 6 and 7, to include references to live links to facilitate their use in such applications, and to Form 14 to make it clear to the witness that a live link direction has been given.

8. Consultation outcome

8.1 Due to the representative nature of the Supreme Court Rules Committee (which makes these Rules with the agreement of the Lord Chancellor) and the fact that these Rules are procedural in nature (and therefore of limited public interest) no formal consultation was considered necessary on this occasion.

9. Guidance

9.1 These Rules will be published on the Northern Ireland Court Service website.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 These Rules do not apply to small businesses.

12. Monitoring & review

12.1 The Rules are freestanding and are kept under review by the Supreme Court Rules Committee. Any subsequent amendment to these Rules will be made by the Supreme Court Rules Committee with the agreement of the Lord Chancellor.

13. Contact

13.1 Angela Bell at the Northern Ireland Court Service Tel: 028 9041 2201 or email: angelabell@courtsni.gsi.gov.uk can answer any queries regarding the instrument.