

**EXPLANATORY MEMORANDUM TO
THE RULES OF THE COURT OF JUDICATURE (NORTHERN IRELAND)
(AMENDMENT) RULES 2012**

S.R. 2012 No. 272

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 The Rules insert a reference to bail under section 91 of the Justice Act (Northern Ireland) 2011 (“the 2011 Act”) into Order 79, rule 11 of the Rules of the Court of Judicature (Northern Ireland) 1980 (“the 1980 Rules”).
- 2.2 This amendment will make it clear in the 1980 Rules that the High Court and the Court of Appeal have the power to deal with a breach of bail granted by a magistrates’ court under section 91 of the 2011 Act.

3. Matters of special interest

- 3.1 None.

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 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. Article 6 of the Criminal Justice (Northern Ireland) Order 2003 allows that a constable may arrest without warrant a person who has been granted bail and is under a duty to surrender to the court, if he thinks it likely that the person will fail to surrender to custody or breach a condition of their bail. However, Article 6 does not extend to compassionate bail because under compassionate bail the defendant is under a duty to surrender to the custody of the prison governor and not the court.
- 4.5 Until the gap can be addressed through an amendment to primary legislation (most likely the Law Commission Bail Bill) we have identified a “work-around”. The Rules of the Court of Judicature make provision about enforcement of bail where there has been a breach. Order 79, rule 11 is drafted in fairly wide terms and allows for the High Court and the Court of Appeal to recommit to custody a person who has breached their bail or failed to surrender to custody. Additionally, the High Court has the power to deal with a breach of compassionate bail under its inherent jurisdiction. It would appear appropriate, therefore, to make explicit in the 1980 Rules that the current power which attaches to the High Court and the Court of Appeal to deal with a breach of bail, also applies to breach of compassionate bail granted by the Magistrates' Courts under section 91 of the 2011 Act.

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 Measure

11.1 The Rules are procedural in nature and the policy was determined in the 2011 Act.

12. Additional Information

12.1 None.