

## **EXPLANATORY MEMORANDUM TO**

### **The Magistrates' Courts (Amendment) Rules (Northern Ireland) 2016**

#### **S.R. 2016 No. 93**

#### **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. The Statutory Rule is made under Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981 and under section 94 of the Justice Act (Northern Ireland) 2015 and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1. The Rule prescribes the procedure for a defendant, in accordance with section 94 of the Justice Act (Northern Ireland) 2015 ("the 2015 Act"), to make application to a magistrates' court for an order for access to premises where that is required to ensure compliance with Article 6 of the European Convention on Human Rights ("ECHR"). The Rule also prescribes the new magistrates' courts rules form to be used in connection with such applications.
- 2.2. A revised magistrates' courts form of summons is also included in consequence of section 93 of the 2015 Act which enables a Public Prosecutor to issue a summons, provided a complaint has been made to a lay magistrate.

#### **3. Background**

- 3.1. Section 94 of the 2015 Act makes provision for the defence to apply to the court to make an order for access to any premises specified in the order. The court must be satisfied that access is required to ensure compliance with Article 6 ECHR, and that an order is an appropriate means of securing such access. The court may allow specified persons to enter, inspect and carry out any other specified activity on the premises. In practical terms, this is intended to allow access to the crime scene.
- 3.2. Section 94(9) provides that an application under section 94 is to be made in accordance with rules governing the practice and procedure of the court, and that such rules may in particular provide: for the notice of application to be served on the occupier of the premises and any other persons appearing to the court to have an interest in the matter; and for such persons to have an opportunity to make representations to the court as to any conditions to be imposed in relation to any order made.
- 3.3. The Rule inserts new rule 174 into the Magistrates' Courts Rules (Northern Ireland) 1984 ("the 1984 Rules"), in accordance with section 94 of the 2015 Act, to prescribe the procedure for the defence to obtain an order for access to premises; and the accompanying form to be used for the application.

- 3.4. Separately, section 93 of the 2015 Act allows a Public Prosecutor, where a complaint has been made to a lay magistrate, to issue a summons directed to a person who has or is suspected of having committed an offence, requiring that person to appear before a magistrates' court. Section 93 also allows a Public Prosecutor to re-issue a summons, without making a further complaint to a lay magistrate, in respect of a summary offence where service has not been successful. This is a change to the existing arrangements whereby a lay magistrate issues summonses.
- 3.5. In consequence of this change, the Rule substitutes a new Form 2 into Schedule 1 to the 1984 Rules (Summons to Defendant to answer Complaint) to allow for issue by a Public Prosecutor.

#### **4. Consultation**

- 4.1. Consultation with the Justice Committee took place in relation to the defence access to premises rule in November 2015.
- 4.2. The Magistrates' Courts Rules Committee, which is made up of representatives from the Judiciary, the legal professions and Northern Ireland Courts and Tribunals Service were consulted prior to the making of the Rule.
- 4.3. The Department has also consulted on the Rule with the Lord Chief Justice per its statutory duty under Article 13 of the Magistrates' Courts (Northern Ireland ) Order 1981.

#### **5. Equality Impact**

- 5.1. The Department has carried out an equality screening exercise on the proposed amendments. No adverse impacts for any of the nine categories in section 75 of the Northern Ireland Act 1998 were identified. A full Equality Impact Assessment was, therefore, not required.
- 5.2. The underlying policies were also screened before the making of the primary legislation.

#### **6. Regulatory Impact**

- 6.1. A Regulatory Impact Assessment is not considered necessary. There will be no impact on business, charities or voluntary bodies.

#### **7. Financial Implications**

- 7.1. None.

#### **8. Section 24 of the Northern Ireland Act 1998**

- 8.1. The Department has considered its obligations under section 24 of the Northern Ireland Act 1998 and is satisfied that the Rules are not incompatible with the Convention rights, are not incompatible with European Union law, do not discriminate against a person or class of person on the grounds of religious belief or political opinion; and do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

#### **9. EU Implications**

- 9.1. None.

**10. Parity or Replicatory Measure**

10.1. These measures are unique to Northern Ireland.

**11. Additional Information**

11.1. None.