

These notes refer to the Northern Ireland (Miscellaneous Provisions) Act (c.13) which received Royal Assent on 13 March 2014 (c.13) which received Royal Assent on 13 March 2014

NORTHERN IRELAND (MISCELLANEOUS PROVISIONS) ACT (C.13) WHICH RECEIVED ROYAL ASSENT ON 13 MARCH 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 21 and the Schedule: Rules of Court

107. **Section 21** introduces the Schedule. Paragraph 1 of the Schedule amends the Judicature (Northern Ireland) Act 1978 to make provision regarding the parliamentary procedure to be followed for rules of court (in the Court of Appeal and the High Court) relating to excepted matters. Currently such rules are subject to negative resolution in the Northern Ireland Assembly. The amendment makes them subject to negative resolution of either House of Parliament. The same change is made to the Crown Court Rules by paragraph 2 of the Schedule. These changes remedy an oversight in the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (the “2010 Order”).
108. The 1998 Act sets out the majority of the devolution settlement with Northern Ireland. Substantive issues are either excepted (Schedule 2), reserved (Schedule 3) or transferred (everything else). The legislative competence of the Assembly in relation to primary legislation is set out in sections 5-8, providing that the Assembly may legislate on reserved matters, and on excepted matters to the extent that they are ancillary to other provisions dealing with reserved or transferred matters, in both cases with the consent of the Secretary of State.
109. Although many aspects of policing and justice were transferred to the devolved administration in 2010, certain issues were not, and in particular national security and counter-terrorism continue to be excepted. This has resulted in split order-making or rule-making powers in a number of areas, with the Secretary of State (or the Lord Chancellor) retaining the power when it relates to an excepted matter, (and in some instances but not always, when it relates to a reserved matter too), but otherwise the power has passed to a devolved Minister or department, usually the Northern Ireland Department of Justice.
110. One of the rule-making powers devolved under the 2010 Order was the power to approve certain court rules. The Department of Justice, rather than the Lord Chancellor, shall approve court rules, save where those rules relate to excepted matters. The amendments to the 2010 Order provided that the parliamentary procedure to be followed for all court rules is the negative resolution procedure in the Northern Ireland Assembly. This was an oversight, as it should have provided that rules dealing with an excepted matter are subject to the negative resolution procedure in the Westminster Parliament. Paragraphs 1 and 2 of the Schedule rectify that error, by providing that rules dealing with an excepted matter are subject to the negative resolution procedure in the Westminster Parliament.

These notes refer to the Northern Ireland (Miscellaneous Provisions) Act (c.13) which received Royal Assent on 13 March

2014 (c.13) which received Royal Assent on 13 March 2014

111. The Schedule also makes changes to the rule-making procedures for other courts (county courts, magistrates' courts and inquests). These changes seek to harmonise court rule-making procedures, so that in each case there is a relevant authority which must allow or disallow the rules (the Lord Chancellor in the case of rules dealing with excepted matters, the Department of Justice in all other cases). A parliamentary procedure is also provided for each of these rules, being negative resolution in Parliament in the case of rules dealing with excepted matters, and negative resolution in the Northern Ireland Assembly in the case of all other rules.