



**Northern Ireland  
Assembly**

**Committee for Justice**

**Report on the Legislative Consent Motion to allow the inclusion  
of Amendments to Court Rule-Making Procedures in the  
Northern Ireland (Miscellaneous Provisions) Bill**

**Thursday 12 September 2013**

**Report: NIA 111/11-15**

# **Contents**

**Background**

**Committee Consideration**

**Purpose of the Legislative  
Consent Motion**

**Conclusion**

**Appendix 1**

Legislative Consent Memorandum - Northern  
Ireland (Miscellaneous Provisions) Bill, as laid on  
28 June 2013

**Appendix 2**

Departmental Memoranda

## **Background**

1. Court Rules are made in a variety of different ways with some Rules being subject to the negative resolution procedure while others, such as County Court and Magistrates' Court Rules, are currently not subject to any Assembly procedure.
2. The previous Justice Committee, during its consideration of the Justice Bill 2010 (now the Justice Act (Northern Ireland) 2011), sought further information on the background and rationale for some Court Rules such as the County Court Rules and Magistrates' Courts Rules not being subject to any formal Assembly procedure (although they could be scrutinised by the Committee).
3. The Committee noted that the reason for the varying approaches to scrutiny appeared to be largely historical rather than due to logic or principle and was of the view that a change to the position to make all Rules subject to negative resolution procedure, which would require amendments in primary legislation, was logical and consistent. The Committee therefore wrote to the Minister of Justice regarding harmonising court rule making procedures so that the same level of scrutiny would apply to all court rules.
4. The Minister of Justice agreed with the Committee's position and undertook to make the necessary changes to primary legislation at the next available opportunity.
5. In March 2013 the Department of Justice provided information on several options for making the necessary legislative changes, one of which would require a Legislative Consent Motion.

## **Committee Consideration**

6. At its meeting on 21 March 2013, the Committee considered two options proposed by the Department of Justice for making the necessary technical changes to the Court Rule-Making Procedures to ensure that all Court Rules are subject to the same level of Assembly scrutiny.

### **Option 1: Assembly Bill (Faster, Fairer Justice Bill) and a Westminster Bill**

7. Option 1 involved a two-track approach using an Assembly Bill and a separate Westminster Bill. The Assembly Bill would provide for Magistrates', County and Coroners' Court Rules to be made subject to the negative resolution procedure and, in the context of existing legislative provisions, ensure that rules which deal with a transferred or reserved matter be laid before the Assembly. It would also provide the Department of Justice with an allowing role in relation to Magistrates' Courts and Coroners' Court Rules and make corresponding provision for the Lord Chancellor.
8. Separate provision would be brought forward in a Westminster Bill to complete the picture, and allow for Magistrates', County and Coroners' Court Rules which deal with an excepted matter and are allowed by the Lord Chancellor to be laid before Parliament.
9. The Committee noted that this two-track approach had the potential to create drafting and choreography difficulties and that it may be difficult for a Westminster Bill to provide that Magistrates', County and Coroners' Court Rules which deal with an excepted matter, and are made by the Lord Chancellor, should be laid before Parliament if there is not already provision in place in an Assembly Bill providing that they are subject to the negative resolution procedure.

10. The Department of Justice indicated that, even if this drafting issue could be overcome, the timing of the commencement of the provisions would have to be very carefully handled to ensure that both provisions commenced at the same time in order to avoid any gap in procedure arising.
11. The Department of Justice also highlighted that splitting provisions relating to one subject matter across two Bills may not provide for the cleanest draft or a straightforward guide for the end user.

**Option 2: Westminster Bill (Northern Ireland (Miscellaneous Provisions) Bill)**

12. Option 2 involved including the entire provisions in the Northern Ireland (Miscellaneous Provisions) Bill which would require a Legislative Consent Motion as the provisions would deal with the rule-making procedures for both excepted and devolved matters.
13. The Committee was of the view that this approach merited consideration as it would allow the entire provisions to be carried in one Bill, thereby minimising the risk of error, avoiding drafting and choreography problems and enabling the provisions to be commenced as soon as possible.
14. Having considered both options, the Committee concluded that the best approach was to use one Bill and agreed that the entire provisions to amend the Court Rule Making Procedures should be included in the Northern Ireland (Miscellaneous Provisions) Bill.
15. At its meeting on 2 May 2013, the Committee considered a departmental briefing paper outlining the up-dated position in relation to the Legislative Consent Motion and agreed that it was content for the Minister of Justice to lay a Legislative

Consent Memorandum before the Assembly in accordance with Standing Order 42A(2).

16. The relevant departmental memoranda are attached at **Appendix 2**.

### **Purpose of the Legislative Consent Motion**

17. The Northern Ireland (Miscellaneous Provisions) Bill was introduced in Westminster on 9 May 2013. The latest version of the Bill can be found at: <http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0009/2014009.pdf>
18. Paragraphs 3 to 5 of the Schedule to the Bill include provisions to ensure that all Court Rules are subject to the same level of Assembly scrutiny as follows:

**Magistrates' Courts Rules** will be subject to the negative resolution procedure and the Department, or in excepted matters the Lord Chancellor, will be provided with an allowing role.

**County Court Rules** will be subject to the negative resolution procedure.

**Coroners' Court Rules** will be subject to the negative resolution procedure and the Department, or in excepted matters the Lord Chancellor, will be provided with an allowing role.

19. The Legislative Consent Memorandum on the Northern Ireland (Miscellaneous Provisions) Bill, which includes the relevant paragraphs of the Schedule to the Bill, was laid by the Minister of Justice on 28 June 2013. A copy of the Legislative Consent Memorandum is attached at **Appendix 1**.

### **Conclusion**

20. **Having carefully considered the options for making technical changes to the Court Rule-Making Procedures to ensure that all Court Rules are**

subject to the same level of Assembly scrutiny, the Committee for Justice agreed to support the Minister of Justice in seeking the Assembly's endorsement of the Legislative Consent Motion:

*“That this Assembly agrees that those provisions contained in the Schedule to the Northern Ireland (Miscellaneous Provisions) Bill, as introduced in the House of Commons on 9 May 2013, which deal with court rule-making procedures in the county courts, the magistrates’ courts and the coroners’ courts, should be considered by the United Kingdom Parliament.”*

**LEGISLATIVE CONSENT MEMORANDUM**  
**NORTHERN IRELAND (MISCELLANEOUS PROVISIONS)**  
**BILL**

**Draft Legislative Consent Motion**

1. The draft motion, which will be tabled by the Minister for Justice, is:

*“That this Assembly agrees that those provisions contained in the Schedule to the Northern Ireland (Miscellaneous Provisions) Bill, as introduced in the House of Commons on 9 May 2013, which deal with court rule-making procedures in the county courts, the magistrates’ courts and the coroners’ courts, should be considered by the United Kingdom Parliament.”*

**Background**

2. This memorandum has been laid before the Assembly by the Minister for Justice under Standing Order 42A(2). The Northern Ireland (Miscellaneous Provisions) Bill (‘the Bill’) was introduced in the House of Commons on 9 May 2013. The latest version of the Bill can be found at:

<http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0009/2014009.pdf>

**Summary of the Bill and its policy objectives**

3. The Bill deals with a range of miscellaneous matters relating to Northern Ireland, which are outlined at paragraph 8 below. This memorandum is concerned only with a small number of technical amendments to the procedures for making court rules in the county courts, the magistrates’ courts and the coroners’ courts. A copy of paragraphs 3-5 of the Schedule to the Bill, which contain the relevant provisions, is attached at Annex A.
4. Court rules are a form of subordinate legislation, generally made by Rules Committees, which regulate the procedures to be followed in courts – for example, they may specify how applications are made, requirements for service of documents, or time limits.
5. The procedures for making the rules vary between the different court tiers (for largely historical reasons), with some being subject to the negative resolution procedure, while others are not. Additionally, the Department of



Justice has an allowing role for some, while in others it agrees the rules or is a consultee.

6. In addition, while matters relating to the courts are devolved, court rules may deal with excepted matters (for example, terrorism-related procedures, such as terrorist asset-freezing). In these circumstances, responsibility for the rules statutorily lies with a Westminster Minister (the Lord Chancellor). Responsibility for court rules dealing with any other matter lies with the Department of Justice.
7. The technical amendments in paragraphs 3-5 of the Schedule to the Bill seek to harmonise the various rule-making procedures.
8. In its wider context, the Bill also makes a number of reforms relating to donations, loans and related transactions for political purposes; ending dual mandates between the Northern Ireland Assembly and the House of Commons; and improvements to the administration of elections in Northern Ireland. These reforms have been the subject of public consultation, or separate discussion with the parties, or, in some cases, both. As these provisions relate to excepted or reserved matters, they are not subject to the Assembly's consent.

### **Provisions which deal with a Devolution Matter**

9. The provisions at paragraphs 3-5 of the Schedule to the Bill relate both to rules which deal with an excepted matter and to those which are the responsibility of the Department of Justice.

#### *The position in other devolved administrations*

10. Rule-making procedures in Scotland differ significantly from those in Northern Ireland, in that the Scottish Minister has no role, while in Wales, matters relating to the courts are not devolved.

### **Reasons for making the Provisions**

11. The variation in rule-making procedures as between court tiers was commented on by the Justice Committee during its consideration of the last Justice Bill (now the Justice Act (Northern Ireland) 2011), particularly why county court and magistrates' courts rules were not subject to the scrutiny of the Assembly through the negative resolution procedure.
12. The Department of Justice, therefore, undertook to bring these procedures into line at the next available opportunity.

### *The effect of the provisions*

13. The provisions, as drafted, will therefore:
- make those magistrates' courts rules, county court rules and coroners' court rules which are the responsibility of the Department of Justice subject to the negative resolution procedure in the Assembly; and
  - make the role of the Department of Justice in these rules an *allowing* one in each case.

### **Reasons for utilizing the Bill rather than an Act of the Assembly**

14. In order to harmonise current procedures, the Department of Justice could make provision to amend the procedures for the making and scrutiny of rules for which it has responsibility via an Assembly Bill. However, equivalent amendments to the procedures for rules dealing with excepted matters - required in order to ensure consistency of approach - would have to be provided for in Westminster legislation. It is considered that separating the provisions in this way would be excessively complicated and would carry potential drafting and choreography risks. Additionally it would be potentially confusing for the end-user, as the provisions would be split across two pieces of legislation. It is, therefore, intended that the Bill will include the necessary amendments relating to both types of rules.

### **Consultation**

15. As these provisions relate only to the technical procedure for making court rules, a public consultation was not considered appropriate. Consultation on the provisions was carried out with the Office of the Lord Chief Justice, the relevant Rules Committees, and other key stakeholders (the Public Prosecution Service, Law Society and Bar Council), all of whom were content.

### **Human Rights and Equality**

16. These are technical amendments to court rule-making procedures. No Convention rights are engaged, and there are no differential impacts as regards equality or good relations.

### **Financial Implications**

17. There are not considered to be any public expenditure implications for the Northern Ireland administration.

### **Summary of Regulatory Impact**

18. These amendments to court rule-making procedures will not impact on businesses, charities, social economy enterprises or the voluntary sector.

### **Engagement to date with the Committee for Justice**

19. The Justice Committee considered a briefing paper on 21 March and the relevant clauses at its meeting on 2 May and raised no concerns.

### **Conclusion**

20. The view of the Minister for Justice is that, in the interests of appropriate process and clear legislation, the Assembly should support the terms of the draft legislative consent motion as set out in paragraph 1 of this memorandum.

**Department of Justice**  
**June 2013**

## Schedule

### RULES OF COURT

#### County courts

3. In the County Courts (Northern Ireland) Order 1980 (S.I. 1980/397 (N.I. 3) S.I. 1980/397 (N.I. 3)), after Article 47 (making of county court rules) insert—

*"Control of county court rules*

47A (1) County court rules that are required under Article 47 to be submitted to the Lord Chancellor are subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 applies accordingly.

(2) County court rules that are required under Article 47 to be submitted to the Department of Justice are subject to negative resolution."

#### Magistrates' courts

4. (1) In Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 351981/1675 (N.I. 26)) (magistrates' court rules), for paragraph (3A) substitute—

"(3A) After making magistrates' courts rules the Rules Committee must submit them to the relevant authority.

(3AA) The relevant authority must, after consultation with the Lord Chief Justice, allow or disallow rules submitted to it.

(3AB) Magistrates' courts rules have effect only if the relevant authority allows them.

(3AC) If the relevant authority disallows rules submitted to it, it must give the Rules Committee written reasons why it has disallowed them."

(2) After Article 13 of that Order insert—

*"Control of magistrates' courts rules*

13A (1) Magistrates' courts rules that are required under Article 13 to be submitted to the Lord Chancellor are subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 applies accordingly.

(2) Magistrates' courts rules that are required under Article 13 to be submitted to the Department of Justice are subject to negative resolution."

#### Inquests

5. (1) In section 36 of the Coroners Act (Northern Ireland) 1959 (c. 15) 1959 (c. 15) (rules and fees), for subsections (1C) and (1D) substitute—

"(1C) After making rules under subsection (1)(b) the Lord Chief Justice must submit them to the relevant authority.

(1CA) The relevant authority must allow or disallow rules submitted to it.

(1CB) Rules made under subsection (1)(b) have effect only if the relevant authority allows them.

(1D) If the relevant authority disallows rules submitted to it, it must give the Lord Chief Justice written reasons why it has disallowed them.”

(2) After section 36 of that Act insert—

*“36A Control of rules*

(1) The following rules are subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument—

(a) rules made by the Lord Chancellor under section 36(1)(a);

(b) rules made under subsection (1)(b) of section 36 that are required under that section to be submitted to the Lord Chancellor;

and section 5 of the Statutory Instruments Act 1946 applies accordingly.

(2) The following rules are subject to negative resolution—

(a) rules made by the Department of Justice under section 36(1)(a);

(b) rules made under subsection (1)(b) of section 36 that are required under that section to be submitted to that Department.”

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of  
**Justice**  
www.dojni.gov.uk

Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90529272  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Our ref SUB/545/2013

## AGREEMENT TO LAY A LEGISLATIVE CONSENT MEMORANDUM - NORTHERN IRELAND (MISCELLANEOUS PROVISIONS) BILL

**From:** Barbara McAtamney

**Date:** 23 April 2013

**To:** Christine Darrah

### Summary

**Business Area:** Access to Justice (Jurisdictional Redesign Division)

**Issue:** To seek agreement to lay a Legislative Consent Memorandum in relation to the inclusion of amendments to court rule-making procedures in the Northern Ireland (Miscellaneous Provisions) Bill.

**Restrictions:** None.

**Action Required:** The Committee is requested to agree that a Legislative Consent Memorandum may be laid.

**Officials Attending:** None – the Committee has previously indicated its agreement in principle to this approach.

### **Background**

1. The Committee will recall considering an Options Paper on the amendment of court rule-making procedures at its meeting on 21 March. The paper explained that, at present, court rules are made in a variety of different ways across the court tiers, with some being subject to the negative resolution procedure, while others are not.



Additionally, the paper outlined the variation in the Department's role (between allowing, being consulted on or agreeing to the making of different court rules).

2. The Committee had commented on the variation in procedures during its consideration of the last Justice Bill (the Justice Act (Northern Ireland) 2011) and, in particular, had asked why county court and magistrates' courts rules were not subject to the scrutiny of the Assembly through the negative resolution procedure.

3. The Department undertook to make the necessary legislative changes to harmonise court rule-making procedures at the next available opportunity which, it was anticipated, would have been the Faster, Fairer Justice Bill.

#### **Need for a Legislative Consent Motion**

4. It had been proposed that the Faster, Fairer Justice Bill would:

- make magistrates' courts rules subject to the negative resolution procedure and provide the Department, or in excepted matters the Lord Chancellor, with an allowing role;
- make county court rules subject to the negative resolution procedure (an allowing role already exists for the Department, or in excepted matters the Lord Chancellor); and
- make Coroners' Court Rules subject to the negative resolution procedure and provide the Department with an allowing role, or in excepted matters, the Lord Chancellor.

5. During discussions with Legislative Counsel, however, it became apparent that not all of these amendments could be carried in the Bill, due to the fact that each type of rule may deal with excepted or devolved matters. Instead, provisions relating to rules dealing with an excepted matter would need to be carried in a Westminster Bill. This meant that the Department was faced with the possibility of splitting the provisions

between two Bills, one in Westminster and the other in the Assembly, which would have been complicated and would have introduced difficult choreography issues.

6. The options considered by the Committee were either to proceed with this two Bill approach, or to agree to all of the provisions being carried in a Westminster Bill, which would then require a Legislative Consent Motion.

*The Northern Ireland (Miscellaneous Provisions) Bill*

7. The Committee will recall that, separately, the Department was also planning to bring forward another amendment to court rule-making procedures in the NIO-led Northern Ireland (Miscellaneous Provisions) Bill.

8. This amendment is to address an error which arose as a result of changes, made in the Northern Ireland (Devolution of Policing and Justice Functions) Order 2010 ('the Devolution Order'), regarding the laying provisions relating to Crown Court and Court of Judicature Rules (which are currently subject to the negative resolution procedure).

9. Under current arrangements, if these Rules deal with an excepted matter, they are allowed by the Lord Chancellor, but they must nonetheless be laid before the Assembly. This situation arose because the Devolution Order did not make specific provision to provide that Rules, when dealing with an excepted matter, should continue to be laid before Parliament (as was the position before devolution). This was an oversight and has recently drawn comment from the Examiner of Statutory of Rules, as it is inappropriate to mix the Westminster and Assembly procedures.

10. The Bill, which is expected to be introduced soon after the start of the new Westminster Parliamentary session on 8 May, will amend this procedure to provide that Court of Judicature and Crown Court Rules which deal with an excepted matter and are, therefore, allowed by the Lord Chancellor, should be laid before Parliament.





11. As this provision removes a function from the Assembly's remit – albeit that it was only ever there mistakenly – and returns it to Parliament, our legal advice indicates that this amendment also requires a Legislative Consent Motion.

### **Decision of 21 March**

12. The Committee agreed, at its meeting on 21 March 2013, that it was content that the proposed court rule-making procedure provisions be included in the Northern Ireland (Miscellaneous Provisions) Bill, and noted that these would require a Legislative Consent Motion as they would deal with the rule-making procedures relating to both excepted and devolved matters.

13. The Secretary of State has now confirmed that she is content for the Miscellaneous Provisions Bill to be used, and a draft of the composite provisions is attached at **Annex A** for the Committee's information.

### **Next Steps**

14. The Committee's agreement to lay a Legislative Consent Memorandum in relation to these technical amendments (which form a very small part of the Bill) is now sought. As mentioned above, the Bill is expected to be introduced into Westminster soon after 8 May. The normal Assembly procedure is that a Legislative Consent Memorandum should be laid within 10 days of the Introduction of the Bill to which it relates. To stay within this timeframe, we ask that the Committee consider this paper at its meeting on 2 May. We have asked that the Executive Committee consider the matter at its meeting on 9 May. Provided both Committees are content, it is intended that the Memorandum will then be laid, allowing the Legislative Consent Motion to be tabled following publication of the required Justice Committee report.

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of  
**Justice**  
[www.dojni.gov.uk](http://www.dojni.gov.uk)

15. Should the Committee require clarification on any of the matters in this paper, officials are happy to provide further information or provide oral briefing if that would be helpful.

A handwritten signature in black ink, appearing to read 'Barbara McAtamney'.

**BARBARA McATAMNEY**  
**DALO**

**Enc**



Northern Ireland (Miscellaneous Provisions) Bill

SCHEDULE 2

Section

RULES OF COURT

*High Court and Court of Appeal*

- 1 In section 56 of the Judicature (Northern Ireland) Act 1978 (control and publication of rules), for subsection (1) substitute-

“(1) Rules made by the Rules Committee-

- (a) in the case of rules that are required under section 55A to be submitted to the Lord Chancellor, are subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 applies accordingly; and
- (b) in the case of rules that are required under section 55A to be submitted to the Department of Justice, are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.”

*Crown Court*

- 2 In section 53 of the Judicature (Northern Ireland) Act 1978 (Crown Court Rules Committee), after subsection (3) insert-

“(4) In the application of section 56(1) by virtue of subsection (3), references to section 55A include references to section 53A.”

*County courts*

- 3 In the County Courts (Northern Ireland) Order 1980 (S.I. 1980/397 (N.I. 3)), after Article 47 (making of county court rules) insert-

“*Control of county court rules*

- 47A (1) County court rules that are required under Article 47 to be submitted to the Lord Chancellor are subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 applies accordingly.



(2) County court rules that are required under Article 47 to be submitted to the Department of Justice are subject to negative resolution.”

### *Magistrates' Courts*

4 (1) In Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I.1981/1675 (N.I. 26)) (magistrates. court rules), for paragraph (3A) substitute-

“(3A) After making magistrates' courts rules the Rules Committee must submit them to the relevant authority.

(3AA) The relevant authority must, after consultation with the Lord Chief Justice, allow or disallow rules submitted to it.

(3AB) Magistrates' courts rules have effect only if the relevant authority allows them.

(3AC) If the relevant authority disallows rules submitted to it, it must give the Rules Committee written reasons why it has disallowed them.”

(2) After Article 13 of that Order insert-

#### *“Control of magistrates' courts rules*

13A (1) Magistrates' courts rules that are required under Article 13 to be submitted to the Lord Chancellor are subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 applies accordingly.

(2) Magistrates' courts rules that are required under Article 13 to be submitted to the Department of Justice are subject to negative resolution.”

### *Inquests*

5 (1) In section 36 of the Coroners Act (Northern Ireland) 1959 (c.15) (rules and fees), for subsections (1C) and (1D) substitute-

“(1C) After making rules under subsection (1)(b) the Lord Chief Justice must submit them to the relevant authority.

(1CA) The relevant authority must allow or disallow rules submitted to it.

(1CB) Rules made under subsection (1)(b) have effect only if the relevant authority allows them.



(1D) If the relevant authority disallows rules submitted to it, it must give the Lord Chief Justice written reasons why it has disallowed them.”

(2) After section 36 of that Act insert-

**“36A Control of rules**

(1) The following rules are subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument-

- (a) rules made by the Lord Chancellor under section 36(1)(a);
- (b) rules made under subsection (1)(b) of section 36 that are required under that section to be submitted to the Lord Chancellor; and section 5 of the Statutory Instruments Act 1946 applies accordingly.

(2) The following rules are subject to negative resolution.

- (a) rules made by the Department of Justice under section 36(1)(a);
- (b) rules made under subsection (1)(b) of section 36 that are required under that section to be submitted to that Department.”

*Application of amendments made by Schedule*

6 The amendments made by this Schedule have effect in relation to rules made on or after the day on which this section comes into force.



Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90529272  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Our ref SUB/243/2013

**FROM:** BARBARA MCATAMNEY  
**DATE:** 27 FEBRUARY 2013  
**TO:** CHRISTINE DARRAH

**Summary**

**Business Area:** Jurisdictional Redesign Division.

**Issue:** To seek the Justice Committee's views on the options available for taking forward amendments to court rule making procedures.

**Restrictions:** None.

**Action Required:** To seek the Justice Committee's views.

**Officials Attending:** Not applicable.

**Background**

1. At present, court rules are made in a variety of different ways across the court tiers, with some Rules being subject to the negative resolution procedure, while others are not. Additionally, the Department has an allowing role for some Rules, while in others it is a consultee or agrees the Rules.
2. The reason for these varying approaches appears to be largely historical and no longer relevant.



3. The variation in procedures was commented on by the Justice Committee during its consideration of the last Justice Bill (now the Justice Act (Northern Ireland) 2011), particularly why county court and magistrates' courts rules were not subject to the scrutiny of the Assembly through the negative resolution procedure.

4. Unfortunately, due to timing issues, it was not possible to take forward amendments to harmonise court rule making procedures in that Bill but the Department undertook to make the necessary changes at the next available opportunity.

### **Proposed Changes to Court Rule Making Procedures**

#### *The Faster, Fairer Justice Bill*

5. The Faster, Fairer Justice Bill presents the first opportunity to harmonise court rule-making procedures. It is proposed that the Bill will --

- make magistrates' courts rules subject to the negative resolution procedure and provide the Department, or in excepted matters the Lord Chancellor, with an allowing role;
- make county court rules subject to the negative resolution procedure; and
- make Coroners' Court Rules subject to the negative resolution procedure and provide the Department with an allowing role, or in excepted matters, the Lord Chancellor.



*The Northern Ireland (Miscellaneous Provisions) Bill*

6. Separately, the Department also plans to bring forward another amendment to court rule-making procedures in the NIO led Northern Ireland (Miscellaneous Provisions) Bill.

7. At present, under the Judicature (Northern Ireland) Act 1978, Crown Court and Court of Judicature Rules are subject to the negative resolution procedure. However, there is an error in the laying provisions which has arisen as a result of changes made in the Northern Ireland (Devolution of Policing and Justice Functions) Order 2012 (“the Devolution Order”).

8. Under current arrangements, Crown Court and Court of Judicature Rules which deal with an excepted matter and which are made by the Lord Chancellor must nonetheless be laid before the Assembly. This situation has arisen because the Devolution Order did not make specific provision to provide that these Rules, when dealing with an excepted matter, should be laid before Parliament. This was an oversight and is inappropriate as it mixes two procedures and recently drew comment from the Examiner of Statutory of Rules.

9. The Northern Ireland (Miscellaneous Provisions) Bill will amend this procedure to provide that Court of Judicature and Crown Court Rules which are allowed by the Lord Chancellor, and which deal with an excepted matter, should be laid before Parliament.

10. As this provision removes a function from the Assembly’s remit – albeit that it was only ever there mistakenly – and gives it to Parliament, a legislative consent motion will be required.





*Issues with the Faster, Fairer Justice Bill provision*

11. Having discussed the court rule procedure amendment intended for inclusion in the Faster, Fairer Justice Bill with Legislative Counsel it has become clear that the entire provision will not be able to be carried in that Bill.
12. This is because the provision will have to set out where rules, which are to be made subject to the negative resolution procedure, are to be laid. Rules which are allowed by the Department will be laid before the Assembly and there is existing statutory framework in place to provide for this.
13. However, rules which are allowed by the Lord Chancellor, and which deal with an excepted matter, will be laid before Parliament. This laying procedure would have to be specified in the provision in the Faster, Fairer Justice Bill and Counsel has advised that this would be of questionable vires in an Assembly Bill and it would be preferable for it to be carried in a Westminster Bill. This would not require a legislative consent motion as unlike the provision to amend the error left by the Devolution Order, magistrates', county and Coroners' Court rules have never been subject to Assembly Procedure, and therefore nothing is being removed from the remit of the Northern Ireland Assembly, rather an entirely new function is being conferred on Parliament
14. Additionally, provision to provide the Lord Chancellor with an allowing role in magistrates' court and Coroners' Court rules would require the consent of the Secretary of State as this would change the functions of a Westminster Minister.



## Options to proceed

15. Having considered and taken account of Counsel's advice, there appear to be two options for bringing forward amendments to harmonise court rule making procedures.

### *Option One – Assembly Bill (Faster, Fairer Justice Bill) and a Westminster Bill*

16. Provision amending court rule making procedures could still be taken forward in the Faster, Fairer Justice Bill but only as far as vires would allow.

17. This means that the Faster, Fairer Justice Bill could provide for magistrates', county and Coroners' Court rules to be made subject to the negative resolution procedure and, in the context of existing legislative provisions, ensure that rules which deal with a transferred or reserved matter be laid before the Assembly. It could also provide the Department with an allowing role in relation to magistrates' courts and Coroners' Court Rules and make corresponding provision for the Lord Chancellor - subject to the consent of the Secretary of State.

18. However, separate provision would have to be brought forward in a Westminster Bill to complete the picture, and allow for magistrates', county and Coroners' Court rules which deal with an excepted matter and are allowed by the Lord Chancellor to be laid before Parliament. (As set out at paragraph 13 this would not require a legislative consent motion.)

19. This two-track approach has the potential to create drafting and choreography difficulties.

20. Advice from Counsel suggests that it may be difficult for a Westminster Bill to provide that magistrates', county and Coroners' Court Rules which deal with an



excepted matter, and are made by Lord Chancellor, should be laid before Parliament if there is not already provision in place in an Assembly Bill providing that they are subject to the negative resolution procedure.

21. Even if this drafting issue could be overcome, the timing of the commencement of the provisions would have to be very carefully handled to ensure that both provisions commenced at the same time in order to avoid any gap in procedure arising.

22. Lastly, splitting provisions relating to one subject matter across two Bills may not provide for the cleanest draft or a straightforward guide for an end user.

### **Option Two – Westminster Bill (Northern Ireland Miscellaneous Provisions Bill)**

23. The second option would be to have the entire provision carried in a Westminster Bill. NIO has advised that it would be open to carrying the provision in the Northern Ireland (Miscellaneous Provisions) Bill given that it will already make amendments to court rule-making procedures in Northern Ireland.

24. The advantage of this would be that it would allow the entire provision to be carried on one Bill, thereby minimising the risk of error and avoiding the drafting and choreography problems set out above. It would also mean that the provision could be commenced as soon as possible.

25. Carrying the entire provision in a Westminster Bill would however require a legislative consent motion. This is because the majority of the provision (aside from the part relating to the laying of excepted rules before Parliament) would fall within devolved responsibilities. However, as set out at paragraph 10, a legislative consent motion is already required for a provision in the Miscellaneous Provisions Bill



relating to court rule-making procedures and it would not, therefore, present an additional hurdle.

### **Next Steps**

26. As the Committee will know, the Minister prefers to proceed by way of local legislation where possible. Indeed the Committee will also have before it at its 7 March meeting a paper on the Bill as a whole which, for the time being, reflects the rule making powers in its content. That will, of course, be subject to the Committee's views.

27. On this occasion, however, due to the difficulties set out above, and in the interests of achieving the end result as efficiently and cleanly as possible, there would seem to be merit in proceeding by way of Option Two. Additionally, this provision is an uncontroversial and technical one.

28. Before making any final decisions, however, the Department would welcome the Committee's views on the matter – particularly in light of the fact that a legislative consent motion would be required if Option Two were chosen (although one will be required in any event for the provision in the Northern Ireland (Miscellaneous Provisions) Bill to amend the gap left by the Devolution Order).

29. Should the Committee require clarification on any part, officials are happy to provide further information or provide oral briefing if that would be helpful.

*Bar Attorney*

**BARBARA McATAMNEY  
DALO**

