

EXPLANATORY MEMORANDUM TO
THE RULES OF THE COURT OF JUDICATURE (NORTHERN IRELAND)
(AMENDMENT) 2010

2010 No. 49

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 The Rules of the Court of Judicature (Northern Ireland) 1980 (S.R. 1980 No. 346) (“the principal Rules”) govern the practice and procedure in the Court of Judicature of Northern Ireland.
 - 2.2 This instrument amends the principal Rules so as to:
 - amend Order 1 to assign to the Family Division of the High Court applications under Article 32L of the Child Support (Northern Ireland) Order 1991 and applications under the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (“the Hague Convention on the Protection of Children”);
 - insert a new Order 60B which prescribes a procedure for appeals from Industrial Tribunals to the Court of Appeal other than by case stated under Article 22 of the Industrial Tribunals (Northern Ireland) Order 1996 (“the 1996 Order”) and from the Fair Employment Tribunal under Article 90 of the Fair Employment and Treatment (Northern Ireland) Order 1998 (“the 1998 Order”);
 - insert new rules into Order 61 to prescribe the procedure for making an application to the Court of Appeal for the suspension of a foreign driving disqualification under section 62 of the Crime (International Co-operation) Act 2003 (“the 2003 Act”);
 - amend Order 82 to prescribe the practice and procedure for proceedings under sections 2-4 (offers to make amends) and 8-11 (summary disposal) of the Defamation Act 1996 (“the 1996 Act”); and
 - amend Order 94 to replace references to Article 31 of the Industrial Training (Northern Ireland) Order 1984 and to section 27 of the Fair Employment (Northern Ireland) Act 1976 which have been superseded respectively by Article 22 of the 1996 Order and by Article 90 of the 1998 Order and to insert a new paragraph (3) in rule 2 to allow appeals from Industrial Tribunals and the Fair Employment Tribunal to

continue to proceed by way of case stated to the Court of Appeal only when leave to appeal is granted.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Assignment to Family Division

Order 1, rule 12 of the principal Rules is amended to assign to the Family Division applications for orders under Article 32L of the Child Support (Northern Ireland) Order 1991 and applications under the Hague Convention on the Protection of Children.

4.2 Appeals from Industrial Tribunals to the Court of Appeal

A new Order 60B is inserted into the principal Rules to provide the procedure for appeals from decisions of Industrial Tribunals under Article 22 of the 1996 Order and from decisions of the Fair Employment Tribunal under Article 90 of the 1998 Order to the Court of Appeal by way of appeal on a point of law.

4.3 Order 94 of the principal Rules (which deals with miscellaneous appeals by way of case stated to the High Court and Court of Appeal) is amended to replace the reference to Article 31 of the Industrial Training (Northern Ireland) Order 1984 with an reference to Article 22 of the 1996 Order and to replace the reference to section 27 of the Fair Employment (Northern Ireland) Act 1976 with a reference to Article 90 of the 1998 Order. New paragraphs (3) to (5) are inserted in rule 2 to allow for appeals from Industrial Tribunals to continue to proceed by way of case stated to the Court of Appeal only when leave is granted.

4.4 Applications for the suspension of a foreign driving licence

The amendments to Order 61 of the principal Rules are as a consequence of section 62 of the 2003 Act which provides that an application may be made to the Court of Appeal to suspend a foreign driving licence disqualification. Such a suspension application may be made where an application has been made to the magistrates' court to state a case for the Court of Appeal or where an application for leave to appeal to the Supreme Court has been made or where that leave has been granted.

4.5 Proceedings under the Defamation Act 1996

Order 82 of the principal Rules is amended to modify the existing procedure for proceedings relating to an offer to make amends and apply it to applications under section 2 of the 1996 Act. The amendments also prescribe the proceedings for summary disposal under sections 8 and 9 of the 1996 Act. The relevant provisions of the 1996 Act came into force in Northern Ireland on 6 January 2010.

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 negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Assignment to Family Division

It is appropriate that any proceedings before the High Court under the Child Support (Northern Ireland) Order 1991 or the Hague Convention on the Protection of Children be assigned to the Family Division for the purpose of organising the business of the Court.

7.2 Appeals from Industrial Tribunals to the Court of Appeal

Article 22 of the 1996 Order allows a party who is dissatisfied in point of law with a decision of an Industrial Tribunal to, according as rules of court may provide, either appeal to the Court of Appeal or require the tribunal to state and sign a case for the opinion of the Court of Appeal. Industrial Tribunals are independent judicial bodies that hear and determine claims concerning employment matters such as dismissal. Under the existing principal Rules the only way a decision of an Industrial Tribunal may be appealed to the Court of Appeal is by means of stated case procedure under Order 61 and 94.

7.3 The House of Lords in *SCA Packaging Limited (Appellants) v Boyle (Respondent) (Northern Ireland)* (2009) UKHL 37 noted that the case stated procedure may cause unnecessary delay and expense whereas a tribunal has already given a full decision. It recommended that the principal Rules be amended to allow such appeals to be able to proceed by way of straightforward appeal on a point of law to the Court of Appeal. The Court of Appeal in Northern Ireland in *Rogan v Eastern Health and Social Care Trust* (2009) NICA 47 agreed with the comments of the House of Lords.

7.4 Applications for the suspension of a foreign driving licence

The amendments are required to take account of the power of appellate courts to suspend foreign driving licence disqualifications under section 62 of the 2003 Act.

7.5 Proceedings under the Defamation Act 1996

These amendments are necessary to make procedural provision for those sections of the 1996 Act which have only recently been commenced in Northern Ireland.

8. Consultation outcome

- 8.1 Due to the representative nature of the Northern Ireland Court of Judicature Rules Committee no formal consultation was considered necessary on the Rules given that they are procedural in nature and therefore of limited public interest.

9. Guidance

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

10. Impact

- 10.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

11. Regulating small business

- 11.1 The legislation does not apply to small business.

12. Monitoring and review

- 12.1 The Rules will form part of the Rules of the Court of Judicature (Northern Ireland) 1980 which are kept under review by the Northern Ireland Court of Judicature Rules Committee.

13. Contact

- 13.1 Michael Kelly at the Northern Ireland Court Service (Civil Policy Division) Tel: 028 90412394 or email: michaelkelly@courtsni.gov.uk can answer any queries regarding the instrument.