

EXPLANATORY MEMORANDUM TO

The Rules of the Court of Judicature (Northern Ireland) (Amendment) 2015

SR 2015 No. 235

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 section 55 and 55A of the Judicature (Northern Ireland) Act 1978 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. These Rules amend the Rules of the Court of Judicature (Northern Ireland) 1980 which govern practice and procedure in the High Court.
- 2.2. They cover three separate subject matters. Firstly, they give effect to changes resulting from the adoption of EU Regulation No.1215/2012 ('the Brussels I Recast'), which deals with cross-border jurisdiction, recognition and enforcement of judgments in civil and commercial matters. Secondly, they prescribe the procedure to be followed in applications for the removal of the automatic notification requirements imposed by new provisions of the Sexual Offences Act 2003 ('the 2003 Act') on sexual offenders with convictions from states which are not members of the Council of Europe. Finally, they remove the automatic right of solicitors to anonymity in certain High Court proceedings which affect them.

3. Background

- 3.1. Brussels I Recast: On 10 January 2015, the Brussels I Recast replaced EU Regulation No.44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('Brussels I'). Brussels I sets out a framework which allows court decisions on civil and commercial issues given in one member state to be recognised and enforced in another. That framework is largely replicated under the Recast. The main difference is that a judgment given by a court in one member state will automatically take effect in another without first having to be recognised. These Rules amend the procedure in the High Court to reflect the changes provided for by the Recast.
- 3.2. Sexual offences notification: The 2003 Act requires offenders convicted of specific sexual offences to notify certain information to the police (such as information about their whereabouts). Since June 2014, relevant offenders who come to Northern Ireland with sexual offence convictions (or cautions etc) from other jurisdictions are automatically subject to these notification requirements. Offenders with convictions from states which are not members of the Council of Europe, however, have the right to apply to the High Court for the removal of the requirements in cases where the relevant

conviction was obtained in violation of their human rights. These Rules set out the procedure to be followed in making the relevant applications and provide for them to be dealt with in the Queens Bench Division of the High Court.

- 3.3. Solicitor anonymity: Solicitors must currently be given anonymity in certain High Court cases concerning them (such as appeals from the Solicitors Disciplinary Tribunal or certain financial or property related cases). It is considered that this automatic entitlement should be removed in the interest of openness and transparency. These Rules make the amendment necessary to remove the entitlement.

4. Consultation

- 4.1. The Law Society of Northern Ireland was consulted in respect of the provision in these Rules regarding solicitor anonymity. It raised no issue in respect of the proposed change.
- 4.2. Consultation was not considered necessary in respect of the other provisions contained in these Rules. This is because the relevant amendments give effect to provision made in the Brussels I Recast and 2003 Act, both of which were subject to separate public consultation exercises as part of the original policy development process.

5. Equality Impact

- 5.1. The changes needed to support implementation of the Brussels I Recast have been the subject of an equality screening exercise. This has revealed no evidence to suggest any adverse impact on any of the 'section 75 categories'. As such, a full equality assessment is not considered necessary. Likewise, there is no evidence to indicate that any equality impact arises from the provision made in these Rules regarding the right of solicitors to anonymity.
- 5.2. No equality assessment is required in relation to the provision in these Rules regarding sexual offences notification because a screening exercise was carried out as part of policy development in respect of the relevant primary legislation.

6. Regulatory Impact

- 6.1. An impact assessment has not been carried out for these Rules as no significant impact on the business, charity or voluntary sector is foreseen.

7. Financial Implications

- 7.1. There may be some minor costs associated with the processing of the applications to which these Rules relate. However, any such impact is not derived from these Rules but from provision made elsewhere (i.e. in the Brussels I Recast and the 2003 Act).
- 7.2. No financial impact is expected to arise from the provision contained in these Rules regarding solicitor anonymity.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. These Rules are considered to be compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Some of the provisions in these Rules support implementation of the Brussels I Recast in Northern Ireland. The Recast is directly applicable in the UK. These Rules do not transpose a European Directive.

10. Parity or Replicatory Measure

- 10.1. The Brussels I Recast applies to all jurisdictions of the UK. Provision similar to that provided for in respect of the Recast in these Rules has been made for other parts of the UK.
- 10.2. The provision contained in the 2003 Act regarding the removal of the automatic notification requirements imposed on sexual offenders with convictions from non-Council of Europe states is unique to this jurisdiction (i.e. no comparable provision exists elsewhere in the UK).
- 10.3. No right to anonymity has been identified for solicitors in similar proceedings in other parts of the UK.

11. Additional Information

- 11.1. N/A