

EXPLANATORY MEMORANDUM TO

The Family Proceedings (Amendment) Rules (Northern Ireland) 2016

S.R. 2016 No. 301

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 12 of the Family Law (Northern Ireland) Order 1993 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The purpose of the Statutory Rule is to amend the Family Proceedings Rules (Northern Ireland) 1996 ("the 1996 Rules") in consequence of Part 1 of (and Schedule 1 to) the Justice Act (Northern Ireland) 2015 ("the Act") which creates a single territorial jurisdiction for the county courts and the magistrates' courts in Northern Ireland, similar to that which already exists for the High Court, Crown Court and Coroners' Courts.

3. Background

- 3.1. Under the Act the existing statutory county court divisions and petty sessions districts are abolished, arrangements for the appointment of lay magistrates and justices of the peace are consequentially amended, and all statutory arrangements for the distribution of business in the county courts and magistrates' courts will be revoked. In their place an administrative framework, consisting of directions issued by the Department of Justice and the Lord Chief Justice, will be introduced.
- 3.2. The Departmental directions will create new administrative court divisions and will provide new arrangements for the allocation of business between chief clerks and clerks of petty sessions.
- 3.3. The Lord Chief Justice will be responsible for the distribution of business in the county courts and magistrates' courts and for the allocation of judges. His directions will replace all existing statutory rules and other provisions which indicate the division in which a matter should be dealt with, but will be modelled upon those provisions, so that existing principles will prevail. The key change will be the introduction of new flexibility, allowing cases to be listed in, or transferred to, an alternative administrative court division where there is good reason to do so.
- 3.4. Of particular note in relation to the Statutory Rule, paragraphs 76 and 124 of Schedule 1 to the Act amend the Matrimonial Causes (Northern Ireland) Order 1978 and the Civil Partnership Act 2004 respectively, to repeal provisions allowing for the designation of specific county courts as divorce county courts and civil partnership proceedings county courts. It will not be necessary to retain such distinctions as all county courts have been so designated.

- 3.5. The 1996 Rules make provision for the procedures to be followed in family proceedings. These may be in the county court or the High Court.
- 3.6. The Statutory Rule amends the 1996 Rules to take account of the changes introduced by the Act. This is achieved by amending those rules which make reference to: the county court division in which a matter should be heard or dealt with; divorce county courts; civil partnership proceedings county courts; designated county courts; or the chief clerk for a county court division.
- 3.7. The Statutory Rule removes references to county court divisions and further amends the 1996 Rules so that all references to the designated, divorce or civil partnership courts become references simply to county courts.

4. Consultation

- 4.1. Consultation with the Justice Committee took place in relation to the proposed Statutory Rule in June 2016.
- 4.2. The Family Proceedings Rules Committee, which is chaired by the Lord Chief Justice and made up of representatives from the Judiciary and the legal professions were consulted prior to their making of the Rule.

5. Equality Impact

- 5.1. The underlying policies were screened before the making of the primary legislation. 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 conducted.
- 5.2. The amendments made by the Statutory Rule are technical and purely consequential upon the primary provisions. No new policy is introduced.

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. The creation of a single jurisdiction in Northern Ireland is not intended to replicate arrangements elsewhere, however, a single county court was created in England and Wales by virtue of section 17 of the Crime and Courts Act 2013.

11. Additional Information

- 11.1. None.