

## **EXPLANATORY MEMORANDUM TO**

### **The Rules of the Court of Judicature (Northern Ireland) (Amendment) 2017**

#### **S.R. 2017 No. 213**

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

#### **2. Purpose**

- 2.1. The purpose of the Statutory Rule is to amend Order 53 Rules 4(1) of the Rules of the Court of Judicature (Northern Ireland) 1980 to remove the requirement of promptitude from the time limit for lodging an application for leave to apply for judicial review, with the result that the time limit for applying for leave in judicial review proceedings will be three months from the date from which grounds for the application first arose, unless extended by the Court.

#### **3. Background**

- 3.1. In June 2015, the Department of Justice consulted about proposed changes to the time limit in judicial review proceedings, particularly whether the requirement that an application should be brought "promptly". The requirement for promptitude had been held to be insufficiently certain and incompatible with the principles of certainty and effectiveness in European law by the Court of Justice of the European Union in *Uniplex (United Kingdom) Ltd v NHS Business Services Authority (C-406/08)* (2010) PTSR 1377.
- 3.2. In March 2016, the Executive Committee agreed that the requirement of promptitude should be removed. In July 2017, the United Nations Committee with responsibility for monitoring compliance with the United Nations Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ("the Aarhus Convention") raised a concern about the promptitude requirement on the basis that it lacks clarity and certainty.

#### **4. Consultation**

- 4.1. A consultation on removing the requirement of promptitude was carried out by the Department of Justice in June 2015.

#### **5. Equality Impact**

- 5.1. It is not considered that an Equality Impact Assessment is necessary. It is considered that there is no adverse impact on any groups under section 75 of the Northern Ireland Act 1998.

## **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 Statutory Rule is not incompatible with Convention rights, is not incompatible with European Union law, does not discriminate against a person or class of person on the grounds of religious belief or political opinion; in the case of an act, does not aid or incite another person to discriminate against a person or class of persons on that ground, and does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

## **9. EU Implications**

- 9.1. The European Union ratified the Aarhus Convention on 17th February 2005. Directive 2003/35 EC (The Public Participation Directive) implements the Aarhus Convention.

## **10. Parity or Replicatory Measure**

- 10.1. Not applicable.

## **11. Additional Information**

- 11.1. Not applicable.