

EXPLANATORY MEMORANDUM TO
THE NORTHERN IRELAND COURT SERVICE (ABOLITION AND
TRANSFER OF FUNCTIONS) ORDER (NORTHERN IRELAND) 2010

S.R. 2010 No. DRAFT

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 Northern Ireland Court Service (Abolition and Transfer of Functions) Order (Northern Ireland) 2010 abolishes the Northern Ireland Court Service and transfers its functions to the Department of Justice in Northern Ireland.

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

3.1 None.

4. Legislative Context

4.1 The Order is made by the Lord Chancellor in exercise of the power under section 78 of the Justice (Northern Ireland) Act 2002. It is made in association with the transfer of legislative competence for the administration of justice to the Northern Ireland Assembly which will be effected by the Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010 and the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland only.

6. European Convention on Human Rights

6.1 The Lord Chancellor and Secretary of State for Justice, the Right Honourable Jack Straw MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Northern Ireland Court Service (Abolition and Transfer of Functions) Order (Northern Ireland) 2010 are compatible with the Convention rights.”

7. Policy background

7.1 The Northern Ireland Court Service was established as a separate and distinct civil service under section 69 of the Judicature (Northern Ireland) Act 1978 to facilitate the conduct of the business of the courts and the enforcement of judgments in Northern Ireland. Under the initial devolution settlement, set out

in the Northern Ireland Act 1998, the administration of justice remained a matter for the UK Government and Parliament at Westminster. Ministerial responsibility for the courts in Northern Ireland has, therefore, continued to vest in the Lord Chancellor and is discharged through the Northern Ireland Court Service. However, the Government set out its willingness to devolve such matters in the Belfast Agreement. That commitment was reiterated in the Joint Declaration of 2003 and the St Andrews Agreement of 2006, which provided for the transfer of powers within a timescale agreed by the Northern Ireland Assembly. Following a resolution of the Assembly to that effect on 9 March 2010, responsibility for the administration of justice is to transfer to the Northern Ireland Executive on 12 April 2010.

7.2 Provision to enable justice matters to be devolved was made in the Northern Ireland Act 1998 and Orders in Council under sections 4 and 86 of that Act (*the Northern Ireland Act 1998 (Amendment of Schedule 3) Order and the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010* have been laid before Parliament to give effect to the transfer of legislative competence, executive functions, property and assets to the Department of Justice established by the Department of Justice Act (Northern Ireland 2010 (c.3).

7.3 On devolution, functions of the Court Service will also transfer to the Department of Justice to be exercised by an agency within the Department. The transfer of its functions and abolition of the Court Service are achieved by this Order in exercise of the power conferred on the Lord Chancellor by section 78 of the Justice (Northern Ireland) Act 2002. The abolition of the Court Service is effected by Article 2 of the Order. Transfer of Court Service functions to the Department of Justice is achieved by Article 3. The Schedule to the Order makes a number of consequential amendments to primary and subordinate legislation.

8. Consultation outcome

8.1 As this Order gives effect to political agreement, consultation was not considered necessary.

9. Guidance

9.1 Not applicable.

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 Order transfers functions to the Department of Justice in Northern Ireland. Monitoring and review of the exercise of transferred functions will be a matter for the Northern Ireland Executive and Northern Ireland Assembly.

13. Contact

13.1 Bronagh O'Reilly at the Northern Ireland Court Service (Civil Policy Division)
Tel: 028 9041 2901 or email: bronaghoreilly@courtsni.gov.uk can answer any queries regarding this instrument.