

EXPLANATORY MEMORANDUM TO
THE RULES OF THE SUPREME COURT (NORTHERN IRELAND)
(AMENDMENT) 2008

SR 2008 No.22

1. This explanatory memorandum has been prepared by Ministry of Justice (Northern Ireland Court Service) and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Rules of the Supreme Court (Northern Ireland) 1980 (S.R. 1980 No.346) (“the principal Rules”) govern practice and procedure in the Supreme Court of Judicature in Northern Ireland.

2.2 This instrument amends the principal Rules so as to:

- remove the requirement, under certain conditions, for a body corporate to be represented by a solicitor in proceedings before the High Court;
- allow flexibility in the sittings of the Supreme Court during the Michaelmas term; and
- allow for applications arising from the introduction of a single wholesale electricity market under the Electricity (Single Wholesale Market) Order 2007 and the restructuring of public electricity supplier licences under the Electricity Regulations (Northern Ireland) 2007.

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

3.1 None.

4. Legislative Background

4.1 By virtue of sections 55 and 55A of the Judicature (Northern Ireland) Act 1978, the Supreme Court Rules Committee is empowered to make rules prescribing practice and procedure before the High Court and Court of Appeal. This instrument represents the most recent exercise of those powers.

Representation of a Body Corporate before the High Court

4.2 Order 5, rule 6(2) of the principal Rules provides that, except as expressly provided by any statutory provision, a body corporate may not begin or carry on proceedings in the High Court otherwise than by a solicitor. In England and Wales, under Rule 39.6 of the Civil Proceedings Rules 1998, a company or other corporation may be represented at trial by an employee, provided that he has been authorised to do so, and the court has given its permission. This instrument will amend the principal rules to the same effect.

Sittings, Vacations and Office Hours of the High Court and Court of Appeal

- 4.3 Order 64 of the principal Rules makes provision in relation to the sittings, vacations and office hours of the High Court and Court of Appeal. These rules amend the principal Rules to allow flexibility in the sittings of the court during Michaelmas term by providing that Halloween recess may fall on days other than those specified at the direction of the Lord Chief Justice.

The Electricity (Single Wholesale Market) Order 2007 and the Electricity Regulations (Northern Ireland) 2007

- 4.4 The Electricity (Single Wholesale Market) Order 2007 made provision for the creation of a single wholesale electricity market in Northern Ireland and the Republic of Ireland.
- 4.5 Part III of the Electricity Regulations (Northern Ireland) 2007 provided for the restructuring of public electricity supplier licence holders in Northern Ireland in order to separate distribution activities from supply and generation as required under Directive 2003/54/EC.
- 4.6 For the purposes of implementing the single market, Schedule 1 of the 2007 Order together with Part III of the 2007 Regulations conferred on the Northern Ireland Authority for Utility Regulation the power to make property arrangements schemes to enable the transfer of the property, rights or liabilities between the owner and the operator of an electricity transmission system. The Order further provided that anyone aggrieved by a determination of the Utility Authority could apply to the Competition Appeal Tribunal for review of the determination. Pending such a review, the 2007 Order and Regulations provide that the Tribunal could make interim arrangements by way of order. This instrument provides for the registration of such interim orders to enable enforcement as an order of the High Court.
- 4.7 The 2007 Order also provided the High Court with the power, on an application of the Utility Authority, and under certain conditions, issue a warrant to enter the premises of an electricity licence holder for the purposes of investigating whether the contravention of a licence has occurred or is occurring. These Rules prescribe procedure on such an application.

5. Territorial Extent and Application

- 5.1 This instrument applies to Northern Ireland only.

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

Representation of a Body Corporate before the High Court

- 7.1 Currently in Northern Ireland, a body corporate may not begin or carry on proceedings in the High Court otherwise than by a solicitor. Having considered the implications of

the rules for companies who may not be able afford legal representation and the more flexible arrangements in England and Wales, the Committee concluded that it would be desirable to allow a body corporate to be represented by an employee if that employee has been authorised by the organisation to act on its behalf and the court has granted leave for the employee to do so.

Order 64 of the Rules of the Supreme Court - Sittings, Vacations and Office Hours of the High Court and Court of Appeal

- 7.2 The Committee considered that amending Order 64 of the principal Rules to give the Lord Chief Justice some discretion as to Halloween break would be desirable to address occasions when recess did not coincide with school holidays and to better meet the needs of court users and members of the legal profession with children.

The Electricity (Single Wholesale Market) Order 2007 and the Electricity Regulations (Northern Ireland) 2007

- 7.3 To facilitate the implementation of the single electricity market as provided for under the Electricity (Single Wholesale Market) Order 2007 and the Electricity Regulations (Northern Ireland) 2007, the Committee has amended the principal Rules to prescribe procedure for the registration in the High Court of an interim order of the Competition Appeal Tribunal and to prescribe the procedure on an application by the Authority for Utility Regulation for a warrant to enter premises to ascertain whether licences have been contravened.

Importance

- 7.4 These rules are procedural in nature and are therefore of limited public interest. It is not considered that the amendments made by these rules are politically or legally important.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 This instrument has no impact on the public sector.

9. Contact

- 9.1 Peter Luney at the Northern Ireland Court service (Policy and Legislation Division) (Tel: (028) 90412282 or email peterluney@courtsni.gov.uk) can answer any queries regarding this instrument.