

EXPLANATORY MEMORANDUM TO
THE RULES OF THE COURT OF JUDICATURE (NORTHERN IRELAND)
(AMENDMENT NO.2) 2010

S.R. 2010 No. 381

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Justice (Northern Ireland Courts and Tribunals Service) 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 (Northern Ireland) Act 1978 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Rules of the Court of Judicature (Northern Ireland) 1980 ('the principal Rules') govern practice and procedure in the High Court and Court of Appeal in Northern Ireland.
- 2.2. This Statutory Rule amends the principal Rules so as to reflect provision in the Human Fertilisation and Embryology Act 2008, EC Directive 2006/123/EC and to take account of the devolution of court related functions.
- 2.3. The Statutory Rule is made by the Court of Judicature Rules Committee and allowed by the Department of Justice.

3. Background

- 3.1. The Human Fertilisation and Embryology Act 1990 made provision allowing married couples to apply for an order transferring parenthood to them from a surrogate mother and her partner ('parental order'). The Human Fertilisation and Embryology Act 2008 ('2008 Act') substituted that provision so as to also allow civil partners and persons in enduring family relationships to also apply for a parental order. Procedure for parental orders is already prescribed in the principal Rules. That procedure is amended by this Statutory Rule to reflect the extended category of persons who can apply for a parental order under the 2008 Act.
- 3.2. EC Directive 2006/123/EC, which aims to improve access to services throughout the European Union, permits litigant parties to be represented by a solicitor in another EEA State (EU Member States, Iceland, Liechtenstein and Norway). The principal Rules contain a number of provisions specifying service on a solicitor within Northern Ireland. This Statutory Rule amends those references to include solicitors within the EEA.
- 3.3. The principal Rules contain a number of references to Lord Chancellor and Treasury which require to be substituted with references to the Department of Justice and the Department of Finance and Personnel to reflect

arrangements following the devolution of court related functions. This Statutory Rule makes the necessary substitutions.

4. Consultation

- 4.1. Given the representative nature of the Court of Judicature Rules Committee and the procedural technical nature of the Statutory Rule, formal consultation was deemed unnecessary.

5. Equality Impact

- 5.1. This Statutory Rule has been screened for any possible impact on equality of opportunity affecting the groups listed in section 75 of the Northern Ireland Act 1998 and no adverse or differential aspects were identified.

6. Regulatory Impact

- 6.1. This Statutory Rule does not require a Regulatory Impact Assessment as it does not impose any additional costs or savings on business, charities or voluntary bodies.

7. Financial Implications

- 7.1. This Statutory Rule does not have any financial implications.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. It is the view of the Northern Ireland Courts and Tribunals Service that this Statutory Rule is compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. The Statutory Rule does not address transposition but makes provision to ensure consistency with EC Directive 2006/123/EC.

10. Parity or Replicatory Measure

- 10.1. In England and Wales, amendments were made to the Civil Procedure Rules 1998 with effect from 6 April 2010 to ensure consistency with EC Directive 2006/123/EC and allow service of documents on a legal representative in another EEA State.

11. Additional Information

- 11.1. Not applicable.