

EXPLANATORY MEMORANDUM TO

The Rules of the Court of Judicature (Northern Ireland) (Amendment No. 2) 2013

SR 2013 No. 202

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 (Northern Ireland) Act 1978 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. This Statutory Rule amends the Rules of the Court of Judicature (Northern Ireland) 1980 ("the 1980 Rules") which are the rules of court governing practice and procedure in the High Court and the Court of Appeal in Northern Ireland.
- 2.2. Rules 2(3), (4) and (11) amend Orders 6 and 12 to provide for service of documents on personal litigants outside the jurisdiction but within the European Economic Area ("EEA") and to correct minor drafting defects. Rules 2(5) and (7) amend Orders 60B and 94 to enable appeals from the Upper Tribunal to the Court of Appeal to proceed by way of appeal on a point of law rather than by case stated. Order 109 is amended by Rule 2(8) to increase the financial limit from £5,000 to £20,000 for an application for a Short Procedure Order for appointment of a person to manage the financial affairs of a person deemed incapable of managing his or her own affairs. Rule 2(6) amends Order 93A to provide for service of a notice of an application for a declaration of presumed death directly on the Attorney General rather than on the Attorney General via the Crown Solicitor's Office; and Rules 2(9) and (10) amend Orders 109A and 116 respectively to correct minor drafting errors.

3. Background

- 3.1. In 2010, amendments were made to the 1980 Rules to ensure compliance with EC Directive 2006/123/EC on services in the internal market. The amendments permitted service of documents on the solicitor for the litigant party where the solicitor is based in another EEA state. This Statutory Rule makes similar amendments to permit service of documents on personal litigants based in another EEA state. The EC Directive 77/249/EEC to facilitate the effective exercise of lawyers of freedom to provide services contains measures to facilitate the cross-border provision of legal services in one Member State by lawyers based in another. This Statutory Rule makes amendments to permit service of documents on a European lawyer who is based in another EEA state. Corresponding amendments to certain forms are also made. Minor drafting defects which permitted service on

those outside the jurisdiction of the Court of Judicature and in another EEA State but not elsewhere in the United Kingdom are corrected.

- 3.2. Section 13 of the Tribunals, Courts and Enforcement Act 2007 (2007 c.15) provides for appeals on a point of law from the Upper Tribunal to the Court of Appeal. Order 94 of the 1980 Rules provides for such appeals to be brought to the Court of Appeal by way of case stated. Given section 13, requiring a case stated for these appeals is unnecessary, so this Statutory Rule removes these appeals from the scope of Order 94 and sets out a new procedure for them in Order 60B. Consequential amendments to the Arrangement of Orders are also made.
- 3.3. The Mental Health (Northern Ireland) Order 1986 ("the 1986 Order") permits the appointment of person ("a controller") to manage the financial affairs of a person deemed incapable of managing his or her own financial affairs ("a patient"). Order 109 of the 1980 Rules prescribes the procedure for the making of a "Short Procedure Order" for controllership in circumstances where the value of the patient's property does not exceed £5,000. This limit has not increased since 1980 and is no longer considered to meet the needs of patients, many of whom have assets exceeding £5,000. The £5,000 limit has also not kept pace with increases in the court fees and legal costs which need to be paid out of the assets. This Statutory Rule, therefore, increases the limit to £20,000 which is in line, for example, with the value of a patient's property which can be managed by a health board or health and social care trusts under the 1986 Order.
- 3.4. Section 9(1) of the Presumption of Death Act (Northern Ireland) 2009 (2009 c.6) provides for notice of an application for a declaration of presumed death to be served by the applicant on the Attorney General. Order 93A of the 1980 Rules currently requires service of such a notice to be served on the Attorney General via the Crown Solicitor. In light of the changes in arrangements consequential upon the devolution of policing and justice, this Statutory Rule amends this so that the notice will now be served directly on the Attorney General.
- 3.5. Order 109A of the 1980 Rules provides the procedure for proceedings under the Enduring Powers of Attorney (Northern Ireland) Order 1987 (S.I. 1987/1627 (N.I. 16)). Rule 18 makes provision for the cancellation of registered enduring powers of attorney. Rule 18(4) refers to "Article 19(4)" of the 1987 Order whereas the correct reference should be to "Article 10(4)." This Statutory Rule amends that reference. Order 116 of the 1980 Rules uses the incorrect title for the "Director of Public Prosecutions for Northern Ireland". This Statutory Rule addresses these minor, technical defects.

4. Consultation

- 4.1. Due to the procedural and technical nature of the Statutory Rule, a consultation was not considered necessary. The Rules have, however, been made by the Court of Judicature Rules Committee which is chaired by the Lord Chief Justice and comprises members of the judiciary and the legal profession.

5. Equality Impact

- 5.1. Due to the procedural and technical nature of this Statutory Rule, such an assessment was not considered necessary. No impact on any of the section 75 groups is foreseen

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. None.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. This Statutory Rule is considered to be compliant with section 24 of the Northern Ireland Act 1998, including EU Law and Convention Rights as defined in the Human Rights Act 1998.

9. EU Implications

- 9.1. The amendments to Orders 6 and 12 help support implementation of EC Directive 2006/123/EC on services in the internal market and EC Directive 77/249/EEC to facilitate the effective exercise of lawyers of freedom to provide services.

10. Parity or Replicatory Measure

- 10.1. Not applicable.

11. Additional Information

- 11.1. Not applicable.