

**EXPLANATORY MEMORANDUM TO
THE RULES OF THE SUPREME COURT (NORTHERN IRELAND) (AMENDMENT
NO.5) 2005**

2005 No. 449

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs (Northern Ireland Court Service) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

- 2. Description**

- 2.1 The Rules are made in exercise of the powers conferred under section 55 of the Judicature (Northern Ireland) Act 1978.

- 2.2 This instrument has been prepared to assign to the Family Division of the Supreme Court of Judicature of Northern Ireland (“the Family Division”), certain proceedings under the Civil Partnership Act 2004, the Gender Recognition Act 2004 and Council Regulation (EC) No. 2201/2003. The purpose of assigning these proceedings to the Family Division is to allow for Family Proceedings Rules to be made in respect of these matters under Article 12 of the Family Law (Northern Ireland) Order 1993. The Rules also amend Forms No. 24 and No. 25 (Writs of subpoena) to notify the recipient that he may apply to the court to set aside the subpoena.

- 2.3 The Rules will come into operation on 4th November 2005.

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

- 3.1 None

- 4. Legislative Background**

- 4.1 Article 12 of the Family Law (Northern Ireland) Order 1993 provides that the Northern Ireland Family Proceedings Rules Committee, with the concurrence of the Lord Chancellor, may make rules of court for the purposes of family proceedings which are assigned to the Family Division of the High Court. Order 1, rule 12 of the Rules of the Supreme Court (Northern Ireland) 1980 assigns causes and matters to the Family Division. The Rules amend Order 1, rule 12 to assign proceedings under the Civil Partnership Act 2004, the Gender Recognition Act 2004 and Council Regulation (EC) No. 2201/2003 to the Family Division.

- 4.1 The Civil Partnership Act 2004

The Civil Partnership Act 2004 received Royal Assent on 18th November 2004 and will come into force on 5th December 2005. The Act will:

- Introduce a statutory civil registration procedure to allow same – sex couples to make a formal, legal, commitment to each other by entering into a civil partnership;
- Establish the rights and responsibilities that flow from entering a civil partnership, which will correspond broadly to the rights and responsibilities that flow from marriage;
- Provide for proceedings to bring a civil partnership to an end (dissolution order, nullity order or presumption of death order), or for the legal separation of civil partners (sections 161 – 180), for an application for financial relief after overseas dissolution of a civil partnership (Schedule 17) and for an application to the court for declarations regarding the status of a civil partnership (section 181).

4.2 The Gender Recognition Act 2004

The Gender Recognition Act 2004 received Royal Assent on 1st July 2004. The main provisions of the Act came into force on 4th April 2005. The purpose of the Act is to provide transsexual people with legal recognition in their acquired gender on the issue of a full gender recognition certificate. The Act establishes Gender Recognition Panels to which a person seeking recognition in his or her acquired gender must apply. If an unmarried applicant's application is granted, the Panel must issue a full gender recognition certificate. If a married applicant's application is granted, the Panel must issue an interim gender recognition certificate only. This permits either party to the marriage to seek the nullification of the marriage. When a court makes absolute a decree of nullity, granted on the ground that an interim gender recognition certificate has been issued to either party to the marriage the court must issue a full gender recognition certificate to that party.

- 4.3 Section 6 of the Act provides for applications to the court which issued a full gender recognition certificate, for the issue of a corrected gender recognition certificate where it contains an error. Section 8(1) of the Act provides a statutory appeal to the High Court on a point of law against a decision of a Gender Recognition Panel to reject an application made to it, and section 8(5) provides for the Secretary of State to refer cases to the High Court where he considers an application for a gender recognition certificate to have been secured by fraud.

4.4 Council Regulation (EC) No. 2201/2003 (Brussels IIa)

The above Council Regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility replaced Council Regulation (EC) No. 1347/2000 (Brussels II), which applied to decisions on parental responsibility only to the extent that they were issued in the context of matrimonial proceedings and concerned children common to both spouses. The new Regulation has extended the scope to cover all decisions on parental responsibility, regardless of whether the parents are, or were, married and whether the parties to the proceedings are, or are not, both biological parents of the child in question. The provisions on matrimonial matters remain unchanged.

4.5 Amendment to Forms No. 24 and No. 25 (Writs of subpoena)

Forms No. 24 (Writ of subpoena) and No. 25 (Writ of subpoena: proceedings in chambers) in Appendix A of the Rules are modified to include notice on the face of these forms, of the recipient's right to have the subpoena set aside.

5. **Extent**

5.1 This instrument applies to Northern Ireland only.

6. **European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. **Policy background**

7.1 The Civil Partnership Act 2004

The Rules provide for the assignment to the Family Division of proceedings in relation to civil partnerships on a similar basis to matrimonial proceedings. Consequently Order 1, rule 12(a) is amended to provide that all causes and matters in relation to the dissolution or annulment of a civil partnership, the legal separation of civil partners, a presumption of death order and any matters arising there from or connected therewith are assigned to the Family Division.

7.2 The Gender Recognition Act 2004

In England and Wales, proceedings under sections 6 and 8 of the Gender Recognition Act 2004 were assigned to the Family Division of the High Court of England and Wales. Given that these provisions extend directly to Northern Ireland, the Rules assign these proceedings to the Family Division.

7.3 Council Regulation (EC) No. 2201/2003 (Brussels IIa)

Proceedings under Brussels IIa in relation to matrimonial matters (as for Brussels II) are assigned to the Family Division by virtue of Order 1, rule 12 (a)(ii). Consequently, it is considered appropriate that all decisions on parental responsibility arising under Brussels IIa should also be assigned to the Family Division. The Rules provide for such an assignment.

7.4 Amendment to Forms No. 24 and No. 25 (Writs of subpoena)

The Law Reform Advisory Committee ("the LRAC") produced a report on Third Party Discovery in Civil Proceedings. The LRAC recommended, among other things, that the prescribed forms (Forms No. 24 and No. 25 in Appendix A of the Rules of the Supreme Court (Northern Ireland) 1980) should be modified to include notice of the recipient's right to apply to have the subpoena set aside. The LRAC report was considered by the Supreme Court Rules

Committee. The Committee agreed with the recommendation that the prescribed forms should be amended.

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.

9. Contact

Rosemary Lundy at the Northern Ireland Court Service Tel: 028 90412256 or e-mail: rosemarylundy@courtsni.gov.uk can answer any queries regarding the instrument.