EXPLANATORY MEMORANDUM TO

THE COURT FUNDS (AMENDMENT) RULES (NORTHERN IRELAND)

2008

SR 2008 No.156

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. Description

2.1 The Court Funds Rules (Northern Ireland) 1979 (S.R. 1979 No. 105) ("the principal Rules") make provision in relation to the management of funds in court in Northern Ireland.

2.2 This instrument amends the principal Rules so as to:

- amend a number of references in respect of the Common Investment Scheme;
- remove a reference to the Bank of Ireland so that the Accountant General is no longer obliged to maintain the County Court Account at that institution; and
- add a new form of lodgment schedule for use in situations where a lending institution finds itself holding on behalf of an untraceable mortgagor the balance proceeds of sale of property it has sold as mortgagee and wishes to lodge same in court.

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

None

4. Legislative Background

Common Investment Scheme

4.1 Section 81 of the Judicature (Northern Ireland) Act 1978 ("the 1978 Act") provides that funds in court may be invested in "funds established by schemes made under section 42 of the Administration of Justice Act 1982", namely common investment schemes.

4.2 The Common Investment Scheme 2004 (S.I. 2004/266) was made under section 42 and was recently amended by the Common Investment (Amendment) Scheme 2007 (S.I. 2007/1095) to ensure that the necessary arrangements for the Accountant General actually to invest court funds in common investment schemes are in place.

Bank of Ireland

4.3 Rule 2 of the principal Rules contains a number of interpretative provisions including that "the Bank" shall mean:

(a) the Governor and company of the Bank of Ireland at their principal office in Belfast; or

(b) such other bank or banks as the Lord Chancellor may, with the concurrence of the Treasury, designate under section 79 of the 1978 Act.

4.4 Rule 6(2) currently provides that the Accountant General shall hold "an account to be known as the County Court Account" in "the Bank of Ireland at its principal office in Belfast".

5. Territorial Extent and Application

This instrument applies to Northern Ireland only.

6. European Convention on Human Rights

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

7. Policy background

Common Investment Scheme

7.1 Further to an internal review of CFO policies and procedures, a number of outdated statutory references in connection with the Common Investment Scheme were identified. While the Accountant General has not yet used his power to invest funds in the Common Investment Scheme (and, therefore, no mischief was created by the outdated references), the principal Rules should be amended to ensure that no legislative obstacle exists to future investment activity.

Bank of Ireland

7.2 Rule 6(2) of the principal Rules currently requires the Accountant General to hold a particular account in the Bank of Ireland. It is not considered that the Accountant General's discretion should be so limited. The provision is, therefore, amended to remove the specific reference to that bank.

7.3 The effect is that the account may be held at the Bank of Ireland or such other bank as the Lord Chancellor (with the concurrence of the Treasury) may designate under section 79 of the 1978 Act.

Lodgment schedule

7.4 Where a lending institution holds on behalf of an untraceable mortgagor the proceeds of the sale of property it has sold as mortgagee (usually as a result of proceedings for repossession), the balance may be paid into court under section 63 of the Trustee Act (Northern Ireland) 1958. Under the principal Rules, the procedure involved requires the applicant to file an affidavit and lodgment schedule in relation to the funds.

7.5 The principal Rules do not currently include a form of lodgment schedule. We believe such a form would, however, be of assistance in the rare circumstances in which it might be required. This instrument, therefore, prescribes such a form.

Importance

7.6 The amendments made to the principal Rules by this instrument are procedural in nature and are, therefore, of limited public interest. It is not considered that the amendments made by this instrument are politically or legally important.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument as there is no impact on business, charities or voluntary bodies.

8.2 This instrument has no impact on the public sector.

9. Contact

Michael Kelly at Northern Ireland Court Service (Tel: 028 90412394 or e-mail: michaelkelly@courtsni.gsi.gov.uk) can answer any queries regarding the instrument.