EXPLANATORY MEMORANDUM TO

THE FAMILY PROCEEDINGS (AMENDMENT NO. 2) RULES (NORTHERN IRELAND) 2008

SR 2008 No 259

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 Family Proceedings Rules (Northern Ireland) 1996 (S.R. 1996 No. 322) ("the principal Rules") prescribe the procedure in relation to family proceedings in the High Court and county courts in Northern Ireland.

2.2 The instrument amends the principal Rules to allow family care centres (certain county courts) to make a freeing order or an adoption order under the Adoption (Northern Ireland) Order 1987.

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

None.

4. Legislative Background

4.1 Article 2(2) of the Adoption (Northern Ireland) Order 1987 ("the Adoption Order") [S.I. 1987/2203 (N.I. 22)] provides that (in respect of a child living in Northern Ireland) an order to free a child for adoption or an adoption order, may only be made by the High Court, or by the county court for the division where the child is, or (in the case of a freeing order only) the county court for the division where the parent or guardian of the child is. It also provides that court rules may prescribe any other county court as a court authorised to make a freeing order or an adoption order. (Although Article 2(2)(c) refers to county court rules, the power to make family proceedings rules in Article 12 of the Family Law (Northern Ireland) Order 1993 includes the power to make any provision, which could be made by county court rules.)

4.2 The Children (Allocation of Proceedings) Order (Northern Ireland) 1996 [S.R. 1996 No. 300] ("the Allocation Order") provides for the allocation of proceedings under the Children (Northern Ireland) Order 1995 ("the Children Order") [S.I. 1995/755 (N.I. 2)]. Proceedings under the Children Order (including applications by Social Services for a child to be taken into care) at the county court tier are assigned to county courts designated by the Allocation Order as "family care centres". The Allocation Order was made pursuant to a power in the Children Order to make provision for the allocation of proceedings under it however there is no corresponding power in the Adoption Order to make provision for the allocation of proceedings under that Order.

5. Territorial Extent and Application

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 At present (in respect of a child living in Northern Ireland) a freeing order or an adoption order may only be made by the High Court or the county court for the division where the child is or (in the case of a freeing order only) the county court for the division where the parent or guardian of the child is.

7.2 Family care centre judges have indicated that there are occasions when it would be helpful if proceedings under the Adoption Order could be heard in a family care centre (not necessarily being the county court for the division where the child, or parent or guardian of the child is) so that they may be heard by the judge who is hearing or has heard related care proceedings under the Children Order.

7.3 The Rules therefore amend the principal Rules to prescribe a family care centre as an authorised court for the purposes of Article 2(2) of the Adoption Order. The effect of this will be to allow a family care centre to make a freeing order or an adoption order even if it is not the county court for the division where the child, or the parent or guardian of the child, is.

8. Impact

8.1 An 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 Jane Maguire at the Northern Ireland Court Service (Tel: 028 9041 2319 or e-mail: janemaguire@courtsni.gsi.gov.uk) can answer any queries regarding the instrument.

Northern Ireland Court Service
June 2008