EXPLANATORY MEMORANDUM TO

The Maximum Number of Judges Order (Northern Ireland) 2020

S.R. 2020 No. 248

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 section 2(3) of the Judicature (Northern Ireland) Act 1978 (the 1978 Act) and is subject to the affirmative resolution procedure.

2. Purpose

2.1. Under section 2(3) of the 1978 Act, the Department of Justice may, with the agreement of the Northern Ireland Judicial Appointments Commission, from time to time amend section 2(1) of the 1978 Act so as to vary the maximum number of High Court judges. The Statutory Rule will amend section 2(1) and increase the statutory limit of High Court judges from 10 to 15. This is intended to allow for both the future appointment of part time judges, which might add to the potential pool of applicants for the High Court ideally increasing diversity at that tier, and allowing sufficient headroom for the addition of judges in times where unforeseen pressures emerge.

3. Background

3.1. Both the Historical Institutional Abuse Redress Board and the newly constituted Victims Payments Board have empanelled members of the High Court Bench as Presidents. This has decreased the number of available High Court judges to deal with High Court Business.

3.2. Moreover, sufficient headroom within the statutory limit would allow for future changes to the High Court complement, when the need arose, to be made more efficiently.

3.3. Of course, any increase in the actual High Court Judicial complement from its current limit of 10 will have to be supported by individual business cases, taking into account the overall volume of High Court business whilst also ensuring that funding is available for the additional salaries and pensions.

4. Consultation

4.1. No public consultation was considered necessary. The Northern Ireland Judicial Appointments Commission, which is chaired by the Lord Chief Justice, must agree to the Statutory Rule.

5. Equality Impact

5.1. Consideration was given to compliance with section 75 of the Northern Ireland Act 1998. An impact assessment was not considered necessary.

6. Regulatory Impact

6.1. An assessment is not necessary because the proposals result in no costs or savings, or increase fees.

7. Financial Implications

7.1. The statutory rule is cost neutral as any additional High Court Judge appointments will require a business case to assess costings and affordability and will be subject to DoF approval.

8. Section 24 of the Northern Ireland Act 1998

8.1. The statutory rule:

8.2. is not incompatible with any of the Convention rights;

8.3. is not incompatible with EU law;

8.4. does not discriminate against a person or class of person on the ground of religious belief or political opinion;

8.5. does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. Section 4(1)(e) of the Senior Courts Act 1981 sets the maximum full-time equivalent number of High Court judges at 108, ensuring that both the necessary number of full time and part time judges may be appointed.

10.2. Currently section 1(1) of the Court of Session Act 1988 holds that the maximum number of judges of the Court of Session is 35.

11. Additional Information

11.1. Not applicable.