EXPLANATORY MEMORANDUM TO THE

THE NON-CONTENTIOUS PROBATE (AMENDMENT) RULES 2004

2004 No.2985 (L.17)

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

1. Following the Government's decision to open the probate market to new providers, it is necessary to amend the definition of "probate practitioner" in the Non-Contentious Probate (Amendment) Rules 1987.

2. These Rules expand the definition to include persons who are members of authorised bodies under section 55 of the Courts and Legal Services Act 1990.

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

None.

4. Legislative Background

1. The Non-Contentious Probate Rules 1987, which set out rules of practice and procedure for non-contentious probate business in the High Court, include a definition of "probate practitioner", who is a qualified professional who may offer probate services for reward.

2. The current position is that only a narrow category of persons may offer these services, a restriction that is set out in section 23 of the Solicitors Act 1974 and reflected in the Non-Contentious Probate Rules definition.

3. This SI expands the definition to include the new categories of providers that the Government is including in the opening up of competition in this area.

4. The Non-Contentious Probate (Amendment) Rules 2004 expand the definition of "probate practitioner" to those people defined in section 23(2) of the Solicitors Act 1974, which now includes persons who are members of authorised bodies under section 55 of the Courts and Legal Services Act 1990. This SI brings the Non-Contentious Probate Rules in line with the other legislative provisions, which define providers of probate services.

5. Extent

This instrument applies to England and Wales.

6. European Convention on Human Rights

Not applicable

7. Policy background

5. Under section 23 of the Solicitors Act 1974, it is an offence for anyone other than a solicitor, a barrister, or a duly certified notary public (most of whom are qualified solicitors), to take instructions for reward or to draft or prepare for reward the papers on which a grant of probate or letters of administration depend.

6. In his Report *Competition in Professions* published in March 2001, the Director General of Fair Trading suggested that consideration should be given to implementing section 54 (which will allow banks, building societies, insurance and trust companies, to provide probate services) and section 55 (which will allow bodies approved by the Secretary of State to provide probate services) of the Courts and Legal Services Act 1990. It was considered that doing so would increase competition in the market for offering probate services for a fee. Bodies offering probate services under section 55 will be required to comply with regulations set by the Secretary of State in respect of matters relating to complaints handling under section 55(2)(d)(ii) of the Courts and Legal Services Act 1990.

7. The Government accepted this recommendation and announced its decision in the Departmental report, *Competition and Regulation in the Legal Services Market*, published 24 July 2003.

8. In October 2004, during a Parliamentary debate, Ministers announced that they would not be implementing section 54. As a result, only section 55 will be commenced.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

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