EXPLANATORY MEMORANDUM TO

The Rules of the Court of Judicature (Northern Ireland) (Amendment) 2019

S.R. 2019 No. 237

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 sections 55 and 55A of the Judicature (Northern Ireland) Act 1978 and section 48 of the Civil Jurisdiction and Judgments Act 1982 and is subject to the negative resolution procedure.

2. Purpose

2.1. The draft Rules amend the Rules of the Court of Judicature (Northern Ireland) 1980 to remove provisions in the Court of Judicature Rules which relate to powers, processes and orders under EU instruments or treaties which will no longer be applicable in the event the UK exits the European Union without a withdrawal agreement.

2.2. In addition, the draft Rules provide the process and procedure for applications under the Convention on Choice of Court Agreements concluded on 30 June 2005 at the Hague which entered into force in the UK on 1 October 2015. The draft Rules also contain a number of minor updating references relating to competition proceedings.

3. Background

3.1. The Court of Judicature rules make provision governing practice and procedure for proceedings under a number of EU instruments, treaties and agreements between the EU and third countries.

3.2. On EU Exit, the European Union (Withdrawal) Act 2018 and statutory instruments made under it will revoke the EU instruments, for which provision is made in the Court of Judicature Rules, and repeal or amend associated domestic legislation. The provision governing practice and practice for these proceedings will, subject to transitional and savings provisions, be superfluous as such proceedings will no longer be possible. There are also references to EEA states and EU lawyers and applications for references to the Court of Justice of the EU which are also superfluous. The draft Rules revoke these redundant provisions and ensure that there are appropriate transitional and savings provisions for any proceedings commenced but not concluded under the EU instruments before exit day. The approach is to follow the provisions made in the relevant statutory instrument made under the European Union (Withdrawal) Act 2018. Broadly, the approach allows proceedings started in a court in Northern Ireland before exit day to be concluded after exit day under the rules as they stood immediately before exit day.

3.3. The 2005 Hague Choice of Court Convention aims to ensure the effectiveness of exclusive choice of court agreements made between

parties to international commercial contracts. The Convention requires a court of a Contracting State, which has been designated by an agreement to exclusively deal with disputes arising under it, to hear a case (and other courts to decline to do so) and that any judgment rendered by a chosen court must be recognised and enforced in other Contracting States. The United Kingdom currently participates in the Convention by virtue of its membership of the European Union. The impact of the coming into force of the Convention in Northern Ireland was minimal since there are very few other Contracting States apart from the European Union and a specific EU measure takes priority over exclusive choice of court agreement arrangements involving Member States, with separate arrangements in place for Denmark. Therefore, the Convention currently only takes priority in exclusive choice of court agreement arrangements involving the UK and non-EU member state contracting parties – at present Singapore, Montenegro and Mexico.

3.4. In preparation for its withdrawal from the European Union, the United Kingdom has taken steps to become an independent contracting party to the Convention. The Convention's rules would then govern questions relating to exclusive choice of court agreements with the EU Member States in addition to the other existing (and future) contracting parties to the Convention. The draft Rules ensure that provision is made to govern applications under the Convention for enforcement of judgements and court settlements and that Convention cases are appropriately included in provisions on service and security for costs.

4. Consultation

4.1. The relevant Rules Committee, which is comprised of representatives from the Judiciary, the legal professions and Northern Ireland Courts and Tribunals Service were consulted prior to their makingof the Rule.

5. Equality Impact

5.1. Given the technical and purely consequential nature of these amendments, no assessment under section 75 of the Northern Ireland Act 1998 was considered necessary.

6. Regulatory Impact

6.1. No Regulatory Impact Assessment was considered necessary. There is no, or no significant, impact on business, charities, voluntary bodies or the public sector.

7. Financial Implications

7.1. None.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department has considered its obligations under section 24 of the Northern Ireland Act 1998 and is satisfied that the Rules are compliant.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. There are similar amendments to court rules in the other legal jurisdictions in the UK.

11. Additional Information

11.1. Not applicable.