EXPLANATORY MEMORANDUM TO

THE RULES OF THE COURT OF JUDICATURE (NORTHERN IRELAND) (AMENDMENT) 2021
S.R. 2021 No. 129

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Northern Ireland Courts and Tribunals Service (NICTS) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made by the Northern Ireland Court of Judicature Rules Committee in exercise of the powers conferred by sections 55 and 55A of the Judicature (Northern Ireland) Act 1978 and is subject to the negative resolution procedure.

2. Purpose

2.1 This Statutory Rule is being made to allow non-contentious probate applications in Northern Ireland to be made online and therefore make the service more modern, accessible and easy to use.

2.2 In particular, it will amend the rules to include application using the new online portal that has been developed for probate applications as well as paying the fee electronically. It will also replace the requirement to swear an oath as part of the application with the signing of a statement of truth.

3. Background

3.1 Applying for the legal right to deal with someone's property, money and possessions (their 'estate') when they die is called 'applying for probate'. An application to the court for probate is required for all estates over £10k irrespective of whether or not the deceased has a will. The outcome for the applicant is either a Grant of Probate or Letter of Administration, which is a court document outlining the applicant's legal authority to deal with the deceased's estate. This work is governed by the Administration of Estates (NI) Order 1979, the Administration of Estates Act (NI) 1955, the Administration of Justice Act 1982, The Inheritance Tax (Delivery of Accounts) (Excepted Estates) Regulations 2004and Order 97 (non-contentious probate) of the Rules of the Court of Judicature. The Probate Service was established in 1858 and the system has remained largely unchanged for the end user since then.

3.2 The current application process is very paper and administratively heavy, and therefore these amendments aim to modernise the service offered to legal practitioners and citizens and make the application for probate easier, more accessible and in line with the service offered by HMCTS in England and

Wales.

4. Consultation

4.1 No consultation has been completed, as it is not a requirement due to the underlying process remaining unchanged. This change simply allows applications to be made online and makes the procedure more accessible and modern.

5. Equality Impact

5.1 The Statutory Rule has been screened for any possible impact on equality of opportunity affecting the groups listed in section 75 of the Northern Ireland Act 1998 and no adverse or differential aspects were identified.

6. Regulatory Impact

6.1 The Statutory Rule was screened for any regulatory impact and none were identified.

7. Financial Implications

7.1 As the fees will remain set according to the Court of Judicature Fees Order (Northern Ireland), there are no financial implications arising from this Statutory Rule.

8. Section 24 of the Northern Ireland Act 1998

8.1 It is the view of the Department that this Statutory Rule is compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

It is the view of the Department that this Statutory Rule does not have any EU implications.

10. Parity or Replicatory Measure

10.1 In Great Britain the corresponding Statutory Instrument is the Non-Contentious Probate (Amendment) Rules 2019, as amended. This Statutory Rule makes similar changes to allow for the modernisation of non-contentious probate applications in Northern Ireland.

11. Additional Information

11.1 Not applicable.

Northern Ireland Courts and Tribunals Service
17 May 2021