EXPLANATORY MEMORANDUM TO

THE RULES OF THE SUPREME COURT (NORTHERN IRELAND) (AMENDMENT) 2007

SR 2007 No. 189

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs (Northern Ireland Court Service) and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Rules of the Supreme Court (Northern Ireland) 1980 (S.R. 1980 No. 346) ("the principal Rules") govern practice and procedure in the Supreme Court of Judicature in Northern Ireland.

2.2 This instrument amends the principal Rules so as to:

- make a number of amendments consequential to the Civil Partnership Act 2004 ("the 2004 Act");
- transfer probate business from the Family Division of the High Court to the Chancery Division and make a small number of consequential amendments;
- update a number of references to merchant shipping legislation, which has been repealed and consolidated in the Merchant Shipping Act 1995 ("the 1995 Act");
- provide for taxation of solicitor's professional costs as a single item under the short form procedure;
- provide for proceedings against or concerning the International Oil Pollution Compensation Supplementary Fund 2003;
- make a minor amendment in respect of giving evidence by video link;
- make a number of amendments in relation to the procedure for applications for statutory review and appeals under the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"), as amended by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 ("the 2004 Act") and the Immigration, Asylum and Nationality Act 2006 ("the 2006 Act"); and
- prescribe the procedure for applications to the High Court under the European Public Limited-Liability Company Regulations (Northern Ireland) 2004 ("the 2004 Regulations") and the European Cooperative

Society (Involvement of Employees) Regulations 2006 ("the 2006 Regulations").

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

None

4. Legislative Background

The Civil Partnership Act 2004

4.1 The 2004 Act provides for a statutory civil registration procedure to allow same-sex couples to make a formal, legal commitment to each other by entering into a civil partnership. The Act further provides that the rights and responsibilities that flow from entering a civil partnership correspond broadly to the rights and responsibilities that flow from marriage.

The Merchant Shipping Act 1995

4.2 The 1995 Act repealed and consolidated the Merchant Shipping Acts 1894 to 1994 and other enactments relating to merchant shipping.

4.3 The 1995 Act was also amended by the Merchant Shipping (Oil Pollution) (Supplementary Fund Protocol) Order 2006 (S.I. 2006/1265) to implement in the United Kingdom the Supplementary Fund Protocol, which was introduced to supplement the compensation available for damage caused by oil pollution and which established the International Oil Pollution Compensation Supplementary Fund 2003.

The Nationality, Immigration and Asylum Act 2002

4.4 Section 26 of the 2004 Act amended the 2002 Act to introduce a new appellate system for asylum and immigration appeals and replace the former two-tier Immigration Appellate Authority with a new Asylum and Immigration Tribunal ("the Tribunal"), which deals with appeals from decisions of the Home Office in asylum, immigration and nationality matters.

4.5 Section 103A of the 2002 Act provides that, where the Tribunal sits in Northern Ireland and comprises less than three legally-qualified members, its decisions will be subject to review by the High Court in Northern Ireland. The High Court will have the power to order the Tribunal to reconsider its decision on the basis that it made an error of law.

4.6 However, paragraph 30 of Schedule 2 to the 2004 Act contains a "filter provision", which provides that, for a period of time (which still continues), applications for an order that the Tribunal must reconsider its decision will be dealt with by a member of the Tribunal, rather than by the High Court. Where the filter provision is in operation, such an application shall be made to the

Tribunal in accordance with the procedures for making section 103A applications to the High Court.

4.7 If the Tribunal member refuses the application, the applicant may then "opt in" to the High Court procedure by giving further notice to the High Court under paragraph 30(5)(a) of Schedule 2 to the 2004 Act.

4.8 Section 103C of the 2002 Act provides that an application under section 103A to the High Court may, if it raises a question of law of such importance, be referred by the High Court to the Court of Appeal.

4.9 The 2006 Act also amends section 104 of the 2002 Act, which relates to the abandonment of appeals to the Tribunal, and provides that, whereas an appeal to the Tribunal would normally be treated as abandoned if the appellant is granted leave to enter or remain in the UK, if the appellant is granted temporary leave but wishes to apply for refugee status or if the appellant's appeal was brought on race discrimination grounds, the appeal may continue on those grounds.

The European Public Limited-Liability Company Regulations (Northern Ireland) 2004

4.10 The 2004 Regulations were made and came into operation in Northern Ireland in October 2004. They implement Council Regulation 2157/2001 on the Statute for a European Company, which provides for the creation of a new form of public limited liability company, the *Societas Europaea*, known as the 'SE'.

4.11 Under regulations 33 and 34, a complaint may be brought before the Industrial Court where there has been failure to comply with the terms of an employee involvement agreement and, where the Industrial Court makes a declaration that the complaint is well-founded, the applicant may make an application to the High Court for a penalty notice to be issued against the SE in respect of the breach.

The European Cooperative Society (Involvement of Employees) Regulations 2006

4.12 The 2006 Regulations were made in July 2006 and came into operation in the UK in August 2006. They implement Council Directive 2003/72/EC supplementing the Statute for a European Cooperative Society and set out the provisions relating to the involvement of employees in the European Cooperative Society (known as the "SCE"); a new form of cooperative, which can operate across the European Economic Area on the basis of registration in one Member State.

4.13 Under regulation 22, as modified by paragraph 5 of Schedule 3 to the 2006 Regulations, a complaint may be brought before the Industrial Court where the

terms of an employee involvement agreement or the information and consultation provisions within the 2006 Regulations have not been complied with. Where the Industrial Court makes a declaration that the complaint is well-founded, an application may be brought before the High Court for a penalty notice to be issued against the SCE in respect of the breach.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland only.

5.2 This instrument primarily updates the principal Rules in light of amendments to UK-wide primary legislation and brings them broadly into line with analogous procedural rules in England and Wales.

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 By virtue of sections 55 and 55A of the Judicature (Northern Ireland) Act 1978, the Supreme Court Rules Committee is empowered to make rules prescribing the procedures to be followed in High Court and other proceedings. This instrument represents the most recent exercise of those powers.

The Civil Partnership Act 2004

7.2 This instrument makes a number of amendments to various rules so as to reflect the new status of civil partners. In particular, a number of amendments have been made to Order 97 of the principal rules in consequence of Schedule 14 to the 2004 Act, which assimilates the rights of surviving civil partners to those of surviving spouses. These amendments mirror similar amendments made to the Non-Contentious Probate Rules 1987 (S.I.1987/2024) by the Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (S.I. 2005/2114).

The Merchant Shipping Act 1995

7.3 This instrument updates a number of references in the principal Rules to merchant shipping legislation, which has been repealed and consolidated in the 1995 Act, and substitutes a new rule 2A in Order 75 of the principal Rules so as provide for proceedings against or concerning the International Oil Pollution Compensation Supplementary Fund 2003.

7.4 The amendments reflect Practice Direction 61 of the Civil Procedure Rules, which makes similar provision for such proceedings in England and Wales.

The Nationality, Immigration and Asylum Act 2002

7.5 This instrument introduces new rules, which reflect the recent amendments made to the 2002 Act by the 2006 Act and mirror similar amendments to Part 54 and Practice Direction 52 of the Civil Procedure Rules.

7.6. This instrument also makes a number of minor amendments to the principal Rules in respect of legal representation of applicants and service of court documents. Again, these correspond, where appropriate, to similar amendments to the Civil Procedure Rules.

The European Public Limited-Liability Company Regulations (Northern Ireland) 2004 and the European Cooperative Society (Involvement of Employees) Regulations 2006

7.7 Applications for a penalty notice under the English equivalent to the 2004 Regulations as well as the 2006 Regulations are to be made to the Employment Appeal Tribunal. The Employment Tribunal Rules 1993 (S.I. 1993/2854) ("the 1993 Rules") presently prescribe the procedure for applications under the 2004 Regulations. However, while amendments to the 1993 Rules in respect of the 2006 Regulations are planned, they have not yet been drafted. Nevertheless, officials anticipate that that there will be no substantial deviation from the procedure for applications under the 2004 Regulations.

7.8 This instrument prescribes a procedure for applications to the High Court in Northern Ireland for a penalty notice under the 2004 and 2006 Regulations, which corresponds broadly with the procedure prescribed in the 1993 Rules in England and Wales.

Short Form taxation

7.9 Order 62 Part V of the principal Rules provides the procedure for short form taxation which can be used only where an item of disbursement is in dispute between parties and where the Master orders that taxation is conducted in accordance with rule 32A of that Part.

7.10 Following a proposal by the Taxing Master it was agreed that provision should be made to allow solicitor's professional costs to be taxed as a single item under the short form procedure obviating the requirement for full taxation of costs and disbursements where only solicitor's professional costs are in dispute.

Evidence by video link

7.11 Order 38, rule 3(2) of the principal Rules was recently amended to allow a witness to give evidence by live television link, telephone or any other direct means of communication.

7.12 However, it has subsequently become apparent that the expression "live television link" is generally applied to describe a link between two single locations in the same building. The expression "video link" is of wider

application and will encompass more sophisticated technology allowing not only communication within a building but from outside and that expression will now be substituted by virtue of this instrument.

Transfer of probate business

7.13 The Masters of the Supreme Court of Judicature in Northern Ireland have carried out a review of the allocation of business across the offices and departments of the Supreme Court.

7.14 As a consequence of this review, probate business was to be transferred from the Family Division to the Chancery Division. This instrument amends Order 1 of the Principal Rules to reflect this transfer of business.

Importance

7.15 The amendments made to the principal Rules by this instrument are procedural in nature and are therefore of limited public interest. It is not considered that the amendments made by this instrument are politically or legally important.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for the provisions set out in this instrument as there is no impact on business, charities or voluntary bodies.

8.2 This instrument has no impact on the public sector.

9. Contact

Michael Kelly at Northern Ireland Court Service (Tel: 028 9041 2394 or e-mail: michaelkelly@courtsni.gsi.gov.uk) can answer any queries regarding the instrument.