EXPLANATORY MEMORANDUM TO

THE RULES OF THE SUPREME COURT (NORTHERN IRELAND) (AMENDMENT No.2) 2008

SR 2008 No. 401

1. This explanatory memorandum has been prepared by Ministry of Justice (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:

- prescribe a procedure for applications to the High Court under the Companies (Cross-Border Mergers) Regulations 2007;
- take account of changes made to the Consumer Credit Act 1974 by the Consumer Credit Act 2006 in relation to unfair relationships in connection with credit agreements;
- assign proceedings under Schedule 1 to the Forced Marriage (Civil Protection) Act 2007 to the Family Division of the High Court; and
- make minor amendments in consequence of the transfer of probate business from the Family Division to the Chancery Division of the Supreme Court.

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

3.1 None.

4. Legislative Background

Companies (Cross-Border Mergers) Regulations 2007

4.1 The Companies (Cross Border Mergers) Regulations 2007 provide a framework for cross-border mergers between limited liability companies formed and registered in the UK and those formed and registered in another state within the European Economic Area. The Regulations provide that merging companies:

- must apply to a court for an order certifying that pre-merger requirements have been complied with;
- may apply to a court seeking the valuation of a company by an independent expert;
- may apply to a court for a meeting of members or creditors to be called; and
- may, on an application to a court, be subject to a penalty notice following a declaration by the Industrial Court that employee participation agreements have been misused or not complied with.

Consumer Credit Act 1974

4.2 The Consumer Credit Act 1974 governs the provision of credit or the supply of goods on hire or hire-purchase to individuals. As enacted, sections 137 – 140 of the Act empowered the Court to reopen credit bargains considered extortionate.

4.3 The 1974 Act was amended by the Consumer Credit Act 2006 so as to repeal sections 137 - 140 and insert new sections 140A – 140D which enable a court to make an order where it considers that a credit agreement is unfair to a debtor because of one or more of the following:

- any terms of the agreement;
- the way in which an agreement is operated by the creditor; or
- any other thing done or not done by or on behalf of the creditor before or after the agreement was made.

The Forced Marriages (Civil Protection) Act 2007

4.4 The Forced Marriages (Civil Protection) Act 2007 provides civil remedies to protect persons from being forced into marriage and persons who have already been forced into marriage.

Transfer of Probate Business

4.5 The Rules of the Supreme Court (Northern Ireland) (Amendment) 2007 amended the principal Rules so as to transfer probate business from the Family Division to the Chancery Division of the Supreme Court. Minor amendments consequential to that transfer require to be made.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland only.

5.2 Amendments to the principal Rules in relation to the Companies (Cross Border Mergers) Regulations 2007 and the Consumer Credit Act 2006 reflect amendments made to the Civil Procedure Rules in England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Sections 54 of the Judicature (Northern Ireland) Act 1978 established the Supreme Court Rules Committee ('the Committee') which is empowered by sections 55 and 55A of the Act to make rules prescribing practice and procedure before the High Court and the Court of Appeal.

Companies (Cross-Border Mergers) Regulations 2007

7.2 The 2007 Regulations, which give effect to Directive 2005/56/EC, confer certain responsibilities on the 'competent authority' which, in the UK, is a court. A court must

certify all mergers and can veto mergers if the necessary steps have not been taken. The Committee has amended the principal Rules to prescribe procedure in relation to such applications.

Consumer Credit Act 1974

7.3 The Consumer Credit Act 2006 repealed powers conferred on the court by the 1974 Act to reopen extortionate credit agreements and inserted new provisions enabling the court to consider whether a relationship between a creditor and debtor arising out of an agreement was unfair to the debtor. Under the revised provisions, the court can consider an agreement unfair because of the terms of the agreement, the way in which the agreement is operated by the creditor or any other thing done or not done by or on behalf of the creditor before or after the agreement was made. The inserted provisions also provide the court with a broad range of remedies to address unfairness.

7.4 The principal Rules already contain provision in relation to the Consumer Credit Act 1974. The Committee has amended those provisions in consequence of the changes made by the 2006 Act.

The Forced Marriages (Civil Protection) Act 2007

7.5 The Forced Marriages (Civil Protection) Act 2007 provides civil remedies for those faced with forced marriage and for victims of forced marriage. Schedule 1 of the Act makes provision for Northern Ireland and the Committee has amended the principal Rules to assign proceedings under Schedule 1 to the Family Division of the Supreme Court. The amendment will allow rules of court to be made under Article 12 of the Family Law (Northern Ireland) Order 1993 (which links the power to make family proceedings rules to proceedings assigned to the Family Division) in anticipation of the 2007 Act being brought into force.

Transfer of Probate Business

7.6 A reorganisation of business across the offices and departments of the Supreme Court resulted in probate business transferring from the Family Division to the Chancery Division. The Rules of the Supreme Court (Northern Ireland) (Amendment) 2007 amended the principal Rules to give legislative effect to that reorganisation. In these Rules, the Committee has addressed a number of small amendments consequent on the reallocation of business between the two divisions.

Importance

7.7 These rules are procedural in nature and are therefore of limited public interest. It is not considered that the amendments made by these rules are politically or legally important.

8. Impact

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

8.2 This instrument has no impact on the public sector.

9. Contact

9.1 Michael Kelly at the Northern Ireland Court Service (Civil Policy Division) (Tel: (028) 90412394 or email michaelkelly@courtsni.gov.uk) can answer any queries regarding this instrument.