

**EXPLANATORY MEMORANDUM TO
THE FAMILY PROCEEDINGS (AMENDMENT NO. 2) RULES (NORTHERN
IRELAND) 2005**

Statutory Rule 2005 No. 497

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 This instrument amends the Family Proceedings Rules (Northern Ireland) 1996 (the 1996 Rules) in consequence of the Civil Partnership Act 2004, the Gender Recognition Act 2004, Council Regulation (EC) No. 2201/2003 (Brussels IIa Regulation) and the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2005. It also makes a number of minor amendments to forms prescribed by the 1996 Rules to ensure that allegations of domestic violence are raised at the commencement of proceedings under Article 8 of the Children (Northern Ireland) Order 1995.

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

- 3.1 None

4. **Legislative Background**

Family Proceedings Rules (Northern Ireland) 1996

- 4.1 The 1996 Rules govern the court procedure relating to family proceedings in the county court and High Court. This includes the procedure for divorce, judicial separation, annulment, applications for ancillary relief, as well as other family proceedings. The 1996 Rules also set out the procedures in relation to proceedings under the Children (Northern Ireland) Order 1995 and for adoption.

Civil Partnership Act 2004

- 4.2 The Civil Partnership Act 2004 received Royal Assent on 18th November 2004. The purpose of the Civil Partnership Act 2004 is to enable same-sex couples to obtain legal recognition of their relationship by forming a civil partnership. To this end the Act creates a new legal status of civil partnership, under which certain rights and obligations will flow. Civil partners will be subject to many of the same legal rights and responsibilities as spouses.
- 4.3 Two people may register as civil partners of each other provided:
 - they are of the same sex;

- neither of them is already a civil partner or married;
- they are not within the prohibited degrees of relationship;
- they are both over the age of sixteen (and the consent of the appropriate persons has been obtained if either of the parties are under eighteen).

4.4 The Act also contains provisions enabling certain overseas same-sex relationships to be treated as civil partnerships.

4.5 The Act makes provision for civil partners similar to that which already exists for married couples in a wide range of areas. Schedules 15 and 17 make provision similar to that contained in the Matrimonial Causes (Northern Ireland) Order 1978 and the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 for married couples and which allow for financial provision on dissolution after, respectively, a domestic and overseas dissolution.

4.6 The principal provisions of the Civil Partnership Act 2004 will come into force on 5th December 2005.

Gender Recognition Act 2004

4.7 The Act enables transsexual persons to obtain legal recognition in their acquired gender. It amends the Matrimonial Causes (Northern Ireland) Order 1978 to add two new grounds of nullity, where an interim or full gender recognition certificate has been issued to a party to the marriage. Under the Act, legal recognition occurs following the issue of a full gender recognition certificate.

4.8 The Act establishes Gender Recognition Panels to which a person, seeking recognition in his or her acquired gender, must apply. If any unmarried applicant's application is granted, the Panel must issue a full gender recognition certificate. If a married applicant's application is granted, the Panel must issue an interim gender recognition certificate only. The issue of an interim certificate permits either party to the marriage to seek to have the marriage annulled (the first new ground of nullity). When a court makes absolute a decree of nullity, granted on the ground that an interim gender recognition certificate has been issued to either party to the marriage, the court must issue a full gender recognition certificate to that party.

4.9 The second new ground of nullity exists where the other party to the marriage was at the time of the marriage a person whose gender had become the acquired gender (that is someone to whom a full certificate has been issued) and that fact was unknown to the other party to the marriage at the time of the marriage.

4.10 Section 6 of the Act provides for applications to the court which issued a full gender recognition certificate, for the issue of a corrected gender recognition certificate where it contains an error. Section 8(1) of the Act provides for a right of appeal to the High Court on a point of law against a decision of a Gender Recognition Panel to reject an application made to it. Section 8(5) of the Act provides for the Secretary of State to refer cases to the High Court where he considers an application for a gender recognition certificate to have been secured by fraud.

Council Regulation (EC) No. 2201/2003("the Council Regulation")

- 4.11 The Council Regulation, which has direct effect, came into force on 1st March 2005. It reproduced and repealed Council Regulation (EC) No. 1347/2000 of 29th May 2000 extending it to include matters of parental responsibility where there are no matrimonial proceedings. The provisions on matrimonial matters are largely unchanged.
- 4.12 The Council Regulation impacts on jurisdiction in parental responsibility matters and recognition and enforcement of orders relating to such matters. For the purpose of the Council Regulation, “parental responsibility” is widely defined and the applications that may be affected include applications relating to custody, access and placement in care. Matters that do not come within the scope of the Council Regulation include adoption and maintenance obligations.

The Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2005

- 4.13 Part III of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 contains, amongst other provisions, civil protections for those people who are suffering from domestic violence. The Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2005 was brought forward to extend the definitions of “relative” and “cohabitee” and to make provision in respect of exclusion zones and ex-parte orders.

Domestic Violence

- 4.14 Article 28 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 inserted a new Article 12A into the Children (Northern Ireland) Order 1995 to require a court that is considering whether to make a residence or contact order under Article 8 of the Children (Northern Ireland) Order 1995 in favour of a person who is prohibited from molesting another person, or who the court considers should be so prohibited, to “consider whether the child has suffered or is at risk of suffering harm through seeing or hearing ill-treatment of another person by the prohibited person”. In the case of Re L (a child) and other (2000) 2 FCR 404, the Court of Appeal in England and Wales highlighted the need for family judges and magistrates to have a heightened awareness of the existence of, and consequences for, children of exposure to domestic violence between their parents or other partners.
- 4.15 During the passage of the Adoption and Children Act 2002, the Government made a commitment to introduce new forms in England and Wales to ensure that allegations of domestic violence were raised at the commencement of proceedings under section 8 of the Children Act 1989 (equivalent to Article 8 of the Children (Northern Ireland) Order 1995).

5. Extent

- 5.1 This instrument applies to Northern Ireland only.

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

The Civil Partnership Act 2004

7.1 The Government held a three-month public consultation on the proposal to create a same-sex relationship registration scheme in England and Wales (30th June 2003 to 30th September 2003). The Government's response to the consultation was published in November 2003 and can be found on the DTI's website at:

<http://www.womenandequalityunit.gov.uk/lgbt/partnership.htm>

The Government announced on 26th November 2003 that it intended to bring forward a Civil Partnership Bill. After a public consultation in Northern Ireland, which took place from 19th December 2003 to 5th March 2004, Northern Ireland Ministers agreed to include Northern Ireland provisions in the Westminster Civil Partnership Bill. The analysis of responses to this consultation can be found on the Office of Law Reform's website at:

http://www.olrni.gov.uk/archive/new_news_archive.cfm

7.2 The policy intention behind the amendments in the Rules implementing the Civil Partnership Act 2005 is to ensure that the procedures which support family proceedings in the High Court and county courts apply equally to civil partners and to civil partnership proceedings as they do to married couples and to matrimonial proceedings.

The Gender Recognition Act 2004

7.3 Under the previous law, transsexual people were not recognised in their acquired gender under the law of any part of the United Kingdom. Although transsexual people could obtain some official documents in their new name and gender, they could not obtain new birth certificates or enjoy any rights confined by law to people of the gender to which they feel they belong. For instance, they could not marry in their acquired gender. These issues were first considered by an Interdepartmental Working Group convened in 1999. The Government announced its intention to bring forward legislation in this area on 13th December 2002. A draft Bill was published on 11th July 2003, and underwent pre-legislative scrutiny by the Joint Committee on Human Rights.

7.4 The policy intention behind the amendment in the Rules is to implement the Gender Recognition Act 2004 and consequently to make provision:

- in relation to the new grounds of nullity, in particular, require a copy of the relevant gender recognition certificate to be attached to the pleadings in proceedings under either ground and require the Secretary of State to be notified of proceedings brought on the ground of issue of an interim gender recognition certificate;
- for an application for a corrected certificate, where the court has issued a full gender recognition certificate containing an error;
- for an applicant who has been refused a gender recognition certificate to appeal on a point of law to the High Court;
- for a reference to the High Court by the Secretary of State where he considers an application to have been granted by fraud.

Council Regulation (EC) No. 2201/2003 2 ("the Council Regulation")

- 7.5 The Council Regulation is based on the EU Council Regulation (EC) 1347/2000 which established grounds of jurisdiction in relation to proceedings for divorce, nullity and judicial separation and for parental responsibility orders made ancillary to those proceedings in relation to the joint biological children of the spouses. The new Council Regulation extends those provisions to all children of the family. Provision is made in the Rules to refer to the Council Regulation and the correct Article of it. They also make provision:
- for a stay under the Council Regulation of children proceedings;
 - to prescribe the procedure for applications under Article 15 of the Council Regulation;
 - relating to certificates under Article 41 of the Council Regulation

The Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2005

- 7.6 The reforms to the Family Homes and Domestic Violence (Northern Ireland) Order 1998 set out in Part III of the 2005 Order were brought about following a review of the operation of the 1998 Order led by the Office of Law Reform (part of the Department of Finance and Personnel responsible for family law policy in Northern Ireland) and a further consultation exercise carried out by an inter-departmental group, which issued a consultation paper entitled “Tackling Violence at Home – the Government’s proposals on domestic violence in Northern Ireland”.
- 7.7 The 2005 Order deals with some of the civil law issues that were raised in the consultation including anomalies in in-law relationships, same-sex relationships and exclusion zone and non-molestation order issues. A draft of the 2005 Order was issued as part of a consultation launched by the Office of Law Reform on 20 September 2004, which can be found at:
http://www.olrni.gov.uk/consult_Uploads/Draft_Misc_Provisions_Order_2004.pdf
There were no substantive replies to the consultation and the Order largely mirrors the draft that was issued.
- 7.8 The policy intention behind the amendments in the Rules is to refer to the new definitions contained in the 2005 Order

Domestic Violence - Article 12A of the Children (Northern Ireland) Order 1995

- 7.9 The policy intention is to ensure that allegations of domestic violence are raised at the commencement of proceedings for a residence or contact order under Article 8 of the Children (Northern Ireland) Order 1995. Consequently, provision is made in the Rules to provide for parties to Article 8 proceedings to provide notice and information of whether a child has suffered harm from ill-treatment or through seeing or hearing the ill-treatment of another person.

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.

9. Contact

Jane McConnell at the Northern Ireland Court Service, Tel: 028 90412349 [e-mail: janemcconnell@courtsni.gov.uk] or Siobhan Broderick at the Northern Ireland Court Service, Tel: 028 90412257 [e-mail: siobhanbroderick@courtsni.gov.uk] can answer any queries regarding the instrument.