EXPLANATORY MEMORANDUM TO

The Court of Judicature (Non-Contentious Probate) Fees (Amendment) Order (Northern Ireland) 2019

S.R. 2019 No. 175

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 section 116(1) and (1A) of the Judicature (Northern Ireland) Act 1978. Section 119 of that Act provides that an order made under section 116 is not subject to any resolution process, however in making this order the Department has undertaken to comply with the conventions applicable to the negative resolution procedure.

2. Purpose

2.1. This Statutory Rule is required in order to implement a 5% increase to the fees charged for the delivery of non-contentious probate proceedings in the Court of Judicature in Northern Ireland from 1st October 2019. The purpose of the fee increase is to move towards a position of full cost recovery in the provision of civil and family court business, a requirement that is placed upon Northern Ireland Courts and Tribunal Service (NICTS) by Managing Public Money (NI).

2.2. The Statutory Rule will also introduce the following changes to the existing Exemptions and Remissions Policy which provides help with court fees to those who cannot afford to pay them:

2.2.1. The policy would not apply to photocopying, copy documents, and, search fees;

3. Background

3.1. The fees currently charged by NICTS do not cover the costs associated with running the civil and family courts; NICTS currently recovers around 80% of these costs. This position is not sustainable as it places an additional burden on NICTS, the Department and the general taxpayer at a time when public sector finances are under significant pressure. By increasing the fees charged to those who make use of the civil and family courts, then taxpayers' contribution to the court system will be reduced.

3.2. Individuals may continue to be protected by Legal Aid coverage and, NICTS Exemption and Remission Policy. In addition, NICTS will continue to partially subsidise children and family cases and fully subsidise cases relating to domestic violence.

4. Consultation

4.1. An 11 week public consultation closed in February 2019. A total of 16 responses were received, the majority of which were from the legal profession and Law Searchers. NICTS considered all consultation responses and engaged further with the Law Society of Northern Ireland, Law Searcher organisations and the Judiciary. This engagement led to recommendations which form the basis of this order. NICTS believes that the implementation of the modified changes outlined above is the most proportionate means of achieving the legitimate aim of cost recovery.

4.2. The Statutory Rule is made with the concurrence of the Department of Finance and after consultation with the Lord Chief Justice, as is required by section 116(1) of the Judicature (Northern Ireland) Act 1978.

5. Equality Impact

5.1. NICTS completed an Equality Impact screening on the proposals and concluded that there is no evidence to suggest that these proposals will impact adversely on the Section 75 categories.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment (RIA) has been completed to ascertain the impact on the business community. The results of the RIA indicate that while the proposals will impact on businesses within Northern Ireland who use the courts, this is not expected to be significant.

7. Financial Implications

7.1. The fee proposals are estimated to generate additional income for NICTS. This will help to ease the budgetary pressure associated with the under recovery of costs of providing civil and family business.

7.2. The fundamental aim of the proposals is to move towards a position of full cost recovery, so there are no additional funding requirements.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department is satisfied that no issues arise regarding section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. The proposed fee structure is comparable to arrangements that already exist in the rest of the United Kingdom.

11. Additional Information

11.1. The Statutory Rule will come into operation on 1st October 2019**.**