EXPLANATORY MEMORANDUM TO

The Court of Judicature (Non-Contentious Probate) Fees (Amendment) Order (Northern Ireland) 2023

S.R. 2023 No. 164

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) 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 procedure, however in making this order the Department has undertaken to comply with the 21 day rule.

2. Purpose

2.1. This Statutory Rule is required in order to implement a 9% inflationary increase to the fees charged for the delivery of non-contentious probate proceedings in the Court of Judicature in Northern Ireland in each of the next two years, from 1 November 2023 and 1 October 2024. 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 Tribunals Service (NICTS) by Managing Public Money (NI).

2.2. In addition, this Statutory Rule prescribes a fee for a certified or sealed copy of a grant or any other document in the non-contentious probate business area.

3. Background

3.1. The fees currently charged by NICTS do not cover the full 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. Inflation-based increases will ensure that fees are better aligned with NICTS costs and in charging those who make use of the civil and family courts, then the taxpayers' contribution to the court system will be reduced.

3.2. The NICTS court fee Exemption and Remission Policy protects access to justice for those individuals on low incomes who cannot afford to pay court fees, In addition, NICTS will continue to partially subsidise children and family cases and fully subsidise cases relating to domestic violence.

3.3. Following research into the introduction of an on-line Probate Application process, NICTS discovered an issue in relation to the statutory authority for the fee charged for a certified or sealed copy of a grant within the non-contentious probate business area. This issue relates to the 1996 Principal Fee Order and subsequent Fees Amendment Orders. The Statutory Rule allows NICTS to charge a fee to cover the administrative costs associated with the production of the certified or sealed copy of a grant and ensures consistency with the fee charged in other NICTS business areas.

4. Consultation

4.1. In 2019, as part of a public consultation on court fees, NICTS stated its intention to move towards inflationary linked court fee increases, as is common practise in other jurisdictions. In May 2023 a targeted consultation with key stakeholders was undertaken, following which this order was drafted. NICTS believes that the implementation of these changes is the most proportionate means of achieving the legitimate aim of cost recovery.

4.2. The introduction of the certified sealed copy document fee is to correct a previous drafting oversight and bring the fee charged for a certified or sealed copy of a grant or any document in the Probate Office in line with other NICTS business areas as has been the stated policy intention since 2007. Therefore, a public consultation is not necessary to consider this minor amendment.

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

5. Equality Impact

5.1. NICTS completed Equality Impact screening on the proposal to increase fees and introduce the certified or sealed copy document fee, concluding there is no evidence to suggest that the changes 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 an increase in court fees will impact on businesses within Northern Ireland who use the courts, this is not expected to be significant.

7. Financial Implications

7.1. An increase in fees over a two-year period will generate additional income for NICTS. This will help to ease the budgetary pressure associated with the under recovery of costs in the provision of civil and family business.

7.2. The introduction of the certified sealed copy document fee proposed is a minor amendment and will therefore not have significant financial implications. Additional revenue generated will help to fund the costs of running the civil courts while achieving consistency in fees charged for certified or sealed copy documents across all business areas in NICTS.

7.3. 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. Probate applications to NICTS fall under family court business for which court fees are charged. The policy of charging court fees to individuals, businesses and public organisations who use the civil courts is comparable to the arrangements that exist in courts in the rest of the United Kingdom. The proposed fee structure and the inflationary uplift 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 1 November 2023.