EXPLANATORY MEMORANDUM TO

The Court of Judicature (Non-Contentious Probate) Fees (Amendment) Order (Northern Ireland) 2026

S.R. 2026 No. 35

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 inflationary increases to the fees charged for the delivery of non-contentious probate proceedings in the Court of Judicature in Northern Ireland during the next three years, with a 5% increase effective from 1 April 2026, a further 2% increase effective from 1 April 2027, and a final 2% increase effective from 1 April 2028. The purpose of the fee increase is to strive towards a position of full cost recovery in the provision of civil and family court business, a requirement that is placed upon the Northern Ireland Courts and Tribunal Service (NICTS) by Managing Public Money (NI) (MPM (NI)).

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 84% 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 'Help with Court Fees' policy helps protect 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 and related protective orders.

4. Consultation

4.1. A 13-week public consultation on proposed changes to court fees closed in August 2025. A total of eight responses were received, the majority of which were from representative bodies or were on behalf of a department or other public body. Some respondents expressed concerns regarding the impact on access to justice. The concept of full cost recovery was also questioned, with some respondents suggesting that the cost of running the civil justice system should be funded by the taxpayer, as with other public services such as schools and hospitals.

4.2. NICTS has considered all consultation responses, alongside the requirement of MPM (NI) and mitigations already in place to protect access to justice; this has led to the recommendations forming the basis of this order.

4.3. NICTS believes that the implementation of these changes is the most proportionate means of achieving the legitimate aim of cost recovery.

4.4. 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 proposals to increase fees, 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 three-year period will 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 strive 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 civil 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 April 2026.