EXPLANATORY MEMORANDUM TO

The Criminal Legal Aid (Disclosure of Information) Rules (Northern Ireland) 2015

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 Articles 36(3) and 38A of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (the 1981 Order), as amended by the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014 and is subject to the draft affirmative resolution procedure.

2. Purpose

2.1. These Rules make provision for the disclosure of information which is furnished to the Department of Justice or any court in connection with the case of an individual seeking or receiving representation under a criminal aid certificate granted under Part 3 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.

3. Background

3.1. The Legal Aid and Coroners' Courts Act (Northern Ireland) 2014 will dissolve the Northern Ireland Legal Services Commission (the Commission) and transfer its functions and staff to an Agency within the Department of Justice (the Agency) on 1 April 2015. The Act inserted a new provision, Article 38A into the 1981 Order which will make it a summary offence to disclose information in criminal legal aid unless it is with the consent of the individual, or it is permitted to do so by Rules. There is currently no express enactment concerning criminal legal aid preventing the disclosure of information, although the Data Protection Act 1998 and Freedom of Information Act 2000 apply. There is currently express provision which prevents the disclosure of information, except in prescribed circumstances, for civil legal aid . These Rules will provide for similar protection from disclosure of information in criminal legal aid as applies in civil legal aid.

4. Consultation

4.1. The Department launched a consultation with key stakeholders on these Regulations in September 2014. It received responses from the Attorney General for Northern Ireland, the Law Society of Northern Ireland and the Northern Ireland Human Rights Commission.

5. Equality Impact

5.1. The equality screening established that a full impact assessment was not required.

6. Regulatory Impact

6.1. The proposals do not impose any restriction or burden on business.

7. Financial Implications

7.1. There are no financial implications.

8. Section 24 of the Northern Ireland Act 1998

8.1. The proposal is considered to be compatible with Section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. Similar provisions apply in England and Wales.

11. Additional Information

11.1. Not applicable