EXPLANATORY MEMORANDUM TO

Legal Aid (Assessment of Resources) (Amendment) Regulations (Northern Ireland) 2013

SR 2013 No. 272

Deleted: ¶

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Justice ("the Department") to accompany the above Statutory Rule which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under Articles 14, 22 and 27 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 and is subject to the negative resolution procedure.

1.3 The Rule makes amendments to the Legal Aid (Assessment of Resources) Regulations (Northern Ireland) 1981. The 1981 Regulations make provision for the assessment of the disposable income and disposable capital of applicants for civil legal aid.

2. Purpose

2.1 The Rule relates to the exercise of function by the Legal Aid Assessment Office ("the LAAO"), an agency of the Department for Social Development. It provides for the situation where the person concerned is not a householder, and he cannot or does not differentiate between the cost of his living accommodation and the cost of his keep (defined as meaning the provision of food, heat, electricity and other daily essentials).

2.2 The Rule provides that, in the situation described in paragraph 2.1, the LAAO shall make a deduction of fifty per cent of the cost

of the living accommodation or such other percentage as the LAAO considers reasonable in the circumstances.

3. Background

3.1 In 2012 judgment was given in judicial review proceedings brought to challenge the LAAO's practice in assessing the resources of an applicant for legal aid in the situation described in paragraph 2.1. The Court held that the LAAO had acted beyond its powers, having no statutory provision to support its approach in cases of this nature.

4. Consultation

4.1 In April 2013 the Department published a consultation document outlining the proposed amendment to the 1981 Regulations. In addition to that consultation exercise, the Department consulted the Committee for Justice in the Northern Ireland Assembly.

5. Equality Impact

5.1 An initial equality screening exercise indicated that a full equality impact assessment ("EQIA") of the proposed amendment was not necessary. However, the Department chose not to screen the options out at that stage. Instead, the Department issued an EQIA consultation document in an effort to obtain additional information to supplement that already available.

5.2 A further equality screening exercise was carried out at the end of the consultation and the policy was screened out. A full EQIA was therefore considered unnecessary.

6. Regulatory Impact

6.1 The amendments to the 1981 Regulations will not impact upon business, the voluntary sector or the environment. Therefore, a Regulatory Impact Assessment was not required.

7. Financial Implications

7.1 The new method of assessment, whereby a 50% rule is applied where an actual amount for board and lodgings has not been provided by the applicant, will incur a small gap in the levels of applicants' assessed contributions. The loss of contributions, estimated to be in the region of £17,000 per annum, will be absorbed by the Commission from within the legal aid fund and taken into consideration in future financial forecasts.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department considers the Rule 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 Not applicable

11 Additional Information

11.1 Not applicable