EXPLANATORY MEMORANDUM TO

The Legal Aid for Crown Court Proceedings (Costs) (Amendment) Rules (Northern Ireland) 2015

SR 2015 No. 215

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 Article 36(3) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 ("the 1981 Order"). It is subject to the negative resolution procedure.

2. Purpose

2.1. This Rule amends the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005 ("the 2005 Rules"), which prescribe the remuneration for solicitors and counsel assigned under Articles 29 or 36(2) of the 1981 Order.

2.2. The Rule revokes the separate provision made for the payment of Guilty Plea 2 Fees in respect of solicitors; introduces new standard fees, payable to counsel only as Trial Preparation Fees, for cases in which the assisted person pleads guilty to one or more offences after the first arraignment and the case does not proceed to trial; substitutes reduced levels of standard fees for guilty pleas and trials; substitutes new daily fees in respect of confiscation hearings; introduces a new provision for the payment of time-based fees ("Public Protection Application fees") in respect of the hearing of applications for sexual offences prevention orders, disqualification orders, indeterminate custodial sentences and extended custodial sentences; makes provision for the reclassification of certain offences; substitutes a new provision regarding the fees payable where a solicitor was dismissed or obliged to withdraw from a case for compelling professional reasons; makes provision for the fees payable in respect of compassionate bail hearings; amends the provisions regarding the time limit within which solicitors and counsel must submit their claims; and makes other minor and consequential amendments. The Rule comes into operation on 5 May 2015.

3. Background

3.1. Criminal legal aid provided under the 1981 Order enables defendants who cannot afford to pay for their own defence to be legally-represented, at public expense, in criminal cases before the courts in Northern Ireland. This assists the Department of Justice to meets its obligations under Articles 5 (right to liberty) and 6 (right to a fair trial) of the European Convention on Human Rights. Criminal legal aid is granted to adult and youth defendants facing criminal charges where the court is satisfied that the defendant has insufficient means to pay for their own defence, and that it is in the interests of justice that the defendant should have such legal aid.

3.2. The 2005 Rules prescribe the remuneration payable for solicitors and counsel representing defendants granted criminal legal aid for cases in the Crown Court. Rule 20 of the 2005 Rules requires the Department to conduct a formal review of the levels of the prescribed fees and the rates of payment under the Rules, and the above Rules make amendments to the 2005 Rules arising out of the latest review.

4. Consultation

4.1. On 5 July 2013 the Department published a consultation document as part of its biennial review of the 2005 Rules. As part of that consultation exercise, in addition to both branches of the legal profession and other key stakeholders, the Department consulted with the Assembly's Justice Committee.

5. Equality Impact

5.1. A screening exercise was carried out on 11 April 2013 as part of the statutory review of the 2005 Rules. This indicated that a fully equality impact assessment was not necessary.

5.2. A full EQIA exercise has not been carried out under section 75 of the Northern Ireland Act 1998. Additional information on the equality impact of the proposals was sought during the consultation period and no additional data was submitted. The policy / Rules have therefore been screened out.

6. Regulatory Impact

6.1. The amendments made to the 2005 Rules, as contained in this Rule, will impose no additional costs on businesses, charities or the voluntary sector. Accordingly, a Regulatory Impact Assessment was not considered necessary.

7. Financial Implications

7.1. The amendments made to the 2005 Rules by this Rule will produce annual savings which will rise to around £7.7m by 2017 / 18.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department considers this 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.