EXPLANATORY MEMORANDUM TO

THE MAGISTRATES' COURTS AND COUNTY COURT APPEALS (CRIMINAL LEGAL AID) (COSTS) (AMENDMENT) RULES (NORTHERN IRELAND) 2021

SR 2021 No. 311

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Justice ("the Department") 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, and Assistance (Northern Ireland) Order 1981 ("the 1981 Order") and is subject to the negative resolution procedure.

2. Purpose

2.1. 4The purpose of the Statutory Rule is to amend the Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009 ("the 2009 Rules") to give effect to final proposals arising from the second statutory review of the 2009 Rules.

2.2. The amending Rules increase the standard fee payable to counsel for appeals against sentence to the County Court from £115 to £230 and increase the fee for remuneration for Newton hearings from a 50% uplift on the relevant guilty plea fee to a 75% uplift on the relevant guilty plea fee.

2.3. The amending Rules introduce a £75 fixed application fee for the hearing of applications for witnesses or the accused to be examined through a Registered Intermediary.

2.4. The amending Rules also allow for the next statutory review period of three years to commence on the date the amending Rules come into operation.

3. Background

3.1. The 2009 Rules prescribe the remuneration payable to solicitors and counsel for criminal legal aid in Magistrates' Court cases and County Court appeals. There is a statutory requirement under Rule 16 of the 2009 Rules to carry out a review of the Rules at least every three years and to ensure that the Rules are consistent with the requirements of Article 37 of the the 1981 Order.

3.2. The relevant criteria under Article 37 of the 1981 Order are: the time and skill which work of the description to which the rules relate requires; the number and general competence of persons undertaking work of that description; the cost to public funds of any provision made by the rules; and the need to secure value for money.

3.3. The Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) (Amendment) Rules (Northern Ireland) 2021 amend the 2009 Rules in consequence of the second statutory review of the 2009 Rules.

4. Consultation

4.1. The Department issued a targeted consultation on the proposed rule changes in July 2021. The Department received responses to the consultation from the Bar Council and Law Society. The Public Prosecution Service, the Office of the Lady Chief Justice, the Rules Committees and the Attorney General acknowledged the consultation but made no comment on the policy proposals. A post-consultation report is available on the Department's website.

5. Equality Impact

5.1. The Department has carried out an equality screening on the proposed legislation. No adverse impacts were identified. A full Equality Impact Assessment has, therefore, not been prepared for these Rules as it is considered that they do not raise any equality or good relations issues under section 75 of the Northern Ireland Act 1998.

6. Regulatory Impact

6.1. A regulatory impact assessment is not considered necessary as the amendment to the Rules will impose no additional costs on businesses, charities or the voluntary sector.

7. Financial Implications

7.1. There will be additional costs arising from the creation of a new fee and the uplift to two existing fees in the Rules. The Department estimates that the cost will be in the region of £93k per annum.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department considers the Rules 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.