EXPLANATORY MEMORANDUM TO

The Magistrates' Courts Fees (Amendment) Order (Northern Ireland) 2023

S.R. 2023 No 170

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 a 9% inflationary increase to the fees charged for the delivery of civil and family proceedings in the Magistrates' Courts in Northern Ireland in each of the next two years, from 1 November 2023 and 1 October 2024. The purpose of the fee increase is to move towards a position of full cost recovery in the provision of civil and family court business, a requirement that is placed upon Northern Ireland Courts and Tribunals Service (NICTS) by Managing Public Money (NI).

2.2. In addition, this Statutory Rule prescribes fees for new licensing applications which can be brought to court as a consequence of licensing reforms introduced by Department for Communities (DfC) under the Licensing and Registration of Clubs (Amendment) Act (Northern Ireland) 2021.

2.3. Court fees are charged by NICTS to offset the administrative and judicial costs of providing civil court services. Although a number of the licensing applications introduced under the DfC-led reforms are covered within the existing Court Fee legislation, this Statutory Rule will prescribe fees for the following applications to be made to the Magistrates' Courts:

- Application for an order for further additional permitted hours under Article 44A;
- Application under Article 44B(1) for revocation or modification of an order made under Article 44A;
- Application for an order approving the suitability for on-sales from a local producers' premises (Article 52E);
- Application for an order authorising on-sales from a local producers' premises (Article 52F);

- Application for an order approving the suitability of certain premises for underage functions (Article 58A);
- Application for an order authorising underage functions (Article 58B).

2.4. In addition to prescribing new fees, the Statutory Rule no longer includes any fees associated with an application for a Children's Certificate as there is no longer a requirement for licensed premises to hold this type of certificate.

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 around 80% 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 court fee Exemption and Remission Policy protects 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.

3.3. Licensing policy in Northern Ireland is the responsibility of the Department for Communities. NICTS provides the administration in relation to licensing. Licensing applications to court fall under civil court business for which court fees are charged. The Licensing and Registration of Clubs (Amendment) Act (Northern Ireland) 2021 (the Act) received Royal Assent on 26 August 2021. The Act contains a number of provisions which have come into effect over the past two years. In order for the courts to charge a specific fee for the new types of licensing applications it is necessary to make minor amendments to the Fees Orders.

4. Consultation

4.1. In 2019, as part of a public consultation on court fees, NICTS stated its intention to move towards inflationary linked court fees increases, as is common practise in other jurisdictions. In May 2023 a targeted consultation with key stakeholders was undertaken, following which this order was drafted. NICTS believes that the implementation of these changes is the most proportionate means of achieving the legitimate aim of cost recovery.

4.2. With regard to the consequential amendments relating to licensing fees, DfC completed a consultation in respect of the Licensing and Registration of Clubs (Amendment) Act (Northern Ireland) 2021. NICTS officials worked with DfC to ensure licensing stakeholders were made aware of the court fees associated with the new types of applications.

4.3. 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 proposal to increase fees and introduce fees for new licensing applications, 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 two-year period will generate additional income for NICTS. This will help to ease the budgetary pressure associated with the under recovery of costs in the provision of civil and family business.

7.2. New licensing applications will result in additional court fee revenue which will be used to offset the administrative and judicial costs of providing the service.

7.3. The fundamental aim of the proposals is to move 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. Civil and family magistrate 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. However, it should be noted that courts in the rest of the United Kingdom do not provide administration in relation to licensing.

11. Additional Information

11.1. The Statutory Rule will come into operation on 1 November 2023.