

## **EXPLANATORY MEMORANDUM TO**

### **The Criminal Defence Services (General) Regulations (Northern Ireland) 2016**

#### **SR 2016 No. 197**

#### **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 26(2)(b) and (3) of the Access to Justice (Northern Ireland) Order 2003 ("the 2003 Order") and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1. The purpose of the Regulations is to provide that the Court of Appeal may grant a right to representation under Part 2 of the 2003 Order in respect of criminal appeals in the Court of Appeal and the Supreme Court, and in the case of an appellant who is to be retried before the Crown Court
- 2.2. The Regulations also prescribe that a right to representation in respect of relevant proceedings in the Court of Appeal includes the right to advice and assistance as to any further appeal from that Court to the Supreme Court. Furthermore, the Regulations prescribe that, for an appellant who is to be retried before the Crown Court, a right to representation in connection with the retrial includes the right to advice and assistance as to any further appeal from the Crown Court to the Court of Appeal.

#### **3. Background**

- 3.1. A drafting error occurred in a commencement order made by the Department in March 2015 to commence civil legal services under Part 2 of the 2003 Order. The effect was to repeal the provisions contained within the Criminal Appeal (Northern Ireland) Act 1980 ("the 1980 Act") which empowered the Court of Appeal to grant legal aid for representation in criminal appeals to the Court of Appeal and the Supreme Court, and in the case of an appellant who is to be retried before the Crown Court.
- 3.2. By way of an initial remedial measure, the Department then made a further commencement order to commence criminal defence services ("CDS") under the 2003 Order. The CDS provisions were commenced only in respect of such appeals. To fully rectify the matter, the Department has now made a further commencement order, together with two substantive instruments.
- 3.3. These Regulations reflect the position which pertained under the 1980 Act and provide the necessary procedural rules for the granting of representation in connection with criminal appeals. The Criminal Defence Services (Remuneration) Order (Northern Ireland) 2016 -- S.R. 2016 No. 198 -- makes further, related provisions.

#### **4. Consultation**

4.1. These Regulations were brought forward by the Department together with a related instrument, the Criminal Defence Services (Remuneration) Order (Northern Ireland) 2016. In discharge of its statutory obligation under Article 47(2)(a) of the 2003 Order, the Department consulted with the Lord Chief Justice, the Law Society, the General Council of the Bar of Northern Ireland and the Director of Public Prosecutions regarding that Remuneration Order. However, no separate consultation took place in relation to these Regulations.

#### **5. Equality Impact**

5.1. An equality screening exercise was carried out. This indicated that a full equality impact assessment was not required under section 75 of the Northern Ireland Act 1998.

#### **6. Regulatory Impact**

6.1. The Regulations were screened for their regulatory impact. The provisions contained in the Regulations will impose no additional costs on businesses, charities or the voluntary sector. Accordingly, a full Regulatory Impact Assessment was not considered necessary.

#### **7. Financial Implications**

7.1. These Regulations are intended to replicate the position as it was prior to 1 April 2015. On that basis, they are not expected to have any specific financial implications.

#### **8. Section 24 of the Northern Ireland Act 1998**

8.1. The Department considers these Regulations 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.