

## **EXPLANATORY MEMORANDUM TO**

### **The Criminal Defence Services (Remuneration) Order (Northern Ireland) 2016**

#### **SR 2016 No. 198**

#### **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 powers conferred by Articles 23(3), 24(3) and (5) and 47 of the Access to Justice (Northern Ireland) Order 2003 ("the 2003 Order") and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1. This Order provides for the remuneration payable to solicitors and counsel for providing 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 Order deals with the manner in which the remuneration is to be determined and paid. In respect of appeals to the Court of Appeal, in part, the provisions draw on the corresponding provisions contained in section 28 of the Criminal Appeal (Northern Ireland) Act 1980 ("the 1980 Act"), together with Practice Directions issued by the Taxing Master in respect of criminal appeals.
- 2.3. In respect of appeals to the Court of Appeal, initial determinations will be undertaken by the Taxing Master. Provision is made enabling solicitors and counsel to apply to the Taxing Master for a review of the determination in a particular case, and for an appeal to the High Court against the decision of the Master on a review.
- 2.4. In respect of appeals to the Supreme Court, the remuneration payable will be determined by an officer of that Court. For retrials in the Crown Court, the remuneration payable will be determined in accordance with the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005, as amended.

#### **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 in 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 made now a further commencement order, together with two substantive instruments.

- 3.3. This Order provides for the remuneration payable to solicitors and counsel acting in criminal appeals. It largely reflects the position which pertained under the 1980 Act and provides the necessary procedural rules for the funding of representation in criminal appeals. The Criminal Defence Services (General) Regulations (Northern Ireland) 2016 -- S.R. 2016 No. 197 -- make further, related provisions.

#### **4. Consultation**

- 4.1. 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 this Remuneration Order. In addition, given the subject-matter of this Order, the Department also consulted with the Taxing Master and the Legal Services Agency Northern Ireland.
- 4.2. The Department held a targeted consultation with these stakeholders and four responses were received which were supportive of the need to replicate the position as it was prior to 1 April 2015.

#### **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 Order was screened for its regulatory impact. The provisions contained in the Order 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. This Order is intended to replicate the position as it was prior to 1 April 2015. On that basis, it is not expected to have any specific financial implications.

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

- 8.1. The Department considers this Order 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.