

EXPLANATORY MEMORANDUM TO

The Legal Aid for Crown Court Proceedings (Costs) (Amendment) Rules (Northern Ireland) 2016

SR 2016 No. 200

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, Advice and Assistance (Northern Ireland) Order 1981 ("the 1981 Order") and is subject to the negative resolution procedure.

2. Purpose

- 2.1. This Statutory 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 purpose of the Statutory Rule is to provide revised remuneration arrangements for defence representatives undertaking work in the Crown Court, in place of those introduced by the Legal Aid for Crown Court Proceedings (Costs) (Amendment) Rules (Northern Ireland) 2015 ("the 2015 Amendment Rules").
- 2.3. For solicitors, the Rule provides new Guilty Plea Fees payable in those cases where the assisted person pleads guilty at the first arraignment. It also provides new standard fees, payable to solicitors 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. The Rule substitutes increased levels of standard fees payable to solicitors for trials.
- 2.4. In respect of counsel, this Rule substitutes new levels of standard fees for guilty pleas and trials. The fees for counsel are increased, save for the Guilty Plea and Basic Trial Fees for Class A and Class D offences which remain at the same level.
- 2.5. This Rule also substitutes a new provision regarding the fees payable where a solicitor was dismissed or obliged to withdraw from a case for compelling professional reasons, and makes other minor and consequential amendments.

3. Background

- 3.1. In May 2015 the General Council of the Bar of Northern Ireland and the Council of the Law Society of Northern Ireland jointly launched judicial review proceedings against the Department seeking a declaration that the 2015 Amendment Rules were unlawful and to have those Rules quashed in their entirety. In November 2015 the High Court found for the applicants

on two limited grounds, but did not quash the Rules [2015] NIQB 99. An appeal was lodged by the Bar Council and the Law Society, together with a cross-appeal by the Department. Before the hearing of the appeal and cross-appeal took place, the Court of Appeal suggested that the parties enter into mediation in respect of the dispute.

- 3.2. Each of the parties agreed, and the mediation took place over the period 10-11 February 2016. While the details of the mediation are confidential, these Rules are an outworking of the process.

4. Consultation

- 4.1. The Department has consulted with the statutory consultees listed in Article 36(3) of the 1981 Order, namely the Lord Chief Justice, the Attorney General for Northern Ireland and the Crown Court Rules Committee. In addition, given their particular interest in the subject-matter of the Rules, the Department consulted with the Law Society of Northern Ireland, the Bar Council of Northern Ireland and the Director of Public Prosecutions for Northern Ireland.
- 4.2. The Department held a targeted consultation with these stakeholders. No substantive responses were received.

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. This Rule was screened for its regulatory impact. 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 full Regulatory Impact Assessment was not considered necessary.

7. Financial Implications

- 7.1. Based on the volume of business in the Crown Court in 2013/14, the amendments to the 2005 Rules contained in this Rule will produce an additional annual cost in the region of £2.4m by 2018/19.

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.