

EXPLANATORY MEMORANDUM TO

The Legal Aid for Crown Court Proceedings (Costs) (Amendment No. 2) Rules (Northern Ireland) 2016

SR 2016 No. 201

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 makes further amendments to 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 make provision for the payment of additional remuneration in exceptional cases. It provides for an application for a Certificate of Exceptionality in an individual case, where a representative is required to undertake additional preparation work because the case (or part of the case which is the subject-matter of the application) involves a point of law or factual issue that is very unusual or novel. The Rule prescribes hourly rates of payment for the additional work authorised by the Department.

3. Background

- 3.1. The 2005 Rules have been successfully challenged in judicial review proceedings by several individual defendants, reflecting some very specific circumstances. The Courts found that the Rules were not sufficiently flexible to remunerate lawyers in the specific circumstances of those individual cases. A series of other challenges to the Rules have been withdrawn or dismissed at the Pre-Action Protocol letter or the leave hearing stage. In response to those successful challenges, the Department developed proposals to introduce provision to remunerate 'exceptional' cases being heard in the Crown Court.
- 3.2. The proposals were developed to provide remuneration outside the standard fee regime where circumstances come together which mean that the standard fee regime alone cannot provide appropriate remuneration for additional preparation work, which is reasonably undertaken and properly done, by defence representatives in Crown Court cases, as required by Article 37 of the 1981 Order. The Department expects the new arrangements to apply to only a very limited number of exceptional cases.

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. Four substantive responses were received. The Department included, where appropriate, a number of the suggested amendments.

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. The Department estimates that the amendments made by this Statutory Rule could cost up to £1.5m per annum.

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.