

EXPLANATORY MEMORANDUM TO

The Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) (Amendment) Rules (Northern Ireland) 2016

SR 2016 No. 398

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 Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009 ("the 2009 Rules"), which prescribe the remuneration for solicitors and counsel assigned under 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 2009 Rules have been challenged in judicial review proceedings by several individual defendants. In response to those challenges, the Department developed proposals to introduce provision to remunerate 'exceptional' cases being heard in the Magistrates' Court or County Court appeals.
- 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 accordance with 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 issued a targeted consultation with the Law Society of Northern Ireland, the General Council of the Bar of Northern Ireland, the Office of the Lord Chief Justice, the Attorney General, the County Court Rules Committee and the Magistrates' Courts Rules Committee. In

addition, the Department obtained the approval of the Department of Finance.

4.2. No wider consultation took place on the Rules.

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. These Rules were screened for their regulatory impact. The provisions contained in the Rules 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 £190,000 per annum.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department considers these Rules 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.