

EXPLANATORY MEMORANDUM TO

The Legal Aid in Criminal Proceedings (Costs) (Amendment) Rules (Northern Ireland) 2010 – 2010 S.R. No. 146

1. This Explanatory Memorandum has been prepared by the Northern Ireland Court Service and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The instrument amends the Legal Aid in Criminal Proceedings (Costs) Rules (Northern Ireland) 1992 (“the 1992 Rules”) so as to alter the date after which certain work may be remunerated at discretionary instead of prescribed rates from 30 June 2010 to 31 March 2011.

- 2.2 For those classes of cases which remain subject to the 1992 Rules, if this instrument was not made, after 30 June 2010 the appropriate authority which determines the fees payable in individual cases would be free to set any rate of fee once it had regard to the ‘lapsed’ rates.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None

4. **Legislative Context**

- 4.1 The 1992 Rules introduced a statutory scheme for remunerating lawyers acting for legally aided defendants in criminal proceedings in Northern Ireland. In addition to regulating the processing of lawyers’ claims, the 1992 Rules:

- (a) Prescribe standard fees for cases meeting certain criteria;
- (b) Prescribe rates of remuneration to be applied to various elements of work undertaken by lawyers in non-standard fee cases; and
- (c) Provide for the appropriate authority to have a discretion in relation to the assessment of fees for work done after a prescribed date.

- 4.2 With the making of secondary rules in 2005 and 2009 respectively, there is now a diminishing number of Crown Court and Magistrates’ Court cases which remain to be paid under the 1992 Rules.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland only.

6. European Convention on Human Rights

6.1 As this instrument is subject to the negative resolution procedure, and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The 1992 Rules have been subject to amendments, which have extended the prescribed date for 12-month periods other than in 2001 and June 2004 when they were extended for 6-month periods. The effect of these extensions has been to require the appropriate authority to continue to apply the rates prescribed in the 1992 Rules.

7.2 If this instrument was not made, after 30 June 2010 the appropriate authority would be free to set any rate of fee once it had regard to the ‘lapsed’ rates.

- **Consolidation**

7.3 The Court Service has no plans to make a consolidating instrument. With the bringing forward of the new remunerations schemes in 2005 and 2009, as referred to in paragraph 4.2, the 1992 Rules have been superseded by those new schemes.

8. Consultation outcome

8.1 Article 36(3)(d) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 requires the Lord Chancellor to consult with the Lord Chief Justice and the Attorney General when making rules prescribing the costs payable under criminal legal aid, and to obtain the approval of Treasury. These consultations have been conducted. The Treasury have also given their approval.

8.2 Consultation also took place with the Law Society and the Bar Council to seek their comments on the proposed amendment. The Bar agreed to the proposal. The Law Society did not make any response.

9. Guidance

9.1 No specific guidance will be issued by the Northern Ireland Court Service. However, as part of our normal practice when bringing forward secondary legislation, the Court Service will be writing to relevant stakeholders – including the Law Society of Northern Ireland and the General Council of the Bar of Northern Ireland – to provide

them with copies of this instrument and to explain the changes it will make.

- 9.2 An entry is also included in the Law Society's monthly publication *'The Writ'* to inform the legal profession of the new legislation and the changes made.

10. Impact

- 10.1 No impact on the private, voluntary or public sectors is foreseen. Accordingly, an Impact Assessment has not been prepared on this instrument.

11. Regulating small business

- 11.1 The instrument does not apply to small business.

12. Monitoring & review

- 12.1 The Court Service and the Northern Ireland Legal Services Commission keep the operation of the legal aid scheme in Northern Ireland under review generally. It will include the operation of this instrument.

13. Contact

Padraig Cullen at the Northern Ireland Court Service, Tel: 028 9041 2235 or e-mail: padraigcullen@courtsni.gov.uk can answer any queries regarding this instrument.