

## **EXPLANATORY MEMORANDUM TO**

# **The Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) (Amendment) Rules (Northern Ireland) 2014**

**S.R. 2014 No. 178**

## **1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Department of Justice ("the Department") to accompany the above Statutory Rule ("the Rule"), 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 and is subject to the negative resolution procedure. It makes amendments to the Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009 ("the 2009 Rules").

## **2. Purpose**

### 2.1 The Rule:

- revokes the separate provision made for the payment of Guilty Plea 2 Fees;
- revokes the separate provision made for special hourly rates of payment in Very High Cost Cases;
- makes provision for the fees payable in respect of compassionate bail hearings;
- makes provision for the payment of an additional fee in respect of preparation work in magistrates' courts cases which are listed for, but do not proceed as, a contest;
- makes provision for the payment of an additional fee in respect of preparation work in committal cases where the number of pages of prosecution evidence exceeds 750 pages;
- introduces new provisions for the payment of additional fees in respect of arrest warrants, applications for witness anonymity orders, severance orders and third party disclosure, and cases involving the dismissal or withdrawal of the representative;
- introduces a new provision for the payment of a fee in respect of a sentencing hearing, where there is a change of representative following the conviction of the assisted person;
- introduces new provisions for the payment of a fixed fee in respect of Fine Default Hearings and for additional fees in respect of Newton hearings; and

- makes other minor and consequential amendments.

### **3. Background**

3.1 Criminal legal aid enables defendants who cannot afford to pay for their own defence to be legally represented in criminal cases in Northern Ireland. This assists the Government to meet its obligations under Articles 5 (right to liberty) and 6 (right to a fair trial) of the European Convention on Human Rights and the Human Rights Act 1998. Criminal legal aid is granted to adult and youth defendants facing criminal charges where the court is satisfied that:

- the defendant has insufficient means to pay for his/her own defence; and
- it is in the interests of justice that the defendant should have free legal aid.

3.2 The 2009 Rules prescribe the remuneration for solicitors and counsel representing defendants in publicly funded criminal cases in the magistrates' courts and on appeal to the county court. Rule 16 of the 2009 Rules places a requirement on the Department to conduct a formal review of the levels of the prescribed fees and the rates of payment under the 2009 Rules, and the above Rule makes amendments arising out of that review.

### **4. Consultation**

4.1 On 9 November 2012 the Department published a consultation document as part of its biennial review of the 2009 Rules. In addition to that consultation exercise with the legal profession and other stakeholders, the Department consulted the Committee for Justice in the Assembly.

### **5. Equality Impact**

5.1 An initial screening exercise was carried out on 24 October 2012 as part of the review of the 2009 Rules. This indicated that a full equality impact assessment (EQIA) was not necessary. A further equality screening exercise was carried out by the Department on 11 April 2013 and the policy was screened out on that date. A full EQIA exercise has not been conducted.

## **6. Regulatory Impact**

6.1 The amendments to the 2009 Rules will not impact upon business, the voluntary sector or the environment. Therefore, a Regulatory Impact Assessment was not required.

## **7. Financial Implications**

7.1 Removing the separate provisions for Guilty Plea 2 Fees and Very High Cost Cases will produce combined savings of £700,000 per annum. However, the introduction of new fixed fees for Fine Default Hearings will cost on average £600,000 per annum over the next four years. By the end of the four year period, it is intended that an alternative civil fine enforcement mechanism will be introduced.

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

8.1 The Department considers the 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.