

EXPLANATORY MEMORANDUM TO

The Civil Legal Services (Appeal) Regulations (Northern Ireland) 2015

SR 2015 No. 197

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Article 20A of the Access to Justice (Northern Ireland) Order 2003 (“the 2003 Order”), as inserted by the Legal Aid and Coroners’ Courts Act (Northern Ireland) 2014 (“the 2014 Act”). It is subject to the draft affirmative resolution procedure.

2. Purpose

- 2.1. The purpose of the Statutory Rule is to establish a procedure for appeals against prescribed decisions on applications for funding by way of Civil Legal Services; and provide for independent appeal panels of suitably qualified individuals to be appointed on a fixed term basis through the public appointments process. The prescribed decisions are decisions on whether to fund, or continue to fund, representation for an individual in the higher courts; together with decisions as to the level of representation authorised for that individual. The Statutory Rule is part of a suite of secondary legislation required to implement Civil Legal Services.

3. Background

- 3.1. Civil Legal Services is the new legislative framework, provided under the 2003 Order, for the public funding of legal services in civil cases.
- 3.2. When the new Legal Services Agency is created under the 2014 Act, the function of granting or refusing funding in civil cases will transfer from the Northern Ireland Legal Services Commission to the Director of Legal Aid Casework in the Agency. Decisions on the award of funding (or further funding) will be based on the relevant statutory provisions and the requirements of the scheme. Decisions in individual cases will be taken on the merits of the case and not influenced by external interference or political considerations.
- 3.3. The purpose of the Appeal Panels will be to consider and adjudicate on appeals against decisions which have been taken by the Director of Legal Aid Casework about the granting of Civil Legal Services.

4. Consultation

- 4.1. The Department carried out a consultation on the draft Regulations in addition to a previous public consultation in 2013 on safeguards to protect the independence of decision making on civil legal aid. It received responses from the Attorney General, the Law Society, the Association of Personal Injury Lawyers (APIL), Disability Action and the Northern Ireland Legal Services Commission.

5. Equality Impact

- 5.1. Consideration was given to compliance with section 75 of the Northern Ireland Act 1998. The Department's initial equality screening exercise, carried out in January 2013, indicated that a full equality impact assessment of the options was not necessary. The public consultation launched in February 2013 on safeguards to protect the individual decisions on the granting of Civil Legal Services sought comments from respondents who might identify any area in which they felt the outlined approach could have adverse equality impacts. Responses to that consultation did not identify any adverse equality impacts. A further equality screening exercise carried out on the draft Regulations in August 2014 confirmed that a full equality impact assessment was not necessary.

6. Regulatory Impact

- 6.1. As the Regulations will impose no additional costs on businesses, charities or the voluntary sector, a full Regulatory Impact Assessment was not considered necessary.

7. Financial Implications

- 7.1. Costs were incurred from running the public appointment process. There are no capital costs associated with these Regulations.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department considers the proposal 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.