

## **EXPLANATORY MEMORANDUM TO**

### **The Civil Legal Services (Remuneration) (Amendment) Order (Northern Ireland) 2019**

**SR 2019 No. 119**

#### **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 Articles 12(3) and 47 of the Access to Justice (Northern Ireland) Order 2003 and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1. The primary purpose of the Order is to make technical amendments to correct a number of errors and omissions in the 2015 Order and to provide for direct billing by Counsel and to change the provisions for interim payment of experts.

#### **3. Background**

- 3.1. This Order amends the Civil Legal Services (Remuneration) Order (Northern Ireland) 2015 (“the 2015 Order”). The primary purpose of this amending Order is to make technical amendments to correct a number of errors and omissions in the 2015 Order. These changes are of a minor nature, including amendments to table headings, extending the references to “letters” to include “emails” in appropriate contexts, and the corrections of a reference to paying letters and phone calls from a “per hour” basis to a “per item basis”.
- 3.2. The 2015 Order does not make explicit references to all of the various rates of payment for travel, as applicable to the type of representative across the various types of proceedings. The amendments make provision for the payment of travel time and mileage in all relevant proceedings, replicating the payments currently made to representatives. In addition, starting points from which travel may be claimed by representatives are inserted into Part 1 of Schedules 3 and 4. Again this replicates how payments are currently made.
- 3.3. In addition to those amendments to clarify the current payments, a new Table 9 in Part 4 of Schedule 4 to the 2015 Order has been added. This is to highlight and reflect those payments that are currently being paid to a solicitor in certain County Court proceedings when proceedings have been withdrawn, abandoned or discontinued, where there is a full certificate in force.
- 3.4. The amending Order introduces two changes. This first intends to improve the arrangements for a solicitor claiming an interim disbursement payment for an expert witness report. The amendments are to Article 6. At present, one solicitor must firstly discharge a liability of over £500, before he or

she can make a claim. The amendments make it so that when that a liability has been incurred as a result of a joint instruction of an expert and the total cost of those instructing exceeds £500, then a solicitor may make a claim for an interim disbursement. The claim may be made when the liability has been incurred as opposed to it being discharged.

- 3.5. The second change is to facilitate the ability of counsel to submit their claim for costs directly. These amendments are to Article 8 and 9.

#### **4. Consultation**

- 4.1. From 16 May 2019 to 14 June 2019 the Department completed a targeted consultation with a range of bodies with an interest, including the Lord Chief Justice, Law Society and Bar Council as statutory consultees under the legislation. Consultees were contacted and asked for their views on
- 4.2. • the policy proposal;
- 4.3. • impact screenings of the policy (human rights; equality, rural, privacy/data protection and regulatory) none of which identified the need for full or further impact assessments to be carried out;
- 4.4. • the draft legislation giving effect to the proposed changes.
- 4.5. The Lord Chief Justice and Court Rules Committees had no comment. The Bar endorsed the proposals, and in particular, the proposal to allow Counsel to bill directly for payment, including interim payments. The Law Society offered some drafting amendments which were incorporated in the Order. The Law Society provided some comments on remuneration generally which were not directly linked to the consultation.

#### **5. Equality Impact**

- 5.1. The Draft Regulations were screened in compliance with section 75 of the Northern Ireland Act 1998. There is no adverse or differential impact on any of the S.75 groups.
- 5.2.

#### **6. Regulatory Impact**

- 6.1. The draft Regulations were screened for Regulatory Impact. A Regulatory Impact Assessment is not required. The Regulations primarily put on a statutory footing current payments which are available. The changes on interim payments will make it easier for a limited group of professional experts to receive payment quicker and counsel will be able to access payment directly rather than having to put claims through solicitors leading to quicker payment.

#### **7. Financial Implications**

- 7.1. As the proposed amendments aim to replicate current provision, there should, in principle, be no associated cost. It is possible that, as a result of making the changes, awareness among legal representatives of the availability of certain entitlements may increase. The potential cost to the legal aid fund of this effect has been estimated at £27k.

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

8.1. The Regulations are compliant with section 24 of the Northern Ireland Act 1998

**9. EU Implications**

9.1. Not applicable

**10. Parity or Replicatory Measure**

10.1. The measure does not replicate or maintain parity with legislation in other administrations. The legal aid provisions in other administrations differ.

**11. Additional Information**

11.1. Not applicable