

**EXPLANATORY MEMORANDUM TO
THE LEGAL AID IN CRIMINAL PROCEEDINGS (COSTS) (AMENDMENT)
RULES (NORTHERN IRELAND) 2011**

S.R. 2011 No. 396

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory 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.

2. Purpose

- 2.1 The Statutory Rule will amend the provisions of the Legal Aid in Criminal Proceedings (Costs) Rules (Northern Ireland) 1992 (“the 1992 Rules”) by substituting the Northern Ireland Legal Services Commission for the appropriate authority.
- 2.2 The effect of the amendment is to transfer responsibility for the determination of the costs payable in individual cases under the 1992 Rules from the appropriate authority to the Legal Services Commission.

3. Background

- 3.1 The Legal Aid in Criminal Proceedings (Costs) Rules (Northern Ireland) 1992 provided for the establishment of the ‘appropriate authority’ as a committee of three persons selected from a panel of barristers, solicitors and other persons appointed by the Lord Chancellor. The appropriate authority assessed the costs payable in respect of criminal legal aid granted for cases covered by those Rules – that is, cases in the magistrates’ courts, county courts on appeal, the Crown Court and bail applications in the High Court.
- 3.2 Following the introduction of new legislation to reform the remuneration payable under criminal legal aid – namely, the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005 (“the 2005 Rules”) and the Magistrates’ Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009 (“the 2009 Rules”) – there is now a diminishing number of cases which remain subject to the 1992 Rules.
- 3.3 These Amendment Rules therefore have the sole purpose and effect of substituting the Northern Ireland Legal Services Commission for the

appropriate authority for the purposes of determining costs for solicitors and counsel in the relatively small number of cases which now fall to be paid under the 1992 Rules.

4. Consultation

- 4.1 The Department issued a consultation letter in February 2010 to all relevant stakeholders including the appropriate authority, Law Society, the Bar Council and the Northern Ireland Legal Services Commission. This drew a nil response, save for a comment from the Commission in relation to the timing of the amendment.

5. Equality Impact

- 5.1 The proposed changes have not been the subject of an equality screening exercise.
- 5.2 The Northern Ireland Legal Services Commission already assesses the costs payable under both the 2005 Rules and the 2009 Rules; and the changes effected by this amendment to the 1992 Rules is an administrative change only, with no changes to the substance of the Rules. There is thus no basis upon which to consider it necessary to carry out an equality impact assessment.

6. Regulatory Impact

- 6.1 The amendment does not impose any restriction on businesses.
- 6.2 It merely replaces the appropriate authority with the Northern Ireland Legal Services Commission for the purpose of determining costs under the 1992 Rules. Consequently, a regulatory impact assessment was not required.

7. Financial Implications

- 7.1 There are no financial implications, save for some modest administrative savings. The expenses of convening meetings of the appropriate authority will no longer be incurred.

8. Section 24 of the Northern Ireland Act 1998

- 8.1 The amendment is considered to be compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1 There are no EU implications associated with the amendment.

10. Parity or Replicatory Measure

10.1 Not applicable.

11. Additional Information

11.1 Not applicable.