



Department of  
**Justice**  
[www.dojni.gov.uk](http://www.dojni.gov.uk)

## Consultation Document

# Proposed amendments to the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005

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## **(i) Ministerial Foreword**

I am taking forward a programme of reform in respect of legal aid in Northern Ireland. As part of that reform, it is important that fees are in place to provide appropriate remuneration for work properly undertaken, and that these fees represent value for money.

In August last year I gave an undertaking that I would consider introducing new fees in respect of confiscation hearings under the Proceeds of Crime legislation. I also agreed to re-categorise the fees for applications, to provide for new time-based fees in respect of certain types of sentencing hearings. These include applications for sexual offences prevention orders, together with hearings in which orders of disqualification from working with children are made.

This consultation paper proposes the introduction of these new fees.

The consultation process provides an opportunity for you to help develop policy in this area and I would encourage all those who have an interest to respond to this consultation.

**DAVID FORD MLA**  
**Minister of Justice**

## **1.0 Introduction**

1.1 Where a person is charged with a criminal offence(s) he/she will initially be brought before a magistrates' court to face the charge(s). If his/her financial means are insufficient for him/her to pay for his/her own legal representation and the court considers that it is in the interests of justice that he/she should be legally represented he/she will be granted criminal legal aid and his/her legal costs will be met out of public funds. Less serious offences are dealt with in the magistrates' court, whilst more serious offences are committed for trial in the Crown Court. A person appearing before the Crown Court may also be granted legal aid and again the costs of his/her legal representation will be met out of public funds.

1.2 Payments to solicitors and counsel working on legally aided cases in the Crown Court are governed by the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005 (the 2005 Rules)<sup>1</sup>.

1.3 In September 2010 the Northern Ireland Courts and Tribunals Service (NICTS) commenced consultation on proposed amendments to the 2005 Rules. Subsequently, in April 2011, following the conclusion of the consultation process, the Legal Aid for Crown Court Proceedings (Costs) (Amendment) Rules (Northern Ireland) 2011 (the 2011 Rules) came into effect and amended the 2005 Rules.

1.4 The main amendments introduced were as follows.

- The levels of standard fees payable to solicitors were reduced by 25%
- The levels of standard fees payable to counsel were reduced by 20%
- The provisions in respect of very high cost cases and exceptionality were removed
- New enhanced fees were provided for guilty pleas in cases with a high volume of served pages of prosecution evidence
- New fees were introduced for solicitors in respect of cases with more than 750 pages of prosecution evidence

## **2.0 Background to the proposed fees**

2.1 The introduction of the new legal aid fees by the 2011 Amendment Rules led to the widespread withdrawal of services by solicitors in Crown Court cases during April to August 2011. This withdrawal of services ended following discussions between officials from the NICTS and representatives of

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<sup>1</sup> SR 2005 No. 112

both branches of the legal profession towards the end of August. These discussions resulted in the Minister of Justice agreeing to introduce increased fees in respect of applications for confiscation orders made under Proceeds of Crime legislation and the re-categorisation of existing fees for extended/indeterminate sentences, Sexual Offences Prevention Orders and Disqualification Orders as Public Protection Applications.

### 3.0 Proposed changes to the 2005 Rules

3.1 It is proposed that new fees will be payable for Proceeds of Crime and Confiscation hearings where the court proceeds:

- Under Article 8 of the Proceeds of Crime (Northern Ireland) Order 1996
- Under section 156 the Proceeds of Crime Act 2002.

3.2 In addition, it is proposed applications in respect of:

- Sexual offences prevention orders made under the Sexual Offences Act 2003;
- Disqualification orders made under the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003; and
- Extended or indeterminate sentence hearings held under the Criminal Justice (Northern Ireland) Order 2008,

should be re-categorised as Public Protection Application (PPA) fees.

### 4.0 New and re-categorised fees

4.1 There are currently no specific fees payable in respect of applications for confiscation orders made under the Proceeds of Crime legislation. Instead, these hearings are remunerated as *Application Fees* and the Bar and Law Society contends that these fees do not provide appropriate remuneration. The Department of Justice is proposing to provide specific fees for these hearings at the level of the highest daily *Refresher Fee* payable under the 2005 Rules, as amended by the 2011 Rules.

#### Proposed fees

	<b>Solicitor</b>	<b>Queen's Counsel</b>	<b>Leading Junior Counsel</b>	<b>Led Junior Counsel</b>	<b>Sole Junior Counsel</b>
<b>Full day</b>	<b>£525</b>	<b>£800</b>	<b>£600</b>	<b>£400</b>	<b>£520</b>
<b>Half day</b>	<b>£263</b>	<b>£400</b>	<b>£300</b>	<b>£200</b>	<b>£260</b>

4.2 It is proposed that fees for extended/indeterminate sentences, Sexual Offences Prevention Orders and Disqualification Orders should be re-categorised under the title of Public Protection Application fees, with these fees paid on the basis of the existing *Application Fee* structure.

## Proposed fees

	<b>Solicitor</b>	<b>Queen's Counsel</b>	<b>Leading Junior Counsel</b>	<b>Led Junior Counsel</b>	<b>Sole Junior Counsel</b>
<b>PPA Fee 1</b> (hearing not exceeding 1.5 hours)	<b>£113</b>	<b>£100</b>	<b>£94</b>	<b>£63</b>	<b>£82</b>
<b>PPA Fee 2</b> (hearing exceeding 1.5 hours but not exceeding 3 hours)	<b>£188</b>	<b>£200</b>	<b>£150</b>	<b>£100</b>	<b>£130</b>
<b>PPA Fee 3</b> (hearing exceeding 3 hours)	<b>£375</b>	<b>£400</b>	<b>£300</b>	<b>£200</b>	<b>£260</b>

4.3 For comparative purposes the existing fees payable for confiscation hearings, extended/indeterminate sentences, Sexual Offences Prevention Orders and Disqualification Orders in Northern Ireland are set out in **Annex B**, together with the corresponding fees payable in England and Wales.

## 5.0 Purpose of this Document

5.1 The purpose of this document is to enable the Department of Justice to obtain the views of consultees on proposed amendments to the 2005 Rules, as contained in the draft Legal Aid for Crown Court Proceedings (Costs) (Amendment) Rules (Northern Ireland) 2012, set out at (**Annex A**).

## 6.0 Consultation Questions

6.1 The Department is eager to obtain the views of as many consultees as possible on the proposals, the draft rules and the draft Impact Assessment as it is important that the proposed fees are appropriate for this jurisdiction.

### Consultation Questions

Q1. Are the proposed fees payable in respect of confiscation hearings and Public Protection Application Fees consistent with the value for money test contained in Article 37 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981?

Q2. Can you identify anything that should be changed in the proposals to enable the fees to be adjusted to produce fairer remuneration?

Q3. Are you content that the new rules should be brought into operation in respect of all defence certificates granted on or after 1 August 2012?

6.2 All comments in relation to the introduction of the proposed fees and the draft Impact Assessment are welcome.

## **7.0 How to Respond**

7.1 We would welcome your views on the proposals in this consultation and we would invite you to send your comments, in whatever format you choose, to:

Chris McGregor  
Consultation Co-ordinator  
Public Legal Services Division  
Access to Justice Directorate  
Department of Justice  
3<sup>rd</sup> Floor, Bedford House  
16-22 Bedford Street  
Belfast BT2 7FD  
Tel: 028 9041 2241  
Fax: 028 9041 2357  
Email: [Chris.McGregor@courtsni.gov.uk](mailto:Chris.McGregor@courtsni.gov.uk)

### **Closing date**

7.2 Responses must be received by 16.00 on Friday 4 May 2012.

7.3 When responding, please state whether you are making a submission as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

## **8.0 Additional Copies and Alternative Formats**

8.1 An electronic version of this document is available to view and download from the DOJ website ([www.dojni.gov.uk](http://www.dojni.gov.uk)). You may make copies of this document without seeking permission. Hard copies will be posted on request. The text phone contact details are set out above. Copies in other formats, including Braille, large print, audio cassette, computer disc etc may be made available on request. If it would assist you to access the document in an alternative format or a language other than English, please let us know and we will do our best to assist you.

## **9.0 Confidentiality of Responses**

9.1 At the end of the consultation period, copies of responses received by the Department may be made publicly available. The information will also be published in a summary of responses which will be made available on the Department's website. If you do not want all or part of your response or name



made public, please state this clearly in your response. Any confidentiality disclaimer that may be generated by you or your organisation's IT system or included as a general statement in your fax cover sheet, will be taken to apply only to information in your response for which confidentiality has been specifically requested.

9.2 Any personal data which you provide will be handled in accordance with the Data Protection Act 1998. Respondents should also be aware that the Department's obligations under the Freedom of Information Act 2000 may require that responses not subject to specific exemptions in the Act may be communicated to third parties on request.

9.3 Please contact Public Legal Services Division at the address at paragraph 7.1 to request copies of responses. An administrative charge may be made to cover photocopying of the responses and postage costs.

## **10.0 Equality**

10.1 Section 75 of the Northern Ireland Act 1998 requires all public authorities in Northern Ireland to have due regard to equality of opportunity between the nine equality categories and have regard to promote good relations between persons of different religious belief, political opinion or racial group. Public Authorities are also required to meet legislative obligations under the Disability Discrimination Order, particularly in the formation of public policy making.

10.2 The Department of Justice is fully committed to fulfilling its Section 75 obligations on the promotion of equality of opportunity, good relations and meeting legislative requirements in Northern Ireland.

## **11.0 Consultation Process**

11.1 If you have any queries about the information provided in this document please contact Public Legal Services Division (details listed at paragraph 7.1). However, if you have any queries or concerns about the way in which the consultation exercise has been handled, you may raise these with the Departmental Consultation Co-ordinator at the following address:

Mark Higgins  
Central Co-ordination Branch  
Central Management Unit  
Department of Justice  
Castle Buildings  
Stormont Estate  
Belfast, BT4 3SG  
E- mail: mark.higgins@dojni.x.gsi.gov.uk  
Telephone: 02890 765784  
Text phone: 028 90 527668

## **ANNEX A**

Please see separate document

## ANNEX B

### Current fees in Northern Ireland

#### Existing Application Fees under the 2005 Rules

	Solicitor	Queen's Counsel	Leading Junior Counsel	Led Junior Counsel	Sole Junior Counsel
<b>Application Fee 1</b> (hearing not exceeding 1.5 hours)	£113	£100	£94	£63	£82
<b>Application Fee 2</b> (hearing exceeding 1.5 hours but not exceeding 3 hours)	£188	£200	£150	£100	£130
<b>Application Fee 3</b> (hearing exceeding 3 hours)	£375	£400	£300	£200	£260

### Fees in England and Wales

#### Counsel Fees in England and Wales

The tables below set out the fees payable to counsel for confiscation hearings in England and Wales.

##### Daily and half-daily rates

	Queen's Counsel	Leading Junior Counsel	Led Junior Counsel	Sole Junior Counsel
<b>Daily rate</b>	£497	£346	£238	£238
<b>Half-daily rate</b>	£260	£195	£130	£130

##### Pages of evidence

	Queen's Counsel	Leading Junior Counsel	Led Junior Counsel	Sole Junior Counsel
<b>51 – 250</b>	£649	£541	£324	£433
<b>251 – 500</b>	£973	£811	£486	£649
<b>501 – 750</b>	£1,298	£1,081	£649	£865
<b>751 – 1,000</b>	£1,946	£1,622	£973	£1,298

## Preparation

	<b>Queen's Counsel</b>	<b>Leading Junior Counsel</b>	<b>Led Junior Counsel</b>	<b>Sole Junior Counsel</b>
<b>Hourly rates</b>	£74	£56	£39	£39

## Solicitor Fees in England and Wales

The table below sets out the fees payable to solicitors for confiscation hearings in England and Wales.

<b>Class of work</b>	<b>Grade of fee earner</b>	<b>Rate</b>	<b>Variations</b>
Preparation	Senior solicitor	£53.00 per hour	£55.75 per hour for a fee earner whose office is situated within the London region of the Commission
	Solicitor, legal executive or fee earner of equivalent experience	£45.00 per hour	£47.25 per hour for a fee earner whose office is situated within the London region of the Commission
	Trainee or fee earner of equivalent experience	£29.75 per hour	£34.00 per hour for a fee earner whose office is situated within the London region of the Commission
Attendance at court where more than one representative instructed	Senior solicitor	£42.25 per hour	–
	Solicitor, legal executive or fee earner of equivalent experience	£34.00 per hour	–
	Trainee or fee earner of equivalent experience	£20.50 per hour	–
Travelling and waiting	Senior solicitor	£24.75 per hour	–

	Solicitor, legal executive or fee earner of equivalent experience	£24.75 per hour	–
	Trainee or fee earner of equivalent experience	£12.50 per hour	–
Writing routine letters and dealing with routine telephone calls		£3.45 per item	£3.60 per item for a fee earner whose office is situated within the London region of the Commission