



Department of  
**Justice**

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Consultation on Section 75 Equality  
Impact Assessment on the Legal Aid for  
Crown Court Proceedings (Costs) Rules  
(Northern Ireland) 2005, as amended

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## **1.0 Introduction**

1.1 The purpose of this document is to seek views from interested parties on the implications of the proposed options to amend the legal aid remuneration arrangements for defence representation under the Legal Aid for Crown Court Proceedings (Costs) Rules 2005, as amended (“the 2005 Rules”) with regard to the equality of opportunity for all groups specified under Section 75 of the Northern Ireland Act 1998.

1.2 This document provides an overview of the purpose and content of the options.

1.3 The Department of Justice (“the Department”) is required to screen all policies to determine whether a full Equality Impact Assessment (“EQIA”) is required. In this case, the Department considers that there is no evidence to conclude that a full EQIA should be carried out. However, it intends to conduct a public consultation lasting sixteen weeks and following analysis of the feedback from the consultation exercise further screening will be undertaken. As part of the consultation exercise, the Department would welcome any information on the impact of the policy on any of the Section 75 equality groups.

## **2.0 Current legislation**

2.1 The 2005 Rules provide a system of standard fees for publicly-funded defence representation in criminal proceedings in the Crown Court. Under the 2005 Rules, the Department is required to keep the general operation of the Rules under review and to conduct a formal review of the levels of the prescribed fees and rates of payment at least once in every two years. In conducting the review into the operation of the 2005 Rules, there is also a statutory requirement on the Department, under Article 37 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (“the 1981 Order”), to have regard to:

- the time and skill which work of the description to which the rules relate requires;
- the number and general level of competence of persons undertaking work of that description;
- the cost to public funds of any provision made by the rules; and
- the need to secure value for money.

For this review, the Department included a further non-statutory criterion to the statutory criteria to the effect the review must also take account of whether there are any omissions in the 2005 Rules.

2.2 In taking forward the review, the Department has analysed payments made to legal teams under the 2005 Rules in light of the criteria set out above, including the additional criterion added by the Department, and initial comments made by stakeholders.

2.3 As part of the review, the Department considered the operation of the litigators' and advocates' graduated fee schemes (GFSs) in England and Wales, as set out in the Criminal Legal Aid (Remuneration) Regulations 2013 ("the 2013 Regulations"). The Department's consideration of the GFSs included undertaking a comparison of remuneration levels between the two jurisdictions using the costs assessed by the Commission under the 2005 Rules in 213 actual cases in Northern Ireland and comparing these to the costs that would have been assessed under the current fee rates in England and Wales under the 2013 Regulations.

### **3.0 Preliminary findings of the review**

3.1 The Department considers that the 2005 Rules are correctly structured to reflect the time and skill required to deliver defence representation in legally aided criminal cases in the Crown Court.

3.2 The Department considers that in Northern Ireland there are sufficient competent solicitors and counsel undertaking defence representation in the Crown Court and that the structure of the 2005 Rules helps to ensure that an adequate supply of solicitors and counsel, willing to carry out legally aided defence work, is retained.

3.3 The exercise comparing remuneration levels mentioned above, indicated that fees paid in Northern Ireland under the 2005 Rules were 46% higher for solicitors and 37% higher for counsel than would have been paid in England and Wales for the same cases.

3.4 The Ministry of Justice in England and Wales has recently gone out to public consultation on reducing the rates of remuneration under the advocates' GFS (counsel). If a decision were made by the Ministry of Justice to apply these further reductions in England and Wales, the fees paid to counsel in Northern Ireland would become even more expensive proportionately when compared to England and Wales.

3.5 The scale of the differences in remuneration levels between Northern Ireland and England and Wales leads the Department to conclude that the 2005 Rules are unnecessarily high when compared to their counterparts in England and Wales. In these circumstances, the Department considers that the 2005 Rules (as amended in 2011) no longer represent value for money.

#### **4.0 The options for Crown Court remuneration**

4.1 On the basis that the Department is of the opinion that the 2005 Rules can no longer be seen as providing value for money, the consultation paper puts forward a number of options to address this, based on two general approaches:

- amending the 2005 Rules to reduce the level of remuneration (and obtain greater parity between levels of remuneration in this jurisdiction as compared to England and Wales); or

- introducing a new scheme based on the England and Wales GFSs.

4.2 The Department considers that the option to introduce a new scheme based on the GFSs should be considered, not only in terms of how it is presently configured, but also in light of the changes being consulted on currently by the Ministry of Justice.

4.3 The options set out below would make no changes whatsoever in respect of the eligibility of defendants applying for criminal legal aid in Crown Court cases. The options relate solely to how members of the legal profession are to be remunerated for their services in the Crown Court. The options are summarised below.

#### Option 1 – amendment to the 2005 Rules

4.4 The Department is of the opinion that the Guilty Plea 2 Fee could provide a financial disincentive to an early guilty plea, thereby creating delay in the disposal of cases and inflating costs, both in terms of the extra court process and the higher legal aid fees. The Department, therefore, proposes that the Guilty Plea 2 Fees should be removed from the 2005 Rules. The remaining Guilty Plea 1 Fee would become the single Guilty Plea Fee.

4.5 Whilst the removal of Guilty Plea 2 Fees would result in an estimated saving of £900k, the Department considers that it would still be necessary, as part of this option, to apply a reduction in fees of 45% for solicitors and 30% for counsel to align the levels of remuneration between the two jurisdictions. This would result in a reduction of fees (excluding VAT and disbursements) of approximately £2.8m each for both solicitors and counsel, giving total savings of £5.6m annually. This would enable the Department to demonstrate that the amended 2005 Rules provide value for money.

#### Option 2 – amendment to the 2005 Rules

4.6 Again, this option would include the removal of the Guilty Plea 2 Fees. Rather than applying a sole percentage reduction in fees across the board, this option would apply reductions based on percentage differences that were identified as part of the exercise undertaken by the Department to compare remuneration levels between Northern Ireland and England and Wales mentioned previously. This would mean a reduction in fees of 45% for solicitors, 46% for sole junior counsel/solicitor advocates, 31% for a led junior counsel, 20% reduction for leading junior counsel and 29% reduction for Queen’s Counsel. Implementation of this option would result in a similar overall reduction in fees as option 1 above.

#### Option 3 – introducing a new scheme based on the England and Wales GFSs

4.7 In considering this option, the Department is content that a new scheme based on the England and Wales GFSs could meet the criteria set out in Article 37 of the 1981 Order and could find no insurmountable reason why the main elements of GFSs could not be introduced in Northern Ireland. The Department accepts that it would be necessary to make a number of modifications to the 2013 Regulations to ensure a proper fit in this jurisdiction. However, the Department is content that these modifications can be made in a manner that provides remuneration that reduces the disparity in terms of remuneration levels with England and Wales and meets the value for money test. This option would deliver savings of £5.6m annually.

#### Option 4 – introducing a new scheme based on the England and Wales GFSs but including the changes to the advocates’ GFS being consulted on currently by the Ministry of Justice

4.8 This option is broadly the same as Option 3 above, but it also includes the proposals for change to the advocates’ GFS being consulted on currently by the Ministry of Justice in England and Wales. This option would deliver savings of £5.8m annually.

## Sub-options

4.9 Included in the consultation document are sub-options to options 1 and 2 to the effect that the reductions in the fees are implemented in stages over three years. The Department considers that staging the reductions in this manner could afford practitioners the opportunity to re-organise their business and other arrangements to adjust to reduced fees. A decision whether or not to apply the changes in stages will be taken in light of the consultation responses and the financial situation at the time, balancing the desirability of making savings as quickly as possible against the potential impact on the legal profession.

## Miscellaneous matters

4.10 The Department is inviting comments on the principle of introducing a system of contracting in criminal cases and the establishment of a Public Defenders Service in Northern Ireland. The Department has also included proposals in relation to the introduction of statutory criteria to be considered before a court could allow a legally aided defendant to change his legal team. Full details of these proposals are contained in the consultation document.

## **5.0 Equality considerations**

5.1 As a public authority under Section 75 of the Northern Ireland Act 1998, the Department is required to have due regard to the need to promote equality of opportunity:

- between persons of different religious belief, political opinion racial group, age, marital status or sexual orientation;
- between men and women generally;
- between persons with a disability and persons without; and
- between persons with dependants and persons without.



5.2 In addition to this obligation public authorities are required to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

5.3 This legislation requires the Department to consider whether any policy has a differential impact upon the relevant groups, the nature and extent of that impact and whether such impact is justifiable.

5.4 The Department considers that the two groups most likely to be affected by the proposals are Crown Court defendants and the legal professions, that is, both solicitors and counsel.

## 6.0 Defendants

6.1 Data on defendants on each Section 75 category are not available to the Department or other organisations within the criminal justice system. This is because there are sensitivities around providing personal characteristics such as religion, political opinion, sexual orientation etc. within the criminal justice process. The only data available currently to the Department on defendants are age and gender.

6.2 The Department has analysed the available Section 75 data on defendants dealt with before the Crown Court during 2012. The following tables show the age bands and gender of the 2,215 defendants in the sample.

### Age Bands

	Frequency	Percent
<b>Under 18</b>	41	1.9
<b>18-19</b>	173	7.8
<b>20-24</b>	524	23.7
<b>25-29</b>	416	18.8
<b>30-34</b>	287	13.0
<b>35-39</b>	209	9.4
<b>40-49</b>	348	15.7

<b>50-59</b>	132	6.0
<b>60-69</b>	49	2.2
<b>70-79</b>	14	0.6
<b>80+</b>	4	0.2
<b>Total</b>	2,197	99.2
<b>Unknown</b>	18	0.8
<b>Total</b>	2,215	100.0

## Gender

	<b>Frequency</b>	<b>Percent</b>
<b>Female</b>	220	9.9
<b>Male</b>	1985	89.6
<b>Unknown</b>	10	0.5
<b>Total</b>	2215	100

6.3 The Department would deduce from analysing the available information, as set out in the tables above, that young to middle-aged males who are defendants in the Crown Court may be affected more than any other Section 75 group. However, the impact will only be on defendants - not on young males as a group.

6.4 As previously mentioned, no data were available on the other Section 75 categories. However, there is nothing to suggest that any other Section 75 category is over represented in the number of defendants, who would be affected more by the proposal.

## **7.0 The Legal Profession**

7.1 The Bar of Northern Ireland is an association of independent barristers based in the Bar Library in Belfast. As of the 1 September 2009 there were some 700 members in private practice. The Bar is a body of specialist advocates experienced in litigation to which the public have access through solicitors and in limited circumstances by direct professional access. As the

Bar is not a public body there is no requirement on it to maintain Section 75 data and such information is not collected or held by the Bar.

7.2 The Law Society of Northern Ireland is the regulatory and representative body for solicitors in Northern Ireland. Recent information from the Law Society confirms that there over 2200 solicitors working in 550 firms based in 74 geographical locations in Northern Ireland. As the Law Society is not a public body there is no requirement on it to maintain Section 75 data and such information is not collected or held by the Law Society.

7.3 In 2011, the Northern Ireland Courts and Tribunals Service conducted a customer service exit survey at all court locations throughout Northern Ireland. The tables below show the Section 75 data collected from the 373 members of the legal profession who participated in the exit survey.

#### Gender

	Frequency	Percent
<b>Male</b>	188	50.4
<b>Female</b>	181	48.5
<b>Don't know/refusal/missing</b>	4	1.1
<b>Total</b>	373	100.0

#### Age Bands

	Frequency	Percent
<b>17 - 25 years</b>	48	12.9
<b>26 - 35 years</b>	139	37.3
<b>36 - 45 years</b>	74	19.8
<b>46 - 55 years</b>	71	19.0
<b>56 - 65 years</b>	25	6.7
<b>over 65 years</b>	4	1.1
<b>Refusal/missing</b>	12	3.2
<b>Total</b>	373	100.0

### Disability

	Frequency	Percent
Yes	12	3.2
No	354	94.9
Don't know/refusal/missing	7	1.9
Total	373	100.0

### Marital Status

	Frequency	Percent
Single, that is never married	155	41.6
Married and living with husband/wife	198	53.1
Married and separated from husband/wife	2	.5
Divorced	7	1.9
Widowed	1	.3
Formerly a civil partner, the civil partnership now legally dissolved	1	.3
Don't know/refusal/missing	9	2.4
Total	373	100.0

### Children as Dependents

	Frequency	Percent
Yes	139	37.3
No	223	59.8
Don't know/refusal/missing	11	2.9
Total	373	100.0

### Other relatives as dependents

	Frequency	Percent
Yes	15	4.0
No	351	94.1
Don't know/refusal/missing	7	1.9
Total	373	100.0

## Ethnic Groups

	Frequency	Percent
White	366	98.1
Chinese	1	.3
Other	1	.3
Don't know/refusal/missing	5	1.3
<b>Total</b>	<b>373</b>	<b>100.0</b>

## Religion

	Frequency	Percent
Catholic	208	55.8
Presbyterian	48	12.9
Church of Ireland	31	8.3
Methodist	6	1.6
Baptist	3	.8
Free Presbyterian	2	.5
Protestant - not specified	14	3.8
Other Christian	3	.8
Muslim	1	.3
No religion	43	11.5
Don't know/refusal/missing	14	3.8
<b>Total</b>	<b>373</b>	<b>100.0</b>

7.4 The Department would deduce from analysing the available information, as set out in the tables above, that lawyers attending courthouses in Northern Ireland are evenly split in terms of gender and marital status. Just over 75% are in the 26 to 55 age range and just over 40% have no dependants. Practically all come from a non-ethnic white group. In terms of religious belief 56% were Roman Catholic, 28% were protestant, and 12% were “no religion”.

7.5 In these circumstances, the policy is likely to have a greater impact on young to middle-aged adult, white Roman Catholics. The proposals do not target these groups and it's the Department's view that the greater impact

arises from the fact there are more people from these groups within the survey.

## **8.0 How to Respond**

8.1 The Department welcomes any information you have that suggests that any Section 75 group may be affected disproportionately by this proposal. Your comments are welcome on the equality implications of the draft proposals, particularly with regard to the following questions.

- Is there any evidence of higher or lower participation or uptake by different groups in relation to the scheme within any of the nine categories?
- Is there evidence or indication that different groups have different needs, experiences, issues and priorities in relation to the scheme?
- Is there an opportunity better to promote equality of opportunity or better relations by altering the policy or working with others in Government or the larger community?

8.2 When responding to this document, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear whom the organisation represents and, where appropriate, how the views of the members were assembled.

8.3 Please submit your response to this consultation by post, fax or email to:

Consultation Coordinator  
Public Legal Services Division  
Access to Justice Directorate

Department of Justice  
Massey House  
Stormont Estate  
Belfast  
BT4 3SX  
Email: [publiclegalservicesdivision@dojni.x.gsi.gov.uk](mailto:publiclegalservicesdivision@dojni.x.gsi.gov.uk)  
Tel: 028 9016 9516  
Text phone: 028 9052 7668  
Fax: 028 9041 2357

Closing date

8.4 Responses must be received by 16.00 on Friday 25 October 2013.

Miscellaneous

8.5 Additional copies of this document may be made without seeking permission from the Department. Printed copies may be obtained by post by contacting the Consultation Coordinator at the address above. An electronic version will be available for viewing on the Department's web-site at [www.dojni.gov.uk](http://www.dojni.gov.uk).