

**Second statutory review of the 2009 Magistrates’ and County Court Appeal Rules**

**Consultation on findings of the Review**

**20 November 2017**

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1. **INTRODUCTION**
   1. The Magistrates’ Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009 (“the 2009 Rules”)**[[1]](#footnote-1)** prescribe the remuneration for solicitors and counsel representing defendants in publicly funded criminal cases in the magistrates’ courts and on appeal to the County Court.

*Background*

* 1. The 2009 Rules came into operation in September 2009, and introduced a new system of standard fees for publically funded defence representation in criminal proceedings in the magistrates’ court and in criminal appeals from the magistrates' court to the County Court. The 2009 Rules replaced the previous system of time-based and composite fees provided by the Legal Aid in Criminal Proceedings (Costs) Rules (Northern Ireland) 1992 (“the 1992 Rules”). The primary objective of the standard fee scheme within the 2009 Rules was to bring greater control and predictability to spending on these types of cases.
  2. The standard fees payable in a magistrates’ court case under the 2009 Rules are determined by reference to two elements:
     + the classification of the offence (Summary; Hybrid/Triable summarily; or Indictable only); and
     + the manner in which the cases is disposed of (guilty plea; contest; withdrawn; or committal).

In certain circumstances, further additional fees are available for prescribed applications and representation at particular hearings. In prescribed circumstances, solicitors and counsel can also avail of payments in respect of travelling expenses.

* 1. For publically funded County Court appeal cases, the standard fees are based on the nature of the disposal of the appeal, with specific fees available for appeal against sentence, appeal against conviction, and withdrawn appeals. An additional fee is also payable for legal representatives’ attendance at County Court appeals which exceed one day.
  2. Rule 16 of the 2009 Rules requires the Department of Justice (DoJ) to keep the general operation of the rules under review. The first statutory review of the 2009 Rules began in July 2012 and culminated in the introduction of the Magistrates’ Courts and County Court Appeals (Criminal Legal Aid) (Costs) (Amendment) Rules (Northern Ireland) 2014 (“the 2014 Rules”)**[[2]](#footnote-2)**. The 2014 Rules revoked provisions in the 2009 Rules relating to Guilty Plea 2 fees and Very High Cost Cases, whilst also introducing a number of additional fees identified during the course of the statutory review.
  3. Since the first statutory review, the 2009 Rules have been subject to further amendment in order to make provision for remuneration in exceptional cases. These amendments were introduced through the Magistrates’ Courts and County Court Appeals (Criminal Legal Aid) (Costs) (Amendment) Rules (Northern Ireland) 2016 (“the 2016 Rules”)**[[3]](#footnote-3)**, and came into operation in December 2016.The 2016 Rules prescribe hourly rates of payment where an application for a Certificate of Exceptionality is granted in an individual case in order to undertake additional preparation work.

*Second Statutory Review*

* 1. In accordance with Rule 16, the objectives for the second review of the 2009 Rules are to consider:
  + the levels of the prescribed fees and the rates of payment under the 2009 Rules (as amended); and
  + whether or not these fees and rates of payment within the 2009 Rules are consistent with the requirements of Article 37 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (“the 1981 Order” – see below).
  1. In addition, the DoJ has identified two further non-statutory criteria for inclusion, which are to:
  + identify any potential omissions in the 2009 Rules; and
  + determine whether the operation of the 2009 Rules can be enhanced to further improve control and forecasting of spending.
  1. When reviewing the fees and rates of payment within the 2009 Rules the DoJ is required to ensure that they are consistent with the criteria set out in Article 37 of the 1981 Order as follows:
  + 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.
  1. This document sets out the findings of the second statutory review and identifies potential areas which may require amendment.
  2. Alongside this statutory review, the DoJ has also reviewed the remuneration arrangements for legal advice and representation of persons detained or appearing voluntarily at police interviews under the Police and Criminal Evidence (Northern Ireland) Order 1989. Proposals in respect of this remuneration scheme will be consulted on separately once they are finalised.

1. **PURPOSE OF THE CONSULTATION**
   1. This consultation is being progressed to fulfil the DoJ’s statutory obligations as required by Rule 16 of the 2009 Rules.
   2. Rule 16(2) requires the DoJ to conduct a formal review of the prescribed fees and level of payment at least once every “review period”, which is defined as “the period of three years beginning with 26 June 2014 and each subsequent period of three years”.
   3. As per rule 16(3), the DoJ must publish the result of the review as soon as is reasonably practicable, in such form as it considers appropriate, and together with any proposals it may have with respect to the matters reviewed.
   4. In line with rule 16(4), the DoJ must also have regard to:
   * Any representations made by the Lord Chief Justice, the Attorney General, the Law Society of Northern Ireland, the General Council of the Bar of Northern Ireland, and the Director of Public Prosecutions for Northern Ireland; and
   * Any other representations which it considers to be relevant.
   1. Following consideration of responses to this consultation exercise, any changes required to existing provision will be advanced through the legislative process.
2. **RESPONDING TO THIS CONSULTATION** 
   1. The DoJ invites views on any issues raised by this consultation document. Responses are welcome from organisations and individuals. If responding on behalf of an organisation, please make it clear who the organisation represents and, where appropriate, how the views of the members were assembled.
   2. Please submit your response to this consultation to:

Consultation Co-ordinator

Public Legal Services Division

Department of Justice

Massey House

Stormont Estate

Belfast

BT4 3SX

Email: plsdresponses@justice-ni.x.gsi.gov.uk

Tel: 028 9016 9559

Text phone: 028 9052 7668

* 1. Responses must be received by **16.00 on Monday 15 January 2018.**
  2. A copy of this consultation will be placed on the DoJ’s website at [www.justice-ni.gov.uk](http://www.justice-ni.gov.uk).
  3. You may make additional copies of this report without seeking permission - we would invite you to access the document through our website and print or make copies yourself. If you do not have access to the internet or, 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. Please contact the Consultation Co-ordinator with your specific request.

1. **SUMMARY OF FINDINGS AND PROPOSALS**
   1. The following findings and proposals are based on the informal engagement by the review team with both internal and external stakeholders. The DoJ welcomes feedback on these findings and proposals, as well as any other comments that stakeholders may have in respect of the 2009 Rules.

***Time and Skill***

* 1. The 2009 Rules provide for different fees depending on the seriousness of the offence and the manner of disposal, reflecting the varying levels of complexity of cases and accordingly the level of skill required, and work required, respectively.
  2. The remuneration system operates on the “swings and roundabouts” principle involving a matrix of standard basic fees which vary according to the mode of the disposal of the case (guilty plea, contest or committal) and the nature of the offence charged, together with a range of fixed payments for specific tasks. This approach means that a range of case-types are grouped together and a standard basic fee is applied to remunerate legal representatives for each case that falls into the category.
  3. This approach accepts that some of the cases falling into each category will be relatively straightforward and the standard fee will provide relatively generous remuneration. Conversely, a limited number of other cases may be more complex and will therefore not be as generously remunerated.
  4. In addition, amendments introduced by the 2016 rules make provision for the remuneration of cases, or specific circumstances within cases, which are exceptional and for which the standard fees do not provide appropriate remuneration, even on the swings and roundabouts basis. The introduction of these provisions allows for greater flexibility to provide adequate remuneration in the most complex cases, reflective of the additional level of skill and work required. Provision is also made for solicitors and counsel to appeal to the Taxing Master against decisions made in particular cases.
  5. During pre-consultation meetings with the DoJ, stakeholders have suggested that the fee payable to Counsel for **appeals against sentence to the County Court** under the 2009 Rules does not adequately reflect the amount of time and skill required to complete this work, particularly those involving a client with a long criminal record.
  6. In particular, stakeholders have pointed to the difference in the respective fees prescribed for solicitors and counsel in such cases, with £115 available to Counsel and £265 available to solicitors. Representations have been made that this is an area in which the standard fees do not represent a fair reflection of the respective roles of the instructed solicitor and counsel or of the time and skill required of counsel to provide legal representation.
  7. Having considered the representations and arguments advanced by stakeholders and having considered the nature of the cases, **the DoJ is minded to increase the fee available to Counsel for these proceedings to £230, and would welcome views on this proposal.**
  8. Stakeholders have also suggested that the fees payable for cases at the magistrates’ court concerning **children charged with indictable only offences** do not adequately reflect the added complexity of representing these clients in particular and younger clients generally, given the added vulnerability of the individuals involved. Furthermore, it has been suggested that the level of fees in the 2009 Rules fails to recognise the additional work that these more serious cases entail, and that the court has the same sentencing powers as the Crown Court. However, a review of the existing arrangements demonstrated that when the fees within the 2009 Rules were set in respect of youth indictable cases, these issues were fully taken into account. This included a recognition that the Youth Court is intended to be a very different experience compared with the Crown Court. Therefore, while the sentencing powers may be the same, the arrangements are very different. As a result a higher rate of remuneration was set for such cases to reflect the additional work required beyond other case types at this court tier. Consequently, in the absence of compelling evidence to the contrary, the DoJ considers that further enhancement to this class of fees is not appropriate at this time.
  9. **The DoJ would welcome views from stakeholders regarding the existing standard fees payable for cases at the magistrates’ court concerning children charged with indictable only offences.**
  10. Stakeholders have also highlighted the extension, in April 2017, of the **Registered Intermediaries Scheme[[4]](#footnote-4)** to all cases being heard in the magistrates’ courts (adult and youth cases). It has been suggested that the standard fees in the 2009 Rules do not take sufficient account of any additional work which may be created due to the involvement of registered intermediaries, and/or any additional time required to prepare for and conduct the case.
  11. In particular, there is currently no provision in the 2009 Rules for:
      + the hearing of an application for examination of a witness through intermediary under Article 17, or examination of the accused through intermediary under Article 21BA, of the Criminal Evidence (Northern Ireland) Order 1999; and
      + a specific fee for the Ground Rules Hearing (GRH) in which the trial judge, trial advocates and the Registered Intermediary discuss the RI’s report and its recommendations and agree the rules on questioning and other matters which concern the vulnerable person’s evidence.
  12. Early experience of the magistrates' court scheme indicates that in a small number of particularly complex cases the circumstances and additional preparation required due the involvement of a registered intermediary may meet the exceptionality criteria and could result in a grant of a small number of extra hours. Also, that GRHs can be expected to last from less than 15 minutes to, potentially, up to an hour for the most complex cases.
  13. **The DoJ agrees in principle that remuneration arrangements are necessary for the extension of the RI scheme to the magistrates’ court, and work is ongoing with the policy lead to establish an appropriate fee structure. At this stage, the DoJ:** 
      + **proposes that the hearing of applications for witnesses or the accused to be examined through intermediary be remunerated by way of the fixed application fee of £75 under paragraph 14 of schedule 1 to the 2009 Rules; and**
      + **would welcome views from stakeholders regarding the additional work required in magistrates’ court cases involving registered intermediaries, in particular in respect of Ground Rules Hearings.**
  14. Finally in respect of time and skill, some stakeholders have also suggested that **Newton Hearings** in the magistrates’ courtsshould be remunerated by way of a contest fee, similar to the remuneration arrangements at the Crown Court, and that this fee would more accurately reflect the time and skill involved in such a hearing. Currently under the 2009 Rules, Newton Hearings at the magistrates’ court are remunerated through a 50% uplift on the relevant guilty fee. **The DoJ would therefore welcome views from stakeholders regarding the time and skill involved in providing representation for Newton Hearings at the magistrates’ court.**

***Number and general competence***

* 1. The Law Society of Northern Ireland is a professional body established to regulate the solicitors’ profession in Northern Ireland and to represent solicitors’ interests. It represents over 2,600 solicitors working in some 530 firms, based in over 74 geographical locations throughout Northern Ireland and practitioners working in the public sector and in business**[[5]](#footnote-5)**.
  2. The Bar of Northern Ireland currently has over 600 members**[[6]](#footnote-6)**. Not all of the members engage in criminal work in the magistrates’ court (which is primarily carried out by solicitors) and on appeal in the County Court. However, Junior Counsel in particular is regularly engaged at both court tiers.
  3. Payment datafrom 2015/16 suggests that in the magistrates’ court, solicitors account for 74.8% of legal aid expenditure, and junior counsel 24.9%, with senior counsel acting in relatively small number of cases. In respect of County Court appeals, junior counsel accounts for 34.9% of expenditure and solicitors 65.1%, with no expenditure on senior counsel for that court tier during the 2015/16 financial year.
  4. The DoJ considers that there are sufficient numbers of competent solicitors and counsel undertaking defence representation in magistrates’ court cases and appeal to the County Court in Northern Ireland. Engagement with the stakeholders to date has not raised any issues in this regard.

***Cost to public funds***

* 1. From 2011/12 to 2015/16 (inclusive) criminal legal aid accounted for 48.4% of legal aid expenditure in Northern Ireland**[[7]](#footnote-7)**. In the 2015/16 financial year, criminal legal aid expenditure was approximately £40.9m. Of the total expenditure on criminal legal aid, payments in the magistrates’ court and County Court appeals accounted for £18.6m and £869K respectively, or 45.5% and 2.1%.
  2. Between 2011/12 and 2015/16 magistrates’ court expenditure fell by 12.8%. That reduction was accompanied by an even greater reduction in the number of cases disposed of at this court tier**[[8]](#footnote-8)** when, between 2011 and 2015, the number of overall defendants (legally aided and non-legally aided) disposed of at the magistrates’ court (adult and youth) fell by approximately 22.1%.
  3. This decrease in magistrates’ court business was, however, accompanied by a smaller reduction in the number of legal aid payments at that court tier, with the number of full reports dropping from 37,222 in 2011/12 to 33,843 in 2015/16 (a fall of 9.1%). On the basis of this information, the reduction in legally aided cases at the magistrates’ court during this period of time appears to be much less than the reduction in magistrates’ court business as a whole.
  4. During this same period, the average cost of magistrates’ courts payments has reduced by 4.2% per case from £590 in 2011/12 to £565 per case in 2015/16. This reduction can be attributed to the natural decrease in the number of payments made under the 1992 Rules as older cases filter out of the system, and the increasing reliance upon the standard fee regime introduced by the 2009 Rules.
  5. The changes introduced through the 2014 Rules were accompanied by a reduction in the overall total, and average cost of, magistrates’ court payments. Perhaps of most significance in this regard was the removal of provisions relating to very high cost cases (VHCCs). Expenditure on VHCCs – which allowed for an escape from the standard fee regime for exceptional cases if particular criteria were met – peaked in the magistrates’ courts in 2014/15 at £2.7m, leading to a jump in the average cost of a payment, but fell to £561K in the subsequent financial year following the removal of the relevant provisions through the 2014 Rules.
  6. Furthermore, the average payment for non-VHCC cases in the magistrates’ court has reduced by 6.0% from £583 in 2011/12 to £548 in 2015/16, demonstrating that the overall impact of the introduction of standard fees has been to reduce costs in the majority of cases. It is important to caveat this conclusion by noting that data from 2016/17 and beyond will be informative as to whether or not this represents a longer term trend at the magistrates’ court.
  7. Between 2011/12 and 2015/16, County Court appeals business and expenditure has remained at a comparatively constant level. In 2011/12, there were 2,470 full payment reports for County Court appeals at an average cost of £306, and the equivalent figures in 2015/16 were 2,798 and £317. Whilst the number of full reports at this court tier in 2015/16 did represent a peak during this period, the average cost remained broadly similar to the previous financial year (£320 in 2014/15).
  8. On the basis of the information above, the DoJ is satisfied that the introduction of the 2009 Rules, and in particular the standard fee structure that the Rules provide, has introduced greater control of and predictability to the cost of criminal legal aid at the magistrates’ court and the County Court on appeal. The amendments made by both the 2014 and 2016 rules have built on this approach, respectively addressing omissions within the Rules and provisions for exceptionality. Therefore, the DoJ is of the view that the cost to public funds under the 2009 Rules is appropriate at this time.

***Value for money***

* 1. When considering the value for money of the 2009 Rules, the DoJ has taken account of the economy, efficiency, effectiveness and equity of the system in question. These criteria – used by the National Audit Office**[[9]](#footnote-9)** to assess the value for money of government spending – can best be summarised as follows:
     + Economy – minimising the cost of resources used or required (“spending less”);
     + Efficiency – the relationship between the output from goods or services and the resources to produce them (“spending well”);
     + Effectiveness – relationship between the intended and actual results of public spending (“spending wisely”); and
     + Equity – the extent to which services are available to and reach all people that they are intended to (“spending fairly”).
  2. The 2009 Rules were introduced not only to improve forecasting and control of legal spending in respect of the relevant proceedings, but also to provide a more economic and efficient system for processing payments. This was achieved through a move towards standard fees, instead of the time-based and composite fees system previously in operation under the 1992 Rules. Whilst the system underpinned by the 1992 Rules would prove to be administratively burdensome, the standard fee approach within the 2009 Rules was structured in order to allow for a more streamlined and efficient approach.
  3. As previously mentioned, the scheme within the 2009 Rules includes a matrix of standard basic fees which vary according to the mode of the disposal of the case (guilty plea, contest or committal) and the nature of the offence charged, together with a range of fixed payments for specific tasks. This standard fee structure implements the “swings and roundabouts” principle, whereby relatively straightforward cases may result in a relatively generous fee, whereas other more complex cases may not be as well remunerated. The DoJ considers this approach to represent an effective and equitable form of remuneration for the work undertaken at the magistrates’ court and the County Court on appeal.
  4. In respect of the value for money of the 2009 Rules, an issue has arisen generally regarding criminal legal aid regarding the attendance at court of **paralegals and ‘other fee earners’** in place of a qualified solicitor. Whilst anecdotally it would appear to be primarily an issue at the Crown Court, it is a relevant matter to be considered when reviewing remuneration arrangements at all criminal court tiers. We do not currently have any evidence of non-qualified staff attending the magistrates’ court and there is no provision in the Rules to remunerate any work done at court by non-qualified staff. If it is appropriate for work to be undertaken by such staff, then more appropriate remuneration arrangements would be required.
  5. **The DoJ would welcome views from stakeholders regarding this issue, and in particular any available evidence regarding the involvement of paralegals or ‘other fee earners’ at the magistrates’ court or County Court on appeal.**

***Omissions***

* 1. The DoJ, following engagement with stakeholders, has identified a number of potential omissions from the 2009 Rules on which it would welcome feedback. Furthermore, the DoJ would welcome information regarding any other potential omissions from the Rules which may need to be addressed.
  2. Paragraph 14 of schedule 1 to the magistrates’ court rules provides for a fixed fee of £75 in respect of certain **applications**. These include applications for bad character, specials measures, and witness anonymity. **The DoJ remains in favour of adding to the list of applications at Schedule 1 paragraph 14 should the need arise, rather than introducing a general application fee within the Rules, and would therefore welcome feedback from stakeholders regarding any additional applications which should be included.**
  3. In respect of the applications covered by the fixed fee at paragraph 14, stakeholders have suggested that these fees do not currently apply to the County Court on appeal, and are only available for magistrates’ court proceedings. Similarly, stakeholders have also suggested that the fees for the hearing of certain bail applications at the magistrates’ courts, provided for by paragraph 6, are not available at the County Court on appeal.
  4. **The DoJ can confirm that these fixed fees apply to applications made at the magistrates’ court and the County Court on appeal. The Legal Services Agency (LSA) also intends to issue a circular to clarify any misunderstanding in this regard.**
  5. During the course of the Review, the DoJ has received feedback regarding remuneration arrangements for hearings relating to certain **prohibited behaviour orders** made in criminal cases at the magistrates’ court, including:
     + Restraining Orders;
     + Anti-Social Behaviour Orders (ASBOs);
     + Football Banning Orders (FBOs);
     + Female Genital Mutilation Protection Orders (FGMPOs);
     + Violent Offences Prevention Orders (VOPOs);
     + Sexual Offences Prevention Orders (SOPOs); and
     + Slavery and Trafficking Prevention Orders (STPOs).
  6. These orders can be made on conviction for certain offences in the magistrates’ court or, in some circumstances, even on acquittal.
  7. VOPOs and SOPOs, introduced under the Justice Act (NI) 2015**[[10]](#footnote-10)** and the Sexual Offences Act 2003**[[11]](#footnote-11)** respectively, can be granted in three circumstances; in the Crown Court on conviction; in the Magistrates’ Court by complaint; and in the Magistrates’ Court on conviction. Secondary legislation has recently been commenced to introduce a fee for the VOPO granted in the first two circumstances, but not the last one, and this mirrors the existing fee structure in place for the SOPO.
  8. For the Crown Court on conviction, the Legal Aid for Crown Court Proceedings (Costs) (Amendment No. 3) Rules (Northern Ireland) 2016**[[12]](#footnote-12)** introduced a fee for hearings of an application for a VOPO on conviction under schedule 1, paragraph 15C of the Crown Court Rules. These fees can range from £113 to £375 depending on the length of the hearing. For the magistrates’ court on complaint, the Civil Legal Services (Remuneration) (Amendment) (No. 2) Order (Northern Ireland) 2016**[[13]](#footnote-13)** brought VOPOs within the scope of schedule 3, table 10 of the 2015 Order**[[14]](#footnote-14)**. The fee available for both solicitors and junior counsel for a VOPO hearing on complaint in the magistrates’ courts is £180.
  9. SOPOs also attract a £180 fee on complaint in the magistrates’ court under schedule 3, table 10 of the 2015 Order, and fees ranging from £113 to £375 in the Crown Court on conviction under schedule 1, paragraph 15C of the Crown Court Rules. Similar provision is also made at the Crown Court for the hearing of an application in relation to other public protection measures including, for example, STPOs made under the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.
  10. There are no existing remuneration arrangements for Restraining Orders, ASBOs, FBOs, or FGMPOs applied for in relation to the disposal of a criminal charge by conviction or acquittal at the magistrates’ court.
  11. The DoJ intends to make provision for a standard fee for hearings related to these ancillary orders in criminal proceedings at the magistrates’ court, in particular for those orders for which remuneration arrangements have already been introduced at the Crown Court, such as SOPOs, VOPOs and STPOs. This standard fee would be set at £75, akin to the set fee currently payable for the hearing of certain applications under paragraph 14 of schedule 1 to the 2009 Rules.
  12. **The DoJ would therefore welcome views from stakeholders regarding this proposal to remunerate hearings related to the prohibited behaviour orders listed at paragraph 4.37.**
  13. The DoJ has recently introduced arrangements by way of direction for the LSA to make **interim payments for disbursements** in respect of experts. **In order to address this issue in the long-term, the DoJ intends, when appropriate, to put these arrangements on a statutory footing through amendments to the 2009 Rules.**
  14. Feedback from stakeholders has also suggested that **pre-hearing reviews** are becoming increasingly commonplace prior to the commencement of proceedings at the magistrates’ courts. These hearings are an administrative step related to case management, which can be requested by the court or either party, in order to determine if preparatory work is in hand or discuss any issues which may have arisen. Although the hearings do involve both parties appearing at the magistrates’ court, they can be relatively short.
  15. **The DoJ would welcome feedback regarding the prevalence of, and additional work required to prepare for, pre-hearing reviews at the magistrates’ court, in order to determine whether – and if so how – it may be appropriate to amend the 2009 Rules to take account of this practice.**

***Control and forecasting of spending***

* 1. Access to Justice 2 suggested that “legal aid payments should continue to move towards standard fees per case, instead of hourly rates” because “[s]tandard fees give better control and reward supplier efficiency”**[[15]](#footnote-15)**. For these reasons, as well as a desire to improve spending forecasts, the introduction of standard fees where appropriate has played a major role in the DoJ’s recent legal aid reforms.
  2. In this regard, the review has identified payments for **extradition cases** as an area in which greater control and forecasting of spending could be achieved within criminal legal aid. Extradition cases – including those relating to a European Arrest Warrants – are predominately remunerated based on hourly rates as a consequence of a direction issued by the Lord Chancellor under rule 4(1) of the 1992 Rules (although the direction does also allow representatives to opt for payment by way of standard fees). This remuneration scheme is administratively burdensome for the LSA when it comes to the payment of bills, and also makes it difficult to forecast expenditure in this area.
  3. **Rather than introduce new remuneration amendments for extradition cases through amendments to the 2009 Rules, the DoJ is proposing to review the remuneration arrangements for all extradition cases, with a view to introducing standard fees. This work will be taken forward separately.**

*Miscellaneous*

* 1. An amendment within the 2014 Rules extended **the review period** for the 2009 Rules from two to three years, in order to allow more time for any amendments to be implemented, and for more data to be collected upon which the findings of any subsequent review would be based. **The DoJ would welcome views from stakeholders regarding the appropriateness of the review period for the 2009 Rules.**

**Summary**

* 1. In summary, the key issues identified for consultation by the DoJ during the statutory review of the 2009 Rules are as follows:
     + the fees payable to Counsel for appeals against sentence to the County Court;
     + the fees payable at the magistrates’ court for children charged with indictable only offences;
     + the impact of the registered intermediaries scheme at the magistrates’ court, and the need for adequate remuneration arrangements to account for this impact;
     + the time and skill involved in providing representation for assisted persons at Newton Hearings at the magistrates’ court;
     + the value for money of remunerating work carried out by paralegals and “other fee earners” at the same rate as qualified solicitors;
     + the provision for any new application fees at the magistrates’ court or the County Court on appeal;
     + the remuneration arrangements for hearings relating to certain prohibited behaviour orders during criminal proceedings at the magistrates’ court;
     + provisions for interim payments within the Rules;
     + the provision for pre-hearing reviews; and
     + the appropriateness of the “review period” for the 2009 Rules.

1. **IMPACT ASSESSMENTS**
   1. The DoJ has completed screening exercises for the equality, rural needs, regulatory, human rights, and data protection impact of the 2009 Rules policy, in accordance with departmental procedures. In respect of each impact, the policy has been screened out at this stage of the development process. These decisions will be reviewed following the completion of the consultation exercise, taking account of any additional evidence received.
2. **NEXT STEPS** 
   1. Following the consultation exercise, the DoJ will finalise its proposals and, if necessary, draft amending legislation in order to implement them. This amending legislation will be subject to statutory consultation and the relevant legislative process before it is commenced.

1. <http://www.legislation.gov.uk/nisr/2009/313/contents/made> [↑](#footnote-ref-1)
2. <http://www.legislation.gov.uk/nisr/2014/178/contents/made> [↑](#footnote-ref-2)
3. <http://www.legislation.gov.uk/nisr/2016/398/contents/made> [↑](#footnote-ref-3)
4. In the context of the review, registered intermediaries are specialists who facilitate communication with vulnerable victims, witnesses or defendants who have significant communication difficulties when they are giving evidence at trial. [↑](#footnote-ref-4)
5. Figure taken from the Law Society’s written response to PLSD consultation on the introduction of a Statutory Registration Scheme for all providers of publicly funded legal services In Northern Ireland. [↑](#footnote-ref-5)
6. Figure taken from <http://www.barofni.com/page/the-bar-of-northern-ireland> [↑](#footnote-ref-6)
7. Based on payment data collected by the Legal Services Agency [↑](#footnote-ref-7)
8. NICTS Judicial Statistics Annual Reports 2011-2015 [↑](#footnote-ref-8)
9. <https://www.nao.org.uk/successful-commissioning/general-principles/value-for-money/assessing-value-for-money/> [↑](#footnote-ref-9)
10. <http://www.legislation.gov.uk/nia/2015/9/contents> [↑](#footnote-ref-10)
11. <http://www.legislation.gov.uk/ukpga/2003/42/contents> [↑](#footnote-ref-11)
12. <http://www.legislation.gov.uk/nisr/2016/397/pdfs/nisr_20160397_en.pdf> [↑](#footnote-ref-12)
13. <http://www.legislation.gov.uk/nisr/2016/396/pdfs/nisr_20160396_en.pdf> [↑](#footnote-ref-13)
14. <http://www.legislation.gov.uk/nisr/2015/201/contents/made> [↑](#footnote-ref-14)
15. Paragraph 11, page 11 of “A Strategy for Access to Justice: The Report of Access to Justice 2”, published in September 2015. [↑](#footnote-ref-15)