



Department of
Justice

An Roinn Dlí agus Cirt

Männystrie O tha Laa

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Post Consultation Report: Legal Aid - Taxation Reform and
Statutory Charge Registration

May 2024

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1. Introduction

- 1.1 The Department of Justice (DoJ) issued a 12-week consultation that ran from 16 March 2022 to 10 June 2022 regarding proposals to introduce an amendment to the Judicature (Northern Ireland) Act 1978 to facilitate envisaged future taxation reform, and an amendment to the Land Registration Act (Northern Ireland) 1970 to enhance the process for registering statutory charges associated with legal aid.
- 1.2 The proposed amendment to the Judicature (Northern Ireland) Act 1978 follows a recommendation from the Public Accounts Committee for the Department to review how expenditure currently adjudicated by the Taxing Master can be brought under the purview of the Accounting Officer as taxation is not subject to audit or accountability through the normal government procedures. The key objective is to preclude the High Court and Court of Appeal from granting orders for taxation of legal aid costs where the Department has the necessary legislation and administration in place to determine payment for those services.
- 1.3 The proposed reforms to statutory charge registration will improve the transparency of the registration process and improve administrative efficiency.
- 1.4 The proposed amendments are scheduled for inclusion in the forthcoming Justice Bill that is due to be introduced to the Assembly in June 2024, subject to Ministerial and Executive approval.

Amendment of the Judicature (Northern Ireland) Act 1978

2. Consultees

- 2.1 This was a general consultation published on the Department's internet site. Identified stakeholders, including the Law Society of Northern Ireland and the Bar of Northern Ireland were notified of the launch of the consultation and invited to respond.

3. Responses

- 3.1 The Law Society of Northern Ireland submitted a late response to the consultation, which was accepted by the Department. In addition, one member of public responded to this component of the consultation.

4. Summary of Consultation Responses

Question 1: Do you have any comments on the proposals?

- 4.1 The Law Society commented that the Taxing Master has the responsibility of assessing fees in light of their experience gained over many years and that this process ensures that the level of remuneration is reasonable and appropriate in respect of the work undertaken. It considers this to be a suitable mechanism that should not be changed.
- 4.2 The Law Society queried the recommendation made by the Public Accounts Committee, stating it was unsure how much detail the Committee was provided regarding the current regime when making their recommendation.
- 4.3 The Law Society commented that the number of cases that the Taxing Master deals with has been very considerably reduced by the introduction of standard fees, particularly in criminal cases. It also commented that it is not clear to it how the proposed reform will result in improved accountability and predictability over legal aid expenditure.
- 4.4 Referring to the role of the Taxing Master, the Law Society responded that it is important to note that the Taxing Master is an independent judicial office holder, subject to standards and Court Rules. As a judge, they have a legal duty to protect the Legal Aid fund and are ultimately accountable to the Lady Chief Justice.
- 4.5 Finally, the Law Society commented that the fees paid had remained unchanged for many years.
- 4.6 The member of the public who replied was largely supportive of the proposals, but was critical of the timing, suggesting that the proposals should have been brought forward before now.

Question 2: Do you have any comments on the draft legislative amendment?

- 4.7 The member of the public raised some queries regarding the level of detail contained within the draft legislative amendment, but not with the legislative amendment itself. The Law Society made no comments on the draft legislative amendment.

Question 3: Do you have any comments on the impact screenings or assessments?

- 4.8 Neither the Law Society nor the member of the public who responded made any comments on the impact screenings or assessments.

5. Departmental Response

- 5.1 The Department welcomes all responses received to the consultation and wishes to thank the Law Society and member of the public for responding. The Department has given detailed consideration to each of the points raised.

Proposals

- 5.2 Reform of taxation of legal aid costs is a complex issue. Legal advice received by the Department identified that primary legislative changes were required to progress reform and the Department needed a legislative mechanism to do this. A forthcoming Justice Bill, scheduled for introduction in June 2024, has been identified as a suitable mechanism to make the necessary amendments to the Judicature (Northern Ireland) Act 1978 to facilitate future reforms.
- 5.3 The Department acknowledges the role played by the Taxing Master in assessing fees in light of their experience and that the Taxing Master is legally bound to protect the Legal Aid fund.
- 5.4 However, as an independent judicial office holder, the Taxing Master is not accountable to the Departmental Accounting Officer. Any payment which the Taxing Master adjudicates on is outside the scrutiny of the Assembly and, therefore, steps must be taken to address the recommendation of the Public Accounts Committee that the Department conducts a review of how

expenditure currently adjudicated by the Taxing Master can properly be brought under the purview of the Accounting Officer.

- 5.5 The Taxing Master has a wide discretion in assessing costs. Order 62 of the Rules of Court of Judicature (NI) 1980 sets out the matters the Taxing Master shall have regard to in exercising their discretion. However, there is often little predictability over these assessments from a Departmental perspective. The understanding of how decisions are reached can be opaque, with no requirement to publish guidelines. The separation between the Department and judiciary has also caused issues when attempting to assess the level of official error attributed to the legal aid fund.
- 5.6 Future taxation reforms will provide the Department with the opportunity to introduce a degree of predictability and establish a line of accountability to the Departmental Accounting Officer and allow scrutiny by the Assembly.
- 5.7 The Department agrees that the number of legally aided cases being taxed has fallen due to the introduction of standard fees in criminal proceedings. It remains the case, however, that almost twenty percent of legal aid expenditure is still determined by the Taxing Master. The introduction of further standard fees or set rates will reduce the extent of taxation.
- 5.8 The reform of taxation will ultimately preclude the High Court and Court of Appeal from making an order for taxation of legal aid costs where there is express provision in another statute that prescribes how that case is to be remunerated. Consequently, the proposed amendment will not take effect until alternative methods of determining remuneration are in place.
- 5.9 In summary, there is nothing within the consultation responses which leads the Department to vary the proposed amendment or the approach to future taxation reform.

Draft Legislative Amendment

- 5.10 The proposed amendment facilitates future stages of taxation reform.
- 5.11 Changes to the Civil Legal Services (Remuneration) Order (Northern Ireland) 2015 will be required to prescribe how cases, which are currently taxed, are to

be remunerated. A Project has been established within the Department to bring forward evidence-based proposals. The Project will engage with key stakeholders to provide evidence to assist the formulation of proposals. The usual consultation processes will be undertaken prior to implementing legislative reform prescribing the legal aid rates which will be payable.

6. Next Steps

- 6.1 Subject to Ministerial and Executive approval, the Department intends to progress amendments to the Judicature (Northern Ireland) Act 1978 via a Justice Bill scheduled for introduction in June 2024, to facilitate future stages of taxation reform. Before any new system of remuneration is introduced the usual, statutorily required consultation processes will be undertaken, and all relevant views and available evidence will be used to ensure that any new arrangements are fully compliant with all relevant statutory criteria.

Amendment of the Land Registration Act (Northern Ireland) 1970

7. Consultees

- 7.1 This was a general consultation published on the Department's internet site.

8. Responses

- 8.1 The Law Society of Northern Ireland submitted a late response to the consultation, which was accepted by the Department. This was the only response received.

9. Summary of Consultation Responses

Question 1: Do you have any comments on the proposals?

- 9.1 The Law Society commented that the existing process ensured repayment of monies due to the Agency and queried whether the proposals brought any additional transparency.
- 9.2 The Law Society also commented that the Department's proposals to use registration in the Statutory Charges Register would incur potentially

unintended consequences for conveyancing practice and, indeed for the powers and remedies of the Department / Agency in respect of the monies owed. Should the Bill be enacted and the provisions implemented, it was important this was widely communicated and publicised in advance, so all relevant stakeholders, including conveyancing solicitors, were given sufficient notice. It also advised the Department to consider the position of any legal owner(s) of a property, who were not subject to the Legal Aid Statutory Charge.

- 9.3 The Law Society's final comments related to joint owners. It highlighted the proposed statutory provision for the Department to register a statutory charge, which affected the property as opposed to being created by the legal owners, potentially meant the interest of any other joint legal owner(s) could be detrimentally affected by automatically severing a joint tenancy. This could have potentially significant implications for the joint owners. Furthermore, the Law Society commented that any other joint legal owner(s) could be unaware of the registration of the statutory charge and therefore of the potential change to their shared ownership of the property.

Question 2: Do you have any comments on the draft legislative amendment?

- 9.4 No comments were received in respect of the draft legislative amendment.

Question 3: Do you have any comments on the impact screenings or assessments?

- 9.5 No comments were received in respect of the impact screenings or assessments.

10. Departmental Response

- 10.1 The Department welcomed the Law Society's response and wishes to thank them for responding. The Department has given due consideration to all points raised.

Proposals

- 10.2 The Department is conscious of the potential for these reforms to affect the work of conveyancing solicitors. As suggested by the Law Society, the introduction of the proposals will be preceded by a communications process that will ensure that all affected parties are aware of the change.
- 10.3 The Department has noted the point made by the Law Society in respect of the potential impact of the proposals on joint owners of properties. It will seek to mitigate any such impact in the design of the operational arrangement to give effect to the new legislative provisions.

11. Next Steps

- 11.1 The proposed amendments are scheduled for inclusion in the forthcoming Justice Bill that is due to be introduced to the Assembly in 2024, subject to Ministerial and Executive approval.