

Human Rights Act Impact Assessment Proforma

This proforma will help you to articulate any human rights issues in the policy/proposal you are working on. It is necessary for you to have read the OFMDFM guidance on human rights entitled “Get in on the Act; a practical guide to the Human Rights Act for public authorities in Northern Ireland”¹ before completing this proforma.

If the policy/proposal is relevant to some rights but does not interfere with or limit them, your assessment must be signed off by a Senior Responsible Officer (Grade 7, equivalent or above). If you find that it does interfere with or limit one or more of the Convention rights, and your senior Responsible Officer agrees, you must seek legal advice, even if it is considered that the interference or limitation is justified.

This proforma is available at www.ofmdfmi.gov.uk/human-rights If you fill in the form electronically, there is no restriction as to the amount you can type in each box.

Your answers in the rest of this proforma will help you draft a clearer note to your legal advisor.

1. Policy title and aims

Please state the title and objective of the policy/proposal you are working on.

Title: Proposals to amend the 2009 Magistrates’ and County Court Appeal Rules following the second statutory review

Objective(s):

Rule 16 of The Magistrates’ Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009 (“the 2009 Rules”), requires the Department of Justice (DoJ) to keep the general operation of the 2009 Rules under review. This is the second statutory review of the Rules.

In accordance with Rule 16, the objectives for the review 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).

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

¹ <http://www.nicshumanrightsguide.com/uploads/files/practical-guide-to-human-rights-act.pdf>

- determine whether the operation of the 2009 Rules can be enhanced to further improve control and forecasting of spending.

When reviewing the fees and rates of payment within the 2009 Rules the DoJ is required to ensure that they are consistent with the statutory criteria prescribed by Article 37 of the 1981 Order, as follow:

- 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.

The Review has identified the following areas for consideration and/or amendment within the 2009 Rules:

- 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 provision for adequate remuneration arrangements to account for this impact;
- the value for money issues associated with remunerating paralegals and "other fee earners" at the same rate as qualified solicitors;
- making provision for any new application fees at the magistrates' court or the County Court on appeal;
- introducing remuneration arrangements for the hearing of applications for certain prohibited behaviour orders at the magistrates' court;
- the introduction of provisions for interim payments within the Rules;
- making provision for pre-hearing reviews; and
- the appropriateness of the statutory "review period" for the 2009 Rules.

These potential amendments to the 2009 Rules would apply universally to all assisted individuals in line with the existing operation of the scheme, and with the aim of ensuring access to legal advice from, and representation by, competent providers.

2. Rights which the policy/proposal engage

Go through each of the rights detailed in the table below. For each one consider whether the policy/proposal engages the right, ie. how the policy/proposal you are working on could involve the right. Explain how the right is engaged.

Please note that the rights have been abbreviated so you should see the relevant article in the Guide referred to above for the full title and explanation of the right.

Right	Yes/No	Explanation
Article 2 Right to life	No	
Article 3 Prohibition of torture inhuman and degrading treatment.	No	
Article 4 Prohibition of slavery and forced labour	No	
Article 5 Right to liberty	Yes	<p>Article 5 focuses on protecting individuals' freedom from unreasonable detention.</p> <p>Article 5(4) states that "everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."</p> <p>The 2009 Rules provide remuneration for legal representatives to allow assisted persons to challenge the lawfulness of their detention and therefore engage this Article.</p> <p>However, they will not interfere with or limit the rights conferred upon assisted persons by the Article. Instead the proposals seek to ensure that adequate remuneration arrangements for those providing legally-aided representation are in place at the magistrates' court.</p>
Article 6 Right to a fair trial	Yes	Article 6 (3) (c) requires that "a person charged with a criminal offence" has the right to defend himself or herself in person

		<p>or through legal assistance of his or her own choosing or, if he or she does not have sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.</p> <p>To receive free legal assistance, the person must fulfill two conditions: (1) he or she does not have sufficient means to pay for legal assistance, and (2) the interests of justice so require. It is for domestic authorities to define the financial threshold triggering the right to free legal assistance and to apply the means test.</p> <p>Article 6 also places a number of requirements on the state in order to ensure compliance. For example, the state must ensure real and effective access to a court for citizens. In addition, an accused person must have the right to effective participation in their criminal trial.</p> <p>Whilst these aspects of Article 6 are engaged by the proposals brought forward following the second statutory review of the 2009 Rules (listed at page 2, above), they will not interfere with or limit the rights conferred upon assisted persons by the Article. Instead the proposals seek to ensure that adequate remuneration arrangements for those providing legally-aided representation are in place at the magistrates' court.</p> <p><u>Registered Intermediaries (RIs)</u></p> <p>The proposals to consider the impact of the registered intermediaries scheme at the magistrates' court, and make provision for adequate remuneration arrangements to account for this, are highlighted as measures intended to provide greater protection for vulnerable persons accused of a criminal offence and contribute to the fair participation by all parties in proceedings.</p> <p>RIs are professionals with specialist skills in communication, coming from backgrounds such as speech and language therapy and social work, facilitate communication during</p>
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		<p>the police investigation and at trial between a person with significant communication deficits and others in the criminal justice process. The involvement of RIs is therefore a means by which vulnerable witnesses and defendants are able to effectively and meaningfully participate in a trial.</p> <p>The proposals arising from the review in respect of RIs therefore engage the rights to effective access to, and participation in, a trial conferred by Article 6. In common with all of the other proposals, they do not impact on the availability of the scheme itself, and are instead focused on remuneration of legal representatives involved in RI cases. Therefore, the proposals do not interfere with or limit the rights conferred by Article 6.</p>
Article 7 No punishment without law	No	
Article 8 Right to respect for private and family life	No	
Article 9 Freedom of thought, conscience and religion	No	
Article 10 Freedom of expression	No	
Article 11 Freedom of assembly and association	No	
Article 12 Right to marry and found a family	No	
Article 14 Prohibition of discrimination	No	
Protocol 1 Right to	No	

property		
Protocol 2 Right to education	No	
Protocol 3 Right to free elections	No	

If you have answered yes to any of these questions, you must complete the rest of the proforma. If you have answered no to **all** of the questions, you may proceed to Question 9.

3. Rights which the policy/proposal interferes with or limits

Will the policy/proposal interfere with or limit the rights you identified as being engaged? If so, explain how the right is interfered with or engaged.

You should note that interference could be a negative impact on a right or a failure to take positive action where this is required under the Article in question. For further guidance on which articles require positive action, please consult the Guide.

Article	Interfered with or limited? Yes/No	What is the interference/limitation?
Article 2: Right to life	No	
Article 3: Prohibition on torture, inhuman and degrading treatment	No	
Article 5: Right to liberty	No	
Article 6: Right to fair trial	No	
Article 8: Right to respect for private and family life	No	
Article 12: Right to marry and family life	No	
Article 14: Prohibition of discrimination	No	
Protocol 1 Right to property	No	

4. Those affected by the interference/limitation

Identify who could be affected by the interference or limitation, eg. sections of society or persons with certain beliefs or opinions, and explain how they could be affected.

It will help in identifying interferences or limitations to think about all the persons who could be affected and be seen as a victim within the Human Rights Act.

Who could be affected?	How could they be affected?
N/A	

5. Legal basis for interference/limitation

Is there a law which allows you to interfere with or limit the rights identified in Question 4?

Any interference with or limitation on a Convention right must have a legal basis. You therefore need to establish whether there is a law which allows the proposed interference or limitation.

You may need legal advice to clarify this.

Relevant Legislation

N/A

Alternatively, the policy/proposal may involve the creation of a new law which allows for the interference or limitation. If this is the case, please detail and explain in the box below.

N/A

6. Purpose of the policy/proposal

Even if the interference or limitation in the policy/proposal is in the law, there are further considerations which must be met. The purpose of the policy/proposal must pursue a legitimate aim or fall under one of the specific exceptions in the Article in question.

Consider each of the Articles which the policy/proposal will interfere with or limit, and for each one specify the exception or legitimate aim which allows the interference or limitation and explain why.

If you are unsure of the exceptions or legitimate aims which are applicable for the rights interfered with or limited by the policy/proposal you are working on, you should refer to the text of the Convention and the Guide.

Article	Exception/Limitation	Explanation
N/A	N/A	N/A

7. Necessary in a Democratic Society

Articles 8, 9, 10 and 11 specify that interferences or limitations must be necessary in a democratic society. If the policy/proposal interferes with or limits one of these rights, detail in the table below how the right is necessary in a democratic society, ie. does it fulfil a pressing social need?

You may need to speak to the Senior Responsible Officer for clarification of this.

Article Affected	Explain why it is necessary in a democratic society
N/A	N/A

8. Proportionality

Any interference with or limitation on a Convention right must be proportionate, ie. the policy/proposal must interfere with or limit a right no more than is absolutely necessary to achieve its aims. For each article which the policy/proposal interferes with or limits, explain how the interference or limitation is proportionate.

For further information on proportionality please consult the Guide.

Article Affected	Explain why the interference/limitation is proportionate.
N/A	N/A

9. Article 14 equality issues

Even if it does not interfere with or limit a right or freedom, could the policy/proposal result in persons being treated differently in relation to any of the Convention rights? Article 14 does not allow discrimination in the exercise of any of the other Convention rights.

For further information on Article 14, please refer to the relevant pages in the Guide.

Convention Article affected	How are persons treated differently?	Is this justifiable?
N/A		

You should now have a clearer view about the policy/proposal and the possibility of it engaging or interfering with Convention rights and freedoms.

Please ensure the proforma is also signed by your Senior Responsible Officer and if there is any possible interference or limitation refer to your legal advisor for further action and advice.

Please tick the statement that applies and sign below.

- (a) The policy/proposal does not engage any Convention rights.
- (b) The policy/proposal does engage one or more Convention rights, but does not interfere with or limit them.
- (c) The policy/proposal interferes with or limits one or more Convention rights and legal advice is being sought.

Countersign, hold copy with your policy papers and refer to your legal advisor.

Signed by: Alan Weir (Official)

Date: 20/09/2017 Grade: DP

Signed by: *Adele Watters* (Senior Responsible Officer)

Date: 28/09/17 Grade: G7