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of justice

Northern Ireland Court Service  
**Consultation Document**  
A Proposal to Revise the Means Test for Criminal Legal Aid  
in Northern Ireland

**March 2010**

Should you require any further information about the Court Service please visit our website at [www.courtsni.gov.uk](http://www.courtsni.gov.uk) or alternatively contact us at our Communications Group.

The report will be made available in a wide range of alternative formats. Requests for alternative formats should be made to the Communications Group.

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# 1. Introduction

- 1.1 Legal aid plays a key role in the criminal justice system. The right to free legal aid for defendants being prosecuted at the magistrates' court and being tried before the Crown Court, who are unable to pay for their own defence, is a fundamental principle of the criminal justice system in Northern Ireland.
- 1.2 The legislation currently governing financial eligibility for criminal legal aid in Northern Ireland, more commonly referred to as the means test, has been in existence since 1981<sup>1</sup>. In Northern Ireland, criminal legal aid is granted by the judiciary. In deciding whether to grant legal aid the judiciary will consider whether it is in the interests of justice that the accused should have legal representation and whether the accused person's means are insufficient. The legislation does not prescribe a fixed financial limit, beyond which an accused would be ineligible for legal aid.
- 1.3 The benefit of having prescribed financial limits is that accused persons and their legal representatives will be in a position to better assess the likelihood of being financially eligible for criminal legal aid in advance of the court proceedings. Prescribed financial eligibility limits also offers a benefit to Government in that the limit can be set to control the cost of legal aid by reducing the numbers of persons eligible for legal aid funding.

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<sup>1</sup> The provisions regarding Criminal Defence Services under the Access to Justice (Northern Ireland) Order 2003 No. 435 (N.I. 10) are yet to be commenced.

1.4 In 2006, reforms were introduced in England and Wales as a result of which the grant of legal aid ceased to be a court function and prescribed financial limits were introduced to determine who would be financially eligible for criminal legal aid. Since then, the implementation of the new means test for magistrates' court proceedings has been successfully reviewed and evaluated and an early adopter scheme has now commenced for means testing in Crown Court proceedings.

## 2. Purpose of Consultation

- 2.1 The Northern Ireland Court Service (the Court Service) believes that the time is right to consult and take views on the reform of the means test for criminal legal aid. This consultation document seeks views on a proposal to set a prescribed financial eligibility limit for criminal legal aid. At this stage we are inviting views on the principle of introducing a prescribed financial eligibility test, to inform Ministerial decisions. If Ministers decided to introduce a prescribed means test for criminal legal aid in Northern Ireland, primary legislation would be required to introduce this, and a further more detailed consultation would follow on the framework of the new test.
- 2.2 The government is committed to ensuring value for money in the legal aid budget and that those who can genuinely afford to pay for their own defence do so. To this extent the government introduced in England and Wales, the Criminal Defence Service Act 2006 to assure the public that publicly funded representation is made available to those who most need it; that those who can afford to pay for their own defence costs do so; and that valuable and finite resources are more effectively and fairly targeted at those defendants who most need them.
- 2.3 The consultation criteria being used in this consultation are set out in **Annex A** to this document. This consultation is being conducted for a period of 8 weeks (and not the standard 12 week period).
- 2.4 This is to help facilitate possible early decisions after devolution by a new Justice Minister whether or not to include provision giving effect to the proposal in any early Assembly justice legislation.
- 2.5 This consultation seeks views on the proposal to set a fixed financial eligibility limit for criminal legal aid. At this stage, we are seeking views on the principle of introducing a fixed financial eligibility test. Following the consultation, Ministerial approval will be sought regarding whether

we proceed with this reform. Should Ministerial approval be given, it would be necessary for us to take an enabling power in primary legislation to make regulations; such regulations would include the detail of any new financial eligibility limits. Any future regulations will be the subject of a full 12 week public consultation with accompanying impact assessment.

- 2.6 We are satisfied that the 8 week period will be sufficient time for intelligent consideration, given the nature of the proposals and our intention to offer consultees the opportunity to meet with officials to discuss the proposals and provide their views in this format if they prefer, rather than by way of written submission.

### **3. How to respond**

#### How to respond

3.1 When responding to this consultation 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.

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

Consultation Coordinator

Revision of the Means Test for Criminal Legal Aid in Northern Ireland

Northern Ireland Court Service

Communications Group

Laganside House

23-27 Oxford Street

BELFAST

BT1 3LA

Tel: 028 9041 2386

Textphone: 028 9041 2920

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#### Closing date

3.3 Responses must be received by **23 April 2010**.

#### Miscellaneous

3.4 Additional copies of this consultation document may be made without seeking permission from the Court Service. Printed copies may be obtained by post by contacting the Consultation Coordinator at the address below. An electronic version is available for viewing on the Court Service's website at <http://www.courtsni.gov.uk>

- 3.5 Please tell us if you know of others who would be interested in receiving this consultation document.

#### Confidentiality and complaints

- 3.6 Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the information access legislation (that is, the Freedom of Information Act 2000 [FOI] and the Data Protection Act 1998 [DPA]). If you want information that you provide to be treated as confidential, please be aware that, under FOI, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.
- 3.7 In view of this, it would be helpful if you would explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system, or included as a general statement in your fax cover sheet will not, of itself, be regarded as binding on the Court Service and will be taken to apply, therefore, only to information in your response for which confidentiality has been requested.
- 3.8 The Court Service will process your personal data in accordance with the DPA and, in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

3.9 If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

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Consultation Coordinator Communications Group  
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23-27 Oxford Street  
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3.10 A copy of the consultation criteria being used in this consultation is set out in **Annex A** to this document.

## 4. The Means Test for Criminal Legal Aid

### Legislative position in Northern Ireland

- 4.1 The grant of criminal legal aid in Northern Ireland is currently governed by the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, (the 1981 Order)<sup>2</sup>. Articles 28 to 30 of the 1981 Order provide the statutory framework for legal aid for criminal proceedings in the magistrates' court, for onward appeals to the County Court, and for trials before the Crown Court.
- 4.2 There are 2 tests to be met to receive legal aid in criminal proceedings:
- the means test,
  - the interests of justice test.

The legislation does not prescribe a fixed financial limit, beyond which an accused would be ineligible for legal aid. The following statutory provision governs the grant of legal aid in magistrates' court proceedings. Article 28(1) provides:

"If it appears to a magistrates' court that the means of any person charged before it with any offence, or who appears or is brought before it to be dealt with, are insufficient to enable him to obtain legal aid and that it is desirable in the interests of justice that he should have free legal aid in the preparation and conduct of his defence before it, the court may grant in respect of him a criminal aid certificate, and thereupon he shall be entitled to such aid and to have-

- a) a solicitor; and
- b) subject to paragraph (2), counsel,

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<sup>2</sup> Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 No. 1981 No. 228 (N.I. 8) [http://www.opsi.gov.uk/RevisedStatutes/Acts/nisi/1981/cnisi\\_19810228\\_en\\_1](http://www.opsi.gov.uk/RevisedStatutes/Acts/nisi/1981/cnisi_19810228_en_1)

assigned to him for that purpose in such manner as may be prescribed by rules made under Article 36<sup>3</sup>.

(2) Free legal aid given for the purposes of any defence before a magistrates' court shall not include representation by counsel except in the case of an indictable offence where the court is of opinion that, because of circumstances which make the case unusually grave or difficult, representation by both solicitor and counsel would be desirable.”

4.3 There is a similar means test for legal aid for Crown Court trials and onward appeals to the County Court<sup>4</sup>. The criminal legal aid scheme is not a contributory scheme; accused persons who pass the means test are eligible for free legal aid. This contrasts with the civil legal aid scheme.

4.4 The absence of prescribed financial limits for the means test for criminal legal aid has the consequence that an accused person, and his or her legal representative, cannot know in advance of the proceedings whether the accused person will pass the means test. This is unproblematic for persons in receipt of passporting benefits, such as Jobseekers Allowance, as they will be confident that they will pass the means test- their application for legal aid will depend on whether or not their application passes the interests of justice test. The situation is different, however, for persons in employment and the self-employed whose financial circumstances are more complex.

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<sup>3</sup> The only Rules made under Article 36 that are relevant to this consultation are the Legal Aid in Criminal Cases (Statement of Means) Rules (Northern Ireland) 1999 No. 233 <http://www.opsi.gov.uk/sr/sr1999/19990233.htm>

<sup>4</sup> Means testing in the Crown Court and for County Court Appeals is provided for by the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 No. 1981 No. 228 (N.I. 8) [http://www.opsi.gov.uk/RevisedStatutes/Acts/nisi/1981/cnisi\\_19810228\\_en\\_1](http://www.opsi.gov.uk/RevisedStatutes/Acts/nisi/1981/cnisi_19810228_en_1)

- 4.5 Similarly the process of applying for legal aid is more straightforward for persons in receipt of benefits. At present the usual practice in the magistrates' court is that an accused person applies for criminal legal aid at his or her first appearance, through completion of a statement of means form<sup>5</sup>. The judiciary when deciding whether to grant legal aid have confirmation from an independent body regarding a person's receipt of benefits.
- 4.6 For persons in employment and the self-employed, however, the current means test is less straightforward. They are required to provide evidence of their income by way of recent wage slips or accounts, however, they will not be able to gauge, prior to the application being made, whether they are likely to pass the means test for criminal legal aid. Similarly, this presents challenges to Government in terms of forecasting the legal aid budget.

#### Legislative position in England & Wales

4.7 The grant of criminal legal aid was fundamentally reformed in England and Wales in 2006. The legislation governing legal aid there is the Access to Justice Act 1999, (the 1999 Act). The 1999 Act was amended by the Criminal Defence Services Act 2006 in 2 significant ways:

- the grant of criminal legal aid ceased to be a judicial function,
- the 1999 Act contained an enabling power to make Regulations introducing a new financial eligibility test for criminal legal aid.

The relevant Regulations<sup>6</sup> were made in 2006 and the new means test has applied to criminal proceedings in the magistrates' courts since

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<sup>5</sup> Legal Aid in Criminal Cases (Statement of Means) Rules (Northern Ireland) 1999 No. 233 <http://www.opsi.gov.uk/sr/sr1999/19990233.htm>

<sup>6</sup> The Criminal Defence Service (Financial Eligibility) Regulations 2006

then. The new means test was subject to a Final Regulatory Impact Assessment<sup>7</sup> and Post-Implementation Review<sup>8</sup>.

4.8 The impact assessment clarified the Rationale for Government Intervention in the following terms:

The DCA<sup>9</sup> introduced the enabling powers within the Act to assure the public that publicly funded representation is made available to those who most need it. The regulations ensure that valuable and finite resources are more effectively and fairly targeted at those defendants who most need them. Making no change to the CDS would have meant that the overspend on legal aid (and the imbalance between civil and criminal) would still exist, and would probably continue to rise. The underlying principle supported by the Act is that those who can afford to pay for their own defence should do so.

4.9 The Criminal Defence Service Regulations 2006<sup>10</sup> detail the scheme, provided for by the Act. The Regulations provide the framework for greater consistency over decision making, so leading to greater control over the grant of publicly funded representation in criminal cases. They also introduced the new financial eligibility test under which defendants who can afford to pay for their defence costs do so, while those people who cannot afford to pay for themselves continue to have their representation paid for by the state.

4.10 The key details regarding the new test were as follows:

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<sup>7</sup>Published at <http://www.dca.gov.uk/risk/crime-defence-act-ria.pdf>

<sup>8</sup>Published October 2007 at [http://www.legalservices.gov.uk/docs/cds\\_main/PIR\\_151007.pdf](http://www.legalservices.gov.uk/docs/cds_main/PIR_151007.pdf)

<sup>9</sup> The relevant Government department is now the Ministry of Justice

<sup>10</sup> Criminal Defence Service (Financial Eligibility) Regulations 2006 No. 2492 (since amended) <http://www.opsi.gov.uk/si/si2006/20062492.htm>

Criminal Defence Service Representation Orders and Consequential Amendments Regulations 2006 No. 2493 (since amended) <http://www.opsi.gov.uk/si/si2006/20062493.htm>

Criminal Defence Service (Representation Order: Appeals etc) Regulations 2006 No. 2494 (since amended) <http://www.opsi.gov.uk/si/si2006/20062494.htm>

Criminal Defence Service (General) (No. 2) (Amendment) Regulations 2006 No. 2490 (since amended) <http://http://www.opsi.gov.uk/si/si2006/20062490.htm>

- An individual is financially eligible for a representation order<sup>11</sup> if his gross annual income, adjusted to take account of any partner or children, is £11,590<sup>12</sup> or less, and ineligible if it is £20,740<sup>13</sup> or more.
- Where it falls between these amounts, the representation authority (either the LSC or its delegate) will calculate the individual's annual disposable income, making deductions in respect of any income tax, national insurance, council tax, housing expenses, child care costs, maintenance and cost of living expenses, from the applicant's adjusted income. The individual is financially eligible if his annual disposable income does not exceed £3,156<sup>14</sup>.

4.11 Government's calculations at the time were that under the eligibility limits set out in the regulations, 46% of defendants subject to the financial eligibility test would be ineligible for public funding. The impact assessment also recorded that the estimated additional running costs of the implementation of the CDS Act and supporting Regulations to the LSC<sup>15</sup> and to HMCS<sup>16</sup> would be around £2.0m for the first year (2005/06), rising to £5m the year after (2006/07) and that the ongoing running costs were estimated at up to £10m, but around £5m of that is already within the HMCS budget, for the administration of the interests of justice test.

4.12 The assessment noted there was some risk that there would be an increase in the number of unrepresented defendants because some applicants will be refused legal aid on the grounds of their means. However, the scheme was devised to identify those defendants who should have sufficient disposable income to pay for their legal fees in

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<sup>11</sup> The comparable term for Northern Ireland would be legal aid.

<sup>12</sup> Currently £12,475.

<sup>13</sup> Currently £22,325.

<sup>14</sup> Currently £3,398

<sup>15</sup> Legal Services Commission – responsible for the administration of legal aid in England & Wales.

<sup>16</sup> Her Majesty's Court Service – responsible for managing the magistrates' courts, the Crown Court, county courts, the High Court and Court of Appeal in England and Wales.

the majority of cases; and in the last resort some defendants who could afford to pay for representation may choose to represent themselves.

The total net savings to the legal aid fund following the introduction of the means test at the limits set out in the regulations would be £35 million.

- 4.13 The post implementation review (PIR) of the means test in England and Wales took place in May and June 2007. The review concluded that the introduction of means testing in the magistrates' courts was largely successful but challenging. The new system was implemented on time, on budget and was on track to deliver the anticipated savings. A number of operational issues did arise but the MOJ,<sup>17</sup> LSC and HMCS have worked together to resolve these.

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<sup>17</sup> The Ministry of Justice - responsible for the England and Wales justice system including the courts, prisons, probation services and attendance centres.

## **5. Proposed Reform**

- 5.1 The Court Service followed closely the reforms implemented in England and Wales and commissioned its own research on both the means test and the merits test to inform future policy decisions regarding the grant of criminal legal aid reform in Northern Ireland.
- 5.2 Regarding the means test, the primary objective of the study commissioned was to undertake research into the financial arrangements for criminal legal aid as a basis for making recommendations on the introduction of the means-testing element of the Criminal Defence Service Act 2006 to Northern Ireland, including a set of upper and lower financial limits which are consistent with the social and economic environment in Northern Ireland.

The specific objectives of the research were as follows:

- Build a micro-simulation model based on the Family Resources Survey (FRS). The FRS will have to be fused with demographic data (to be collated from various sources) on NI defendants i.e. age, sex and a neighbourhood profile to create a synthetic database of defendants that aims as far as possible to capture the demographic, domestic and financial circumstances of magistrates' court defendants;
- Provide a detailed profile of the eligible, partially eligible and ineligible groups, as a result of the implementation of the proposed eligibility limits with specific reference to those groups covered under section 75 of the Northern Ireland (1998) Act; and,
- Provide a picture of the consequences of a potential new means test to estimate the impact on take-up and expenditure, again with particular reference to section 75 groups.

- 5.3 Regarding the interests of justice test, the Court Service has commissioned a comparative study of its practice in England and Wales. The results of this research will be published in due course.
- 5.4 The research highlighted that there were a number of policy options available for reform in Northern Ireland - these were;
1. No Intervention – do nothing to reform the current grant of criminal legal aid;
  2. Replicate the reforms introduced in England and Wales by reforming both the means and merits tests, including decisions regarding who would grant legal aid;
  3. Replicate the reforms brought forward in England and Wales in a phased approach by firstly considering reform of the means test only and following this with further work on the interests of justice test and the grant of criminal legal aid.
- 5.5 The increasing cost of legal aid in Northern Ireland, and criminal legal aid in particular, meant that option 1 was not a feasible option. For the most recent financial year, legal aid expenditure on criminal legal aid equated to just over £50 million<sup>18</sup> while expenditure on civil was approximately £32.5 million. (Of the £50 million expenditure on criminal legal aid - £16.7 million was paid out in Very High Cost Criminal cases and £33.8 million was spent on all other criminal business.)
- 5.6 The research commissioned by the Court Service established that the means test may be a higher priority for reform than the merits test. The financial pressures on the legal aid fund also suggested that option 3

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<sup>18</sup> The figure does not represent typical expenditure as it includes the sum of £16.7 million paid out in Very High Cost criminal cases, the bills for which had accrued over a number of years but were paid out during 2008/09. Source: Northern Ireland Legal Services Commission.

was to be preferred to option 2. Accordingly, the Court Service has decided to prioritise reform of means testing in the first instance.

5.7 Introducing prescribed financial eligibility limits not only provides greater clarity regarding who will be eligible for legal aid but it also provides Government with a tool to control legal aid expenditure, as evidenced by the means test research commissioned by the Court Service. This research focused on the means test reform which had been introduced in England and Wales, although the reform in Scotland was also noted. The key findings from the research are detailed at **Annex B** and can be summarised as follows:

- Introducing the existing England and Wales test = 10% saving
- NI version of the England and Wales test = 15% saving
- A modified version of the England and Wales test = 14% saving
- A zero errors test = 18% saving
- A constant eligibility test (essentially maintaining the status quo) = 0% savings

5.8 The Court Service recognises that further research is required before Ministers could make any decision regarding the actual financial level at which any new means test would be set. The Court Service also recognises that Ministers will wish to weigh the costs of any new test against its benefits. Accordingly, the Court Service intends to commission further research by an independent economist, part of the remit of which will be to conduct a comprehensive impact assessment.

5.9 For the above reasons, this consultation seeks views on the proposal to set a fixed financial eligibility limit for criminal legal aid. At this stage, we are seeking views on the principle of introducing a fixed financial eligibility test. Following the consultation, Ministerial approval will be sought regarding whether we proceed with this reform. Should Ministerial approval be given, it would be necessary for us to take an

enabling power in primary legislation<sup>19</sup> to make regulations; such regulations would include the detail of any new financial eligibility limits. Any future regulations will be the subject of a full 12 week public consultation with accompanying impact assessment.

5.10 This policy was equality screened in line with guidance from the Equality Commission for Northern Ireland. The screening found that a full equality impact assessment was not required.

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<sup>19</sup> The enabling power would be necessary in 2 pieces of primary legislation, namely the Legal Aid Advice and Assistance (Northern Ireland) Order 1981, which currently governs the grant of legal aid, and the Access to Justice (Northern Ireland) Order 2003, which will govern legal aid in the future. Together with the enabling power in the 1981 Order, it would appear necessary to amend Article 31 of the 1981 Order, should prescribed financial eligibility limits be approved. Article 31 provides:

“If, on a question of granting a person free legal aid under Article 28, 28A, 29 or 30, there is a doubt whether his means are sufficient to enable him to obtain legal aid or whether it is desirable in the interests of justice that he should have free legal aid, the doubt shall be resolved in favour of granting him free legal aid.”

## **6 Consultation Questions**

6.1 The Court Service is eager to obtain the views of as many consultees as possible on the proposal to revise the means test for criminal legal aid.

6.2 Consultation questions on the proposed reform:

1. Do you agree that the time is right to consider reform of the grant of criminal legal aid in Northern Ireland?
2. Do you agree with our preferred option of considering reform of the means test in the first instance and review the interests of justice test at a later date?
3. Do you agree that Northern Ireland should follow the approach taken by England and Wales and Scotland to prescribe financial eligibility limits for criminal legal aid in the magistrates' court?
4. Do you consider there are good reasons not to introduce prescribed financial limits to assess financial eligibility for criminal legal aid? If so, please specify.
5. To date our research has focused on the reforms which were introduced in England and Wales. Do you agree with this approach? If not, please specify a more suitable comparator jurisdiction.
6. Do you consider that the introduction of a revised means test for criminal legal aid would adversely affect access to justice?
7. Do you agree that if a prescribed means test was to be introduced, that an amendment should be made to Article 31 of

the 1981 Order to confine the resolution of doubt provision to the interests of justice test only?

6.3 All comments in relation to this consultation exercise are most welcome.

### Consultation Criteria

- 1.1 This consultation is being carried out in accordance with the Cabinet Office Code of Practice on Consultation. This Code of Practice stipulates that the seven consultation criteria must be reproduced with any consultation document. The consultation criteria are:
1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
  2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible. *(See paragraphs 8 to 11 below)*
  3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
  4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
  5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
  6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.
- 1.2 This consultation is being conducted for a period of 8 weeks (and not the standard 12 week period).
- 1.3 This is to help facilitate possible early decisions after devolution by a new Justice Minister whether or not to include provision giving effect to the proposal in any early Assembly justice legislation.
- 1.4 This consultation seeks views on the proposal to set a fixed financial eligibility limit for criminal legal aid. At this stage, we are seeking views on the principle of introducing a fixed financial eligibility test. Following the consultation, Ministerial approval will be sought regarding whether we proceed with this reform. Should Ministerial approval be given, it would be necessary for us to take an enabling power in primary legislation to make regulations; such regulations would include the detail of any new financial eligibility limits. Any future regulations will be the subject of a full 12 week public consultation with accompanying impact assessment.
- 1.5 We are satisfied that the 8 week period will be sufficient time for intelligent consideration, given the nature of the proposals and our intention to offer consultees the opportunity to meet with officials to discuss the proposals and provide their views in this format if they prefer, rather than by way of written submission.

### Key findings from research conducted to date

1. In order to provide the Court Service with a range of options on a new fixed means test, the Court Service commissioned research by Dr Tony Dignan of Economic Research and Evaluation. The primary objective of his study was to undertake research into the financial arrangements for criminal legal aid as a basis for making recommendations on the introduction of the means-testing element of the Criminal Defence Service Act 2006 to Northern Ireland, including a set of upper and lower financial limits which are consistent with the social and economic environment in Northern Ireland.
2. The specific objectives of his research were to:
  - build a statistical model that aims as far as possible to capture the demographic, domestic and financial circumstances of magistrates' court defendants;
  - provide a detailed profile of the eligible, partially eligible and ineligible groups, as a result of the implementation of the proposed eligibility limits with specific reference to those groups covered under section 75 of the Northern Ireland (1998) Act; and,
  - provide a picture of the consequences of a potential new means test to estimate the impact on take-up and expenditure, again with particular reference to section 75 groups.
3. Dr Dignan focused his research on the defendant population proceeded against for indictable offences and hence most likely to be granted criminal legal aid.

4. Dr Dignan’s findings considered a number of scenarios for a new means test for criminal legal aid. These five options are summarised in the table below.

**Table 1**

<b>Screen with:</b>	<b>Change in take-up</b>
	%
<b>Both upper and lower limits</b>	
Existing England and Wales	-10
NI version	-15
Zero errors	-18
<b>Screen with upper limit only</b>	
Modified version	-14
Constant eligibility	0

5. Dr Dignan’s research recommended adopting the modified version of the England and Wales test with screening in the upper limit only as the preferred option. His rationale was based on the following findings:

6. **Preferred option – Modified version with screening in the upper limit only**

- Access to justice
  - Better matches affordability to eligibility
  - Errors in NI version low, but public funds allocated to those who can afford legal costs
- Transparency
  - Either option makes arrangements explicit, but:
  - Two-stage test means defendants can be eligible on one test, but not on another
- Simplicity
  - Gross income required under either test
  - Different context in NI re cost driver

## 7. Preferred option - Comparison with England and Wales.

- Passporting
  - No difference
- Screening test
  - Same threshold, adjustments for family size and composition
  - E&W screens in on a lower limit
  - Upper income limit only for NI – to minimise errors in aligning eligibility with ability to pay
- Disposable income test
  - Same threshold, similar set of deductions
  - Personal living allowance – higher in NI – to maintain parity of eligibility
- NI-specific social and economic circumstances
  - Higher receipt of benefit in NI – fully reflected in passporting, disregarding certain benefits
  - Larger family size – reflected in use of adjusted gross income and living allowance
  - NI variant of E&W test – screening out only.

## Initial Impact Assessment

1. Figures provided by NILSC are that in 2008/9 there were 22,353 solicitor bills paid for criminal legal aid in the magistrates' court, totalling £9,466,129.<sup>20</sup>
2. The table below provides a broad initial analysis of the potential impact of the change in take up to the legal aid budget, based on the options for reform which have been researched to date.

**Table 2**

Screen with:	Change in take up %	Reduction in spend in %	Saving to legal aid fund
<b>Both upper and lower limits</b>			
Existing England and Wales	- 10	10	£946,613
NI version	-15	15	£1,419,919
Zero errors	-18	18	£1,703,903
<b>Screen with upper limit only</b>			
Modified version	-14	14	£1,325,258
Constant eligibility	0	0	£0

3. When England and Wales introduced a new means test in 2006, their impact assessment recorded that the estimated costs of administering the new test would be £5 million per year. If a similar test were to be introduced for Northern Ireland, it would appear reasonable to estimate, at this stage, that the corresponding estimate for annual administration costs would be in the region of £125,000.

<sup>20</sup> NILSC draft annual report 2008/09.

**List of Consultees**

- 1 Age Concern Northern Ireland
- 2 Alliance Party
- 3 An Munia Tober – Traveller Support Group
- 4 Association of Justices of the Peace
- 5 Chief Officers Third Sector
- 6 Children's Law Centre
- 7 Committee on the Administration of Justice
- 8 Council of Her Majesty's County Court Judges in Northern Ireland
- 9 Criminal Justice Inspection Northern Ireland
- 10 Crown Solicitors Office
- 11 Directorate of Legal Services
- 12 Democratic Unionist Party
- 13 Departmental Solicitors Office
- 14 Disability Action
- 15 District Judges' Association
- 16 Equality Commission for Northern Ireland
- 17 The General Bar Council of Northern Ireland
- 18 General Consumer Council for Northern Ireland
- 19 Green Party
- 20 Health and Social Care Board
- 21 Help The Aged, Northern Ireland
- 22 High Court Judges
- 23 Law Centre (Northern Ireland)
- 24 Law Society of Northern Ireland
- 25 Lord Chief Justice
- 26 Northern Ireland Association of Citizens Advice Bureaux
- 27 Northern Ireland Association of District Judges (Magistrates Court)
- 28 Northern Ireland Commissioner for Children and Young People
- 29 Northern Ireland Council for Ethnic Minorities
- 30 Northern Ireland Guardian Ad Litem Agency

- 31 Northern Ireland Human Rights Commission
- 32 Northern Ireland Lay Magistrates' Association
- 33 Northern Ireland Legal Services Commission
- 34 Northern Ireland Office
- 35 Northern Ireland Peers
- 36 Northern Ireland Policing Board
- 37 Northern Ireland Women's Aid Federation
- 38 NSPCC
- 39 Office of the First Minister and Deputy First Minister
- 40 Police Service of Northern Ireland
- 41 Prison Service for Northern Ireland
- 42 Probation Board for Northern Ireland
- 43 Progressive Unionist Party
- 44 Public Prosecution Service
- 45 Sinn Fein
- 46 Social Democratic and Labour Party (SDLP)
- 47 Television Licensing Enquiry Office
- 48 The Participation Network
- 49 Traditional Unionist Voice
- 50 Ulster Unionist Party
- 51 Victim Support Northern Ireland
- 52 Youth Justice Agency





For further information on the work of the Northern Ireland Court Service please contact

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