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Justice Bill: Legal Aid Taxation

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This paper provides supplementary information on proposed legislative changes on the taxation of legal aid costs in the Justice Bill.

This information is provided to Members of the Legislative Assembly (MLAs) in support of their duties, and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as professional legal advice, or as a substitute for it.

Key Points

- Taxation is a procedure whereby a legal practitioner submits a bill of costs to the Taxing Master who will assess and determine the amount of legal costs to be paid. The Taxing Master is an independent judicial office holder.
- At the conclusion of the taxation proceedings, the Taxing Master issues a certificate for the costs allowed. This certificate is presented to the Legal Services Agency which is obliged to pay the amount as taxed, subject to a 5% statutory deduction. The majority of taxed legal aid expenditure is for civil legal services as taxed criminal expenditure is limited to the Criminal Court of Appeal. Figures for 2024-25 show that taxed civil expenditure accounted for £30.9 million with £2.9 million of taxed criminal expenditure; this totals £33.9 million from the overall spend of £120 million on legal aid in 2024-25. More information on this can be found in section 2.2.
- A number of strategic reviews of the justice system and legal aid expenditure have referenced the role of the Taxing Master in recent years, including reports by the Northern Ireland Audit Office and the Access to Justice 1 Review in 2011. In 2017, the Assembly's Public Accounts Committee made a recommendation 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”*. This was based on figures provided to the Committee by the Department of Justice.
- Clause 28 of the Justice Bill would insert new section 59A into the Judicature (Northern Ireland) Act 1978. This would pave the way for a position whereby the Department, rather than the judiciary, determines the fees which may be paid to solicitors and counsel where a person is legally-aided. Therefore it would remove the role of the Taxing Master in assessing proceedings involving legal aid. Under the Department's Enabling Access to Justice Reform Programme published in December 2024, it was suggested that a phased approach would be taken to reform

starting with High Court bail applications, Criminal Court of Appeal and Judicial Review proceedings.

- Department of Justice officials provided evidence to the Justice Committee in November 2025 which indicated a revised approach in this area. Officials highlighted the potential for an unfunded pressure in this area due to increases to the solicitors' hourly rate and counsel's interlocutory fees used in assessments by the Taxing Master earlier in 2025. The Department is now proposing to expedite reform by setting legal aid fees and rates for solicitors and counsel through remuneration orders made under the Access to Justice (Northern Ireland) Order 2003 (these are subject to the negative resolution procedure). These fees and rates will then be applied by the Taxing Master in assessing bills of costs across all types of proceedings.
- The role of the Taxing Master broadly corresponds to the functions carried out in England and Wales by Costs Judges (assisted by Costs Officers who are civil servants). They can assess costs and expenses incurred in civil litigation in order to decide how much a solicitor or counsel can recover from public funds. The prescribed rates used by Costs Judges can be found in the Legal Aid (Remuneration) Regulations 2013, as amended. In Scotland, the role of the Auditor of the Court of Session could be considered equivalent to the role of the Taxing Master. The Auditor can deal with accounts referred by the Scottish Legal Aid Board (SLAB) where SLAB is in dispute with a solicitor or counsel acting for a legally aided client. According to SLAB, the majority of accounts received are paid as claimed and the need to proceed to taxation is rare.
- The Republic of Ireland's civil legal aid structure differs from Northern Ireland and therefore it is difficult to make direct comparisons. The Office of the Legal Costs Adjudicators deals with disputes on legal costs typically between parties involved in litigation in the Superior Courts. However, it has no role in payments from the legal aid fund.
- MLAs may wish to consider a number of issues in relation to the Department's proposed new approach, such as whether an equality impact assessment or human rights impact assessment has been carried out. Other potential scrutiny points include the timeline for the setting of

new rates and the methodology underpinning this alongside any potential cost savings that the Department envisages. It may also be worth querying any further engagement or public consultation that the Department plans with the legal professions and other stakeholders.

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1 Context

1.1 Role of the Taxing Master

Taxation is a procedure whereby a solicitor or barrister submits a bill of costs to the Taxing Master who will assess and determine the amount of legal costs to be paid. The Taxing Master is an independent judicial office holder appointed following a competition run by the Northern Ireland Judicial Appointments Commission (NIJAC).¹ The Taxing Master is also appointed as The Master in the Enforcement of Judgments Office.

Section 59(1) of the Judicature (Northern Ireland) Act 1978 provides that the costs of all proceedings in the High Court and the Court of Appeal shall be at the discretion of the Court which has the power to determine by whom and to what extent the costs are to be paid. Section 60(1) vests the jurisdiction in relation to taxation of costs in the Taxing Master. This discretion must also be exercised subject to the Rules of the Court of Judicature.²

The breadth of cases to which taxation applies includes both criminal and civil proceedings and the power for costs to be taxed is contained within a wide range of legislative instruments. Standard fees cover the majority of criminal legal aid expenditure. However, the Criminal Defence Services (Remuneration) (Northern Ireland) Order 2016 provides that the Taxing Master is responsible for the assessment of bills of costs in Court of Criminal Appeal cases. The Taxing Master also adjudicates on appeals and redeterminations in respect of decisions made by the Legal Services Agency.

This includes hearing appeals against decisions of the Legal Services Agency in respect of Crown Court cases assessed under the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005 (these introduced a range of standard fees for Crown Court cases) and Magistrates' Court cases assessed under the Magistrates' Courts and County Court Appeals (Criminal Legal Aid)

¹ The most recent competition was run by NIJAC in 2023: [Master \(Taxing Office and Enforcement of Judgments\)](#). The Taxing Master is required to be a barrister or solicitor with at least seven years' experience.

² [The Rules of the Court of Judicature \(Northern Ireland\) 1980](#) (October 2024)

(Costs) Rules (Northern Ireland) 2009 (these prescribed a range of standard fees for Magistrates' Court proceedings and appeals to the County Court).

The Taxing Master is also responsible for assessing costs incurred in civil cases in all divisions of the High Court, including personal injury and clinical negligence actions, commercial court actions, family cases (divorce, separation, adoption, wardship, non-molestation, child abduction, all Children (Northern Ireland) Order 1995 cases), chancery cases, probate actions, cases involving patients' affairs and judicial review.³

The framework containing remuneration arrangements for civil legal aid is broadly set out in the Schedule 2 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981. A significant part of the Taxing Master's role involves assessment of costs in cases funded by legal aid where the Court has specifically made an order for the costs of the legally assisted persons to be taxed.

During the taxation process, the Taxing Master performs an inquisitorial function and has a duty to protect the legal aid fund.⁴ Solicitors are required to prepare an itemised Bill which details every step taken in the case, including attendances with clients and their witnesses, correspondence and telephone calls, the instruction of experts, consultations and attendances at court.⁵ In June 2025, hourly rates for solicitors were increased by the Taxing Master following a review from £102 to £155 per hour.⁶

Barristers will mark fees taking into account a range of factors, including the complexity of the issues in the case, the amount of preparation time required, the anticipated duration of the case, the value of any claim, whether the case involves one or two counsel and the length of time within which the work is

³ Northern Ireland Judicial Appointments Commission, [The Nature of the Role of a Master](#) (December 2023)

⁴ Lady Chief Justice's Office, [Clause 28 of the Justice Bill](#) (April 2025)

⁵ Law Society of Northern Ireland, [Justice Bill: Committee for Justice Consultation](#) (March 2025), page 13

⁶ The Court of Judicature of Northern Ireland Taxing Office, [Notification regarding the Hourly Rate](#) (April 2025)

required to be undertaken.⁷ They can also claim refresher fees for attending extra court sittings. In June 2025, the Taxing Master also issued a Practice Direction containing updates in relation to miscellaneous drafting and interlocutory fees marked by counsel.⁸

The Taxing Master will consider a number of factors relevant to the circumstances of a case when assessing a bill which are set out in Order 62 of the Rules of the Court of Judicature.⁹ The Taxing Master examines each item on a bill, can allow it or disallow it, before settling on an amount which is considered reasonable for the permitted work. It is worth noting that guidelines for the marking of fees also exist in certain areas such as High Court personal injury cases using the Comerton Scale which was most recently updated in January 2025.

A taxation decision can also be subject to a review under the provisions of Order 62 if a party is dissatisfied with the decision and there is the potential for a further review by a High Court Judge if necessary. At the conclusion of the taxation proceedings, the Taxing Master issues a certificate for the costs allowed. This certificate is presented to the Legal Services Agency which is obliged to pay the amount as taxed, subject to a 5 per cent statutory deduction. This deduction is set out in Schedule 2 of the Legal Aid, Advice and Assistance

⁷ The Bar of Northern Ireland, [Justice Bill Written Evidence](#) (February 2025) and [Code of Conduct: Fees and Remuneration](#) (September 2022), page 48

⁸ The Court of Judicature of Northern Ireland Taxing Office, [Practice Direction 2025 No. 01 Pleading and Interlocutory Matters: Counsel's Fees](#) (June 2025)

⁹ [The Rules of the Court of Judicature \(Northern Ireland\) 1980](#) (October 2024), Order 62 at Appendix 2, page 217 states: (2) *In exercising his discretion the Taxing Master shall have regard to all the relevant circumstances, and in particular to:*

- (a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;*
- (b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor or counsel;*
- (c) the number and importance of the documents (however brief) prepared or perused;*
- (d) the place and circumstances in which the business involved is transacted;*
- (e) the importance of the cause or matter to the client;*
- (f) where money or property is involved, its amount or value;*
- (g) any other fees and allowances payable to the solicitor or counsel in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.*

(Northern Ireland) Order 1981 (as amended by The Legal Aid (Deduction from Taxed Costs) Regulations (Northern Ireland) 1988).

1.2 Background to Reform

A number of strategic reviews of the justice system and legal aid expenditure have referenced the role of the Taxing Master. In 2011, the Northern Ireland Audit Office (NIAO) produced a report on 'Managing Criminal Legal Aid' which referred to the role of the Taxing Master largely in relation to assessing the remuneration payable by the Legal Services Commission (now the Legal Services Agency) under the Very High Cost Cases (VHCCs) scheme in the Crown Court under the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005.¹⁰ This report highlighted the significant expense associated with the VHCCs scheme which exempted cases from the standard fee regime. VHCCs were abolished under the Legal Aid for Crown Court Proceedings (Costs) (Amendment) Rules (Northern Ireland) 2011.

In the same year, the Access to Justice 1 Review published a report on publicly funded legal services with a particular focus on exploring alternative dispute resolution and securing value for money. This report noted that *"lessons should be learnt from the experience of VHCCs, including the need for legislation and rules concerning fee levels to be drafted with objective and tight criteria to govern decision-making and, where this can be achieved consistently with the interests of justice, for decision-making with financial implications to be located with the spending body. This is not just about keeping expenditure in check; such an approach also facilitates accurate financial forecasting"*.¹¹

The role of the Taxing Master in VHCCs was later replaced with new exceptional preparation arrangements which allow for an application for a Certificate of Exceptionality to the Legal Services Agency in an individual case

¹⁰ Northern Ireland Audit Office, [Managing Criminal Legal Aid](#) (June 2011), page 24

¹¹ Department of Justice, [Access to Justice Review Northern Ireland](#) (August 2011), page 36

which involves a point of law or factual issue that is very unusual or novel.¹² The Legal Aid for Crown Court Proceedings (Costs) (Amendment No 2) Rules (Northern Ireland) 2016 provides for a legal representative to be able to appeal to the Taxing Master if they are not content with the outcome of the Legal Services Agency review in respect of a decision to refuse or revoke a Certificate of Exceptionality. The Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) (Amendment) Rules (Northern Ireland) 2016 also provide for this function in relation to the Magistrates' Courts and for criminal appeals to the County Court.

In 2015, the Access to Justice Review 2 considered the strategic approach to publicly funded legal services with recommendations for more robust controls on legal aid expenditure in certain areas.¹³ The role of the Taxing Master was not referenced within this report. In 2016, the NIAO also published a further report into 'Managing Legal Aid'. This highlighted the nature of legal aid as a demand-led service and the recommendations highlighted that *"budgeting and forecasting are key pillars of good financial management. The opening legal aid budget has been inadequate to meet annual expenditure for a number of years. The Department has made progress in addressing this issue. We recommend that it continues to align resources allocated to fund legal aid more closely with the expected spend"*.¹⁴ However, the remit of the Taxing Master was not specifically examined within this report.

In 2017, the Assembly's Public Accounts Committee (PAC) published a report entitled 'Managing Legal Aid'. This called for *"improved transparency and accountability for legal aid payments made under direction from the Taxing*

¹² Criminal Justice Inspection Northern Ireland published a report recommending that the DOJ and LSANI commence a review of Exceptional Preparation as *"applications had increased significantly and costs risen by 154% between 2018-19 and 2020-21"*. See CJINI, [An Inspection of Criminal Legal Aid Processing: The Effectiveness of the Legal Aid Management System in Supporting the Achievement of Strategic Business Objectives and Improved Service Delivery](#) (June 2022). More recently, the Burgess Review recommended that the Exceptional Preparation criteria should be replaced with 'complexity markers' but did not recommend an increase to Exceptional Preparation Fees. See His Honour Tom Burgess CBE, [Fundamental Review of Criminal Legal Aid](#) (August 2024), pages 158 and 174

¹³ Department of Justice, [The Report of Access to Justice 2](#) (September 2015)

¹⁴ Northern Ireland Audit Office, [Managing Legal Aid](#) (June 2016), page 4

Master” and made a recommendation 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. In the meantime, the Legal Services Agency must have a complete and detailed analysis of adjustments to claims to establish possible patterns of over claiming”.¹⁵ At this time, the report highlighted that the Taxing Master adjudicated on around £19 million of legal aid fees annually. The Committee also stated that there “is no line of accountability from the Taxing Master through the Accounting Officer to this Committee”.

In a separate recommendation, the Committee also highlighted that the LSA’s “counter fraud arrangements are weak”. This recommended that “the Agency establishes a method of measuring the level of fraud within the legal aid system, and to develop proactive risk-based counter fraud measures. These measures should address specific issues raised continually by the C&AG and build a strong culture of fraud awareness within the Agency”.¹⁶ The need for an effective counter-fraud strategy was also highlighted in the Access to Justice 1 and 2 Reviews with the NIAO also recommending “a more joined up approach with other public bodies... [and] more effective working relationships with the Department for Communities in particular”.¹⁷

The LSA’s Counter Fraud Unit reviews and investigates referrals from within the Agency, other bodies or individuals alleging abuse of the legal aid system with a view to prevent and detect fraud. This tends to relate to allegations about an assisted person’s financial circumstances but can also cover referrals in relation to suppliers of publicly funded legal services.¹⁸ The LSA has also implemented an ongoing Counter Fraud Strategy and Action Plan.¹⁹ In addition, the introduction of the digital Legal Aid Management System (LAMS) in 2020 has

¹⁵ Northern Ireland Assembly, [Public Accounts Committee: Report on Managing Legal Aid](#) (January 2017), page 14

¹⁶ Ibid, page 15

¹⁷ Northern Ireland Audit Office, [Managing Legal Aid](#) (June 2016), page 40

¹⁸ Northern Ireland Assembly, [AQW 4903/22-27](#) (27 October 2022) provides an example of the low numbers of suspected fraud with 3 practitioners and 21 applicants identified by the LSA from 2018 to 2022 and these were referred to the PSNI. One case was also prosecuted through the courts during this period with the practitioner being acquitted.

¹⁹ Legal Services Agency, [Corporate Plan 2025/26-2027/28 & Business Plan 2025/26](#) (July 2025)

assisted in reinforcing the audit trail around transactions and therefore reducing the risk of fraud and error.²⁰

Furthermore, the PAC report specifically expressed concern in relation to the extent to which legal representatives have had their claims reduced on taxation by the Taxing Master. This was based on figures provided by the Department of Justice which are reproduced below in table 1. However, it is important to note that the Lord Chief Justice's Office at the time highlighted that *"the fact that a bill of costs is reduced is not necessarily evidence of fraud. When the Master reduces a Bill it is because the costs claimed are disproportionate or are considered to have been not reasonably incurred or due to delay in submitting the claim etc. They are not reduced on suspicion that the work claimed for has not been genuinely incurred"*.²¹ Any suspicion of fraudulently claimed costs could be referred to the LSA or PSNI and the regulatory bodies of the Law Society and Bar Council would also treat any referral as a disciplinary matter.²²

Table 2 below provides an update on the figures in table 1 which the Justice Committee received from the Department of Justice in October 2025. However, note the caveat below that this information is not directly comparable to the figures contained in table 1. It is also worth highlighting that the Lady Chief Justice's Office referenced that a bill of costs being reduced on taxation is not evidence of fraud in correspondence to the Committee.²³

²⁰ Legal Services Agency, [Annual Report and Accounts 2024-2025](#) (July 2025) has further information on how the LSA addresses irregular legal aid expenditure involving: official error (where an error can be attributed to the actions or inactions of the LSA or the wider justice structure); errors made by legal aid applicants and legal practitioners; and fraud. The Standards Assurance Unit within the Department for Communities now delivers the error programme for the LSA under a Memorandum of Understanding.

²¹ Lord Chief Justice's Office, [Public Accounts Committee Evidence Session on the Northern Ireland Audit Office's Report on Managing Legal Aid](#) (September 2016)

²² Ibid

²³ Lady Chief Justice's Office, [Clause 28 of the Justice Bill](#) (April 2025)

Table 1: Legal Aid Bills subject to Taxation from 2013-2014 to 2016-2017

Year Bill Received	Number of Legal Aid Bills Received	Total Claimed	Number of Bills with Amount reduced under Taxation	Number of Bills Unchanged	Amount reduced after Taxation
2013-2014	1,675	£20,704,566.12	1,487	188	£2,353,017.63
2014-2015	1,487	£21,528,289.07	1,305	182	£2,832,939.16
2015-2016	1,222	£18,025,699.48	1,099	123	£2,437,098.72
2016-2017 (up to 30/09/16)	584	£8,625,913.37	504	80	£1,404,273.29

(Source: Department of Justice, [Public Accounts Committee Evidence Session on the Northern Ireland Audit Office's Report on Managing Legal Aid](#), October 2016)

Note: The Department highlighted that legal aid bills include those cases that have an element of 'party to party' (costs paid privately) as well as those where the claim solely relates to legal aid. The number of bills unchanged are primarily those that the Master has taxed and made no deductions from but it also contains a small number that have yet to be assessed, predominantly during 2016-17.

Table 2: Legal Aid Bills subject to Taxation from 2022 to 2024

Calendar Year	Number of Legal Aid Only Bills Assessed	Total Claimed	Number of Bills with Amounts Taxed Off	Number of Bills Unchanged	Total Taxed Off
2022	984	£26,308,303.07	952	32	£4,474,200.20
2023	1,117	£32,469,945.84	1,054	63	£6,543,417.10
2024	977	£26,804,593.96	909	68	£5,611,194.29

(Source: Department of Justice, [Restriction on Ordering Taxation of Legal Aid Costs](#), October 2025)

Note: The Department highlighted that the information included in table 2 is not directly comparable to the information provided in table 1 for several reasons. The data provided in table 2 is by calendar year instead of financial which is to reflect the procedural registration of bills. The data provided in table 1 included party to party bills (cases where costs are ultimately payable by some other party, not the public purse via legal aid) as the case management system at that time could not separate out cases that related solely to legal aid. However, the new case management system can now separate out this information.

2 Policy Reform

2.1 Public Consultation

In 2022, the Department conducted a public consultation on the reform of taxation of legal aid costs. This received two responses, one from the Law Society of Northern Ireland and another from a member of the public. The Law Society highlighted 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*”.²⁴ In addition, the Society queried the level of detail provided to inform the recommendation made by the Assembly’s Public Accounts Committee. It also commented that it was not exactly clear how the proposed reform would result in improved accountability and predictability over legal aid expenditure.

It is also worth noting that the Department conducted an equality screening in relation to taxation reform. Section 75 of the Northern Ireland Act 1998 requires the Department to have due regard to the need to promote equality of opportunity and to identify whether a policy has a differential impact upon the relevant groups. As part of this screening exercise, the Department highlighted that it did not believe that any specific issues would arise in relation to: religious belief, political opinion, racial group, age, marital status, sexual orientation, men and women generally, or those with or without a disability or dependents. The equality screening noted that subordinate legislation will be required to implement taxation reforms with further screenings necessary in the future.²⁵

The Department also published a Human Rights Impact Assessment which noted that the legislative change would engage Article 6 (right to a fair trial) but that this would not amend the level of representation available in legally aided

²⁴ Department of Justice, [Post Consultation Report: Legal Aid - Taxation Reform and Statutory Charge Registration](#) (May 2024)

²⁵ Department of Justice, [Equality Screening Form: Change to Primary Legislation to Enable Taxation Reform](#) (February 2022)

cases and instead relates to the payment mechanism. Future stages of policy reform will therefore have to be considered on their own merits.²⁶

2.2 Enabling Access to Justice Reform Programme

In December 2024, the Justice Minister launched the ‘Enabling Access to Justice’ Programme.²⁷ This is wide ranging in nature with plans across a number of interconnected areas, including: amending financial eligibility rules for legal aid; a root and branch review of the fee structure for public legal services; establishing a reference group to identify, collate and validate data to inform current and future remuneration reform proposals; reviewing oversight arrangements for the provision of public legal services, including the merits of an independently chaired advisory board; and developing a Strategy for Access to Justice to aid decisions on resourcing. This programme also includes plans to bring all publicly funded legal services within the remit of the Departmental Accounting Officer through removing the role of the Taxing Master under clause 28.

Since the publication of the delivery plan, a Criminal Legal Aid Working Group independently chaired by His Honour Judge Burgess was established in March 2025 to develop advisory proposals relating to the criminal legal aid fee structure.²⁸ Plans for a 16 per cent uplift in criminal, civil and family legal aid fees were also consulted on earlier in 2025 with a business case being finalised by the Department of Justice.²⁹ Public consultations relating to the scope of legal aid, merits testing and financial eligibility are expected to be launched in December 2025.³⁰

²⁶ Department of Justice, [Human Rights Impact Assessment: Change to Primary Legislation to Enable Taxation Reform](#) (March 2022)

²⁷ Department of Justice, [Enabling Access to Justice Programme Delivery Plan](#) (January 2025)

²⁸ The Working Group was due to report to the Department on 31 October 2025: Northern Ireland Assembly, [AQW 33608/22-27](#) (24 October 2025). DOJ Officials briefing the Justice Committee on 20 November stated that this report is now expected by the end of November 2025.

²⁹ Department of Justice, [Legal Aid – Amendments to Legal Aid Remuneration](#) (January 2025) and the [Post Consultation Report](#) (June 2025) which highlights this uplift will be backdated to 01 December 2024

³⁰ Northern Ireland Assembly, [AQW 34212/22-27](#) (02 November 2025)

As part of this 'Enabling Access to Justice' work, the Department published a summary report on taxation reform which outlined that this forms pillar four of a five pillar reform programme within the Department's Enabling Access to Justice Division.³¹ This document included data on taxed legal aid expenditure as a proportion of the overall legal aid spend. This indicated that the majority of taxed legal aid expenditure is for civil legal services (taxed criminal expenditure is limited to the Criminal Court of Appeal).

According to the Department's document, civil taxed expenditure accounted for 35 per cent of overall civil legal aid expenditure in 2020-21 rising to 59.5 per cent in 2023-24.³² In terms of total taxed civil expenditure, the amount paid between 2015-16 and 2018-19 was consistently in the region of £20 million per year. Since then, the annual total has increased and in 2023-24 the total taxed civil legal aid expenditure was £37.7m.³³ The average cost per taxed civil bill was £21,800 in 2023-24.³⁴ Standard fees exist in the majority of criminal legal aid expenditure. Criminal Court of Appeal legal aid expenditure which remains subject to taxation has accounted for on average £4 million of expenditure per year since 2020-21.³⁵ The average cost per taxed bill was £43,453 in 2023-24.³⁶

Up to date statistics on expenditure issued in September 2025 show that taxed expenditure across both criminal and civil cases accounted for over a quarter (28 per cent or £33.8 million) of all legal aid payments authorised in 2024-25 (£120 million).³⁷ In 2024-25, £2.9 million of criminal expenditure was authorised using taxation which accounted for just under 5 per cent of all criminal spend

³¹ Department of Justice, [Enabling Access to Justice: Taxation Reform and Extradition Summary Report](#) (November 2024)

³² Ibid, page 3

³³ Ibid, Annex A (includes Appeals, Judicial Review, High Court Bail, Children Order cases, Personal Injury etc.)

³⁴ Ibid, page 3

³⁵ Ibid, Annex A

³⁶ Ibid

³⁷ Department of Justice, [Legal Aid in Northern Ireland - Annual Statistics to March 2025](#) (September 2025). This release contains new details on authorised expenditure in respect of taxation for 2024-25 which were not included in previous releases.

and 9 per cent of all taxed expenditure. The majority of taxed expenditure at £30.9 million was authorised against civil cases in 2024-25 which accounted for over half (52 per cent) of all civil spend (£59 million) and 91 per cent of all taxed expenditure. Children Order cases accounted for the majority of civil taxation (58 per cent or £17.8 million) which is similar to previous years, followed by Judicial Review at £4.8 million (compares to £3.2m in 2020-21, £3m in 2021-22, £2.7m in 2022-23 and £5.9m in 2023-24).³⁸ Spending on taxed civil and criminal cases also has the potential to rise given the recently announced increases to the rates used by the Taxing Master when assessing costs.³⁹

The Department initially indicated in the plan that it intended to take a phased approach to reform in this area, starting with High Court bail applications. Two further areas were also identified for proposals to be expedited in this mandate, namely Criminal Court of Appeal and Judicial Review proceedings.⁴⁰ Timelines for this work were initially included in the Enabling Access to Justice Programme Delivery Plan.⁴¹ However, the Department has since provided further information to the Justice Committee highlighting a change of approach in this area.

2.3 Justice Bill: Clause 28

Clause 28 of the Justice Bill would amend the Judicature (Northern Ireland) Act 1978 by inserting a new section 59A. This would preclude the High Court and the Court of Appeal from making an order for taxation of a person's costs for any proceedings which relate to civil legal services or criminal defence services funded by the Department.

³⁸ Department of Justice, [Enabling Access to Justice: Taxation Reform and Extradition Summary Report](#) (November 2024), Annex A

³⁹ The Court of Judicature of Northern Ireland Taxing Office, [Notification regarding the Hourly Rate](#) (April 2025) and [Practice Direction 2025 No. 01 Pleading and Interlocutory Matters: Counsel's Fees](#) (June 2025)

⁴⁰ Department of Justice, [Enabling Access to Justice: Taxation Reform and Extradition Summary Report](#) (November 2024), page 4

⁴¹ Department of Justice, [Enabling Access to Justice Programme Delivery Plan](#) (January 2025), page 16 forecasted that proposals to reform taxation of legal aid remuneration in High Court bail applications would be delivered in Q1 2025. Proposals for reform in Criminal Court of Appeal cases are due in Q4 2025 and for Judicial Review applications in Q1 2026.

New section 59A would provide for a position whereby the Department, rather than the judiciary, determines the fees which may be paid to solicitors and barristers in cases where a person is legally-aided. The Explanatory and Financial Memorandum (EFM) notes that clause 28 is intended to “*facilitate the envisaged future introduction of alternative methods of determining the remuneration payable in relevant legal aid cases*”. The EFM continues that “*the provisions will not be commenced, and will therefore have no effect, except where this is done, on a project-by-project basis, to enable the proper operation of any new remuneration systems as they are developed*”.

Further information on clause 28 can be found in the Research and Information Service Bill Paper on the Justice Bill (NIAR 089-2024).⁴²

2.4 Department of Justice Update: November 2025

Department of Justice officials attended the Justice Committee on 20 November 2025 to provide oral evidence on the Enabling Access to Justice Reform Programme and Taxation. Officials advised that a revised Enabling Access to Justice programme is being finalised following public consultation on the Delivery Plan which closed in March 2025.⁴³ It is expected that the sequencing of some actions will be altered and that the final report of the Criminal Legal Aid Working Group will also be reflected in the revised version.

The Department officials provided an update to plans relating to legal aid taxation. They highlighted the potential for a significant unfunded pressure due to the increases to the hourly rate and interlocutory fees used in assessments by the Taxing Master earlier in 2025.⁴⁴ Consequently, the Department has decided to move away from the phased approach based on proceeding type which envisaged remuneration arrangements being developed in relation to

⁴² Northern Ireland Assembly Research and Information Service, [Justice Bill Paper](#) (September 2024). Further Northern Ireland Assembly Research and Information Service Papers on the Justice Bill can be found on the Justice Committee’s webpage: [Research Papers on the Bill](#)

⁴³ Department of Justice, [Consultation on Enabling Access to Justice Programme Delivery Plan](#) (January 2025)

⁴⁴ The Court of Judicature of Northern Ireland Taxing Office, [Notification regarding the Hourly Rate](#) (April 2025) and [Practice Direction 2025 No. 01 Pleading and Interlocutory Matters: Counsel’s Fees](#) (June 2025)

High Court bail applications, Judicial Review and Criminal Court of Appeal proceedings in this Assembly mandate. This arrangement would have removed the role of the Taxing Master in assessing this type of proceeding involving legal aid and would instead have resulted in standard fees or hourly rates set down in regulations.

The revised approach outlined by the Department retains the role of the Taxing Master in assessing legal aid bills. However, the Department is proposing to expedite reform by setting legal aid fees and rates for solicitors and counsel through remuneration orders made under Articles 12(3) and 24(3) of the Access to Justice (Northern Ireland) Order 2003. Article 12(3) gives the Department the power to “*by order make provision about the payment of remuneration by the Department to persons who provide civil legal services*”. Article 24(3) of the 2003 Order relating to criminal defence services has only been commenced in respect of appeals.⁴⁵ Any remuneration order made under these Articles is subject to the negative resolution procedure.⁴⁶

The statutory framework under which the Minister can make remuneration orders in the 2003 legislation already requires that the Minister shall have regard to a number of criteria, namely:

“(a) the time and skill which the provision of services of the description to which the order relates requires;

(b) the number and general level of competence of persons providing those services;

(c) the cost to public funds of any provision made by the regulations; and

⁴⁵ See the Access to Justice (2003 Order) (Commencement No. 8) [Order](#) (Northern Ireland) 2015. The criminal legal aid system largely operates under the provisions of Part III of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981. The [Fundamental Review of Criminal Legal Aid](#) (August 2024) discusses this in more detail at page 49.

⁴⁶ A statutory rule that is subject to the negative resolution procedure is made by the rule making body, typically a Department, and then laid before the Assembly. It will have effect when the ‘comes into force’ date is reached.

(d) the need to secure value for money".⁴⁷

The Department's intention is that the Taxing Master will apply the fees and rates set down in the remuneration orders when assessing bills of costs across all types of proceedings. It appears from the evidence provided by the officials on 20 November that the structure of the new regime will primarily involve a 'time and line' assessment under which legal practitioners document the work and associated time taken. This will then be assessed by the Taxing Master in line with hourly rates for both solicitors and counsel with potentially some standard fees.

The Department believes that this approach will improve transparency and accountability for public expenditure whilst also retaining the role of the Taxing Master. The Department now proposes to table an amendment to the Justice Bill at Consideration Stage to allow for legal aid fees and rates set in accordance with the statutory criteria contained in the 2003 Order to apply to legal aid taxations. However, the full detail around the setting of rates and the assessment arrangements will be contained in secondary legislation which will require further engagement with a number of stakeholders, including the Office of the Lady Chief Justice, the Taxing Master and the legal professions.

2.5 Stakeholder Reaction

The Bar of Northern Ireland's written evidence to the Justice Committee on the Justice Bill described clause 28 as a "*disjointed and incoherent approach to reform*". The Bar also queried the rationale behind clause 28 when the "*Department's own Review of Taxation is still at a relatively early stage*", adding that "*it remains completely unclear what alternative measures will be introduced to replace the Taxing Master*".⁴⁸

The Law Society of Northern Ireland also expressed concerns around the legislative change, stating in written evidence that "*there is a complete lack of*

⁴⁷ Access to Justice (Northern Ireland) Order 2003, Article 47. Also note that for criminal cases there is a very similar provision in Article 37 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981

⁴⁸ Bar of Northern Ireland, [The Justice Bill Written Evidence](#) (February 2025), page 2

clarity on what alternative measures may be considered by the Department of Justice and how future commencement decisions may be made or brought into force. This approach raises considerable concerns on the ability of the Justice Committee and wider Assembly to adequately and properly debate and scrutinise any projects relating to this provision. In our view this is a risky approach to adopt and will have the ultimate effect of reducing accountability and oversight". The Society described clause 28 as premature, adding that it could instead be legislated for once alternative arrangements have been developed and consulted on.⁴⁹

At the time of writing this paper, the legal professions and other stakeholders had yet to respond publicly to the Department's updated November 2025 proposals around legal aid taxation.

3 Other Jurisdictions

3.1 England and Wales

The role of the Taxing Master broadly corresponds to the functions carried out in England and Wales by Costs Judges. The Senior Courts Costs Office (administered by HM Courts and Tribunals Service) deals with all aspects of costs from each Division of the High Court and from the Court of Appeal. It also handles certain criminal costs appeals. There are two ranks of judicial officer: Costs Judges and Authorised Court Officers known as Costs Officers (senior civil servants from whose decisions appeals lie as of right to a Costs Judge).⁵⁰

The Senior Courts Costs Office (SCCO) assesses the costs and expenses incurred in civil litigation in order to decide how much a successful party in litigation can recover from their opponent, how much a barrister or solicitor can recover from public funds and how much a client should have to pay their solicitor. The SCCO can also reduce costs and expenses where necessary. Regional Costs Judges, who are District Judges (County Courts), have also

⁴⁹ The Law Society of Northern Ireland, [Justice Bill Consultation](#) (March 2025), page 13

⁵⁰ Judiciary of England and Wales, [The Senior Courts Costs Office Guide 2025](#) (August 2025)

been appointed on all circuits outside London to hear detailed assessment of bills of costs at a venue which is convenient to the parties and their legal representatives.

In terms of background, the Covid-19 pandemic impacted on the ability of HM Courts and Tribunals Service (HMCTS) to quickly assess claims. In July 2020, the Legal Aid Agency (LAA) and HMCTS took a decision that the LAA would assess these bills where there was no inter partes assessment required.⁵¹ Legal aid practitioners were subsequently given the option to submit bills to HMCTS or the LAA, depending on their preference.⁵² Prior to July 2020, all such bills had been assessed by HMCTS.

In 2021, the Ministry of Justice then consulted on permanently transferring the responsibility for the assessment of all civil legal aid bills of costs between £2,500 and £25,000 from the HMCTS to the LAA.⁵³ The consultation received nine responses with the majority favouring the hybrid approach under which legal aid practitioners are given the option to submit bills to either HMCTS or the LAA.⁵⁴ A number of those respondents raised concerns that the LAA as ‘paying party’ would be incentivised to assess bills at lower amounts than HMCTS would.⁵⁵ However, others noted that the LAA had been able to assess bills more quickly than the court during this period. The Ministry of Justice reached a view that the hybrid position would be continued for a further period of time to “*enable the comparative merits of each route to be monitored and to enable further data to be collected*”.⁵⁶

Since 2021, for cases involving costs payable out of the legal aid fund, the assessment of those costs may be carried out by the LAA or by the

⁵¹ Legal Aid Agency, [Civil news: transfer of court assessed claims to Legal Aid Agency](#) (July 2020)

⁵² The Legal Aid Agency is an executive agency of the Ministry of Justice which is responsible for commissioning and administering legal aid in line with legal aid legislation.

⁵³ Ministry of Justice, [Civil Legal Aid: Consultation on the proposed transfer of the assessment of all civil legal aid bills of costs to the Legal Aid Agency](#) (February 2021)

⁵⁴ Ministry of Justice, [Civil Legal Aid: The Government's response to its consultation on the proposed transfer of the assessment of all civil legal aid bills of costs to the Legal Aid Agency](#) (November 2021)

⁵⁵ Ibid, page 6

⁵⁶ Ibid, page 5

SCCO/County Courts. Where the costs are payable by another person as well as the legal aid fund, the bill will be assessed by the court. Irrespective of whether the LAA or the court conducts the assessment of costs payable under legal aid, the object in all cases is to achieve a fair assessment of the costs.⁵⁷ There are also various rates and fees set out in regulations which prescribe the amounts payable to solicitors and counsel in legally aided cases under the Civil Legal Aid (Remuneration) Regulations 2013, as amended.⁵⁸ These rates are applied by Costs Judges (both in the SCCO and County Courts) in family and civil cases when assessing costs which are to be paid from the legal aid fund.

Separately, the SCCO can also assess legal aid bills arising from representation orders issued by the High Court.⁵⁹ The vast majority of these are issued by the Administrative Court of the King's Bench Division and relate to funding for appeals from extradition orders made at Westminster Magistrates' Court (under the Extradition Act 2003). The procedure involves solicitors applying directly to the court for the representation order with costs and fees then assessed by the SCCO (solicitors' costs and counsel's fees are filed and assessed independently of each other). There are no fixed rates for this work, but as a general rule, the SCCO broadly allows for legal aid rates with an uplift for the specialised nature of the work. Payment is made from Central Funds but ultimately the cost is reimbursed from the LAA budget.

3.2 Republic of Ireland

The Republic of Ireland's civil legal aid structure differs from Northern Ireland and therefore it is difficult to make direct comparisons. The Civil Legal Aid Scheme is the primary method by which people on low incomes are supported to access legal advice and legal representation on civil law issues. It is

⁵⁷ The Civil Procedure Rules govern the procedure to be followed in most civil cases brought in the SCCO – see [CPR44.3: Basis of Assessment](#)

⁵⁸ The Civil Legal Aid (Remuneration) Regulations 2013 (as amended) make provision about the payment of remuneration to persons who provide civil legal services under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). The detailed assessment procedure for cases involving costs or prescribed rates payable under Part 1 of LASPO can be found in the Civil Procedure Rules, [Practice Direction 47](#)

⁵⁹ Judiciary of England and Wales, [The Senior Courts Costs Office Guide 2025](#) (August 2025), page 121

administered by the Legal Aid Board through its network of law centres and is delivered via a mixed model of in-house, employed solicitors and panels of private solicitors, instructing counsel where appropriate.⁶⁰ Fees payable to private practitioners are mostly set in accordance with Regulations. In July 2025, the Review of Civil Legal Aid recommended an immediate review of the Legal Aid Board's capacity to administer the Civil Legal Aid Scheme, including an examination of fees for solicitors and counsel which have not changed in a number of years in certain areas.⁶¹ A limited number of Independent and Community Law Centres also exist in the Republic of Ireland which make an important contribution towards meeting the legal needs of some disadvantaged communities.⁶²

Separately, wide-ranging reforms introduced under the Legal Services Regulation Act 2015 established the Office of the Legal Costs Adjudicators which deals with disputes on legal costs typically between parties involved in litigation in the Superior Courts (High Court, Court of Appeal or the Supreme Court).⁶³ The establishment of the Office of the Legal Costs Adjudicators in 2019 resulted in the abolition of the Office of the Taxing Masters. However, the Office of the Legal Costs Adjudicators has no role in payments from the legal aid fund in the Republic of Ireland.

The Office deals with approximately a thousand cases a year as part of its work in adjudicating on the level of costs that can be charged by legal practitioners.⁶⁴ Such costs can arise in contentious or non-contentious matters. Contentious matters usually relate to costs awarded to one party by a court at the conclusion of a case and derive from an order of the court which directs one party to an action to pay the costs of another (this area makes up the greatest proportion of

⁶⁰ Department of Justice, Home Affairs and Migration, [Civil Legal Aid Review 2025](#) and [Appendix 2](#) (July 2025)

⁶¹ Department of Justice, Home Affairs and Migration, [Civil Legal Aid Review 2025](#) (July 2025), page 40

⁶² *Ibid*, page 41

⁶³ The Office of the Legal Costs Adjudicators, [Strategic Plan 2026-2029](#) (July 2025)

⁶⁴ *Ibid*, page 4

the work of the Office). Non-contentious matters usually involve a dispute between a client and their own legal advisors.⁶⁵

The 2015 Act also obliges legal practitioners to provide more detailed information about legal costs to their clients with new provisions for the preparation and presentation of bills of costs.⁶⁶ Under these changes an aggrieved client can also apply for the adjudication of disputed legal costs by the Office of the Legal Costs Adjudicators which has a duty to hear and determine disputes relating to the amount and whether costs are reasonable. The Act sets out a series of Legal Costs Principles that detail the various matters that can be taken into account in the adjudication of disputed legal costs.

3.3 Scotland

The Scottish Legal Aid Board (SLAB) is a non-departmental public body of the Scottish Government which administers and funds legal aid. Legal aid is a demand led service in Scotland and SLAB has a statutory duty to ensure this is available in accordance with the Legal Aid (Scotland) Act 1986.

Scotland has a 'judicare' service model whereby private solicitors that are registered to SLAB can take on cases. Judicare is designed on a case by case funding model for services provided by solicitors and others instructed by them, such as advocates and experts.⁶⁷ Law centres and legal clinics also provide support and advice on civil matters. In 2025, the Scottish Government proposed plans to simplify the judicare service delivery model and reform legal aid fees.⁶⁸

Legal practitioners are typically paid for legal aid work using block fees which are standard fees used for a specific stage of work (for example, until the end of

⁶⁵ Ibid

⁶⁶ Department of Justice, [Home Affairs and Migration, Minister Flanagan announces the appointments of Chief Legal Costs Adjudicator & Legal Costs Adjudicator](#) (October 2019)

⁶⁷ Scottish Government, [Legal Aid Reform Discussion Paper](#) (February 2025). This follows on from a previous review: M Evan, [Independent Strategic Review of Legal Aid](#) (February 2018)

⁶⁸ Ibid

the first court hearing).⁶⁹ The alternative to this is ‘time and line’ fees which require a detailed account of all work undertaken for a client.⁷⁰ The Scottish Parliament’s Equalities, Human Rights and Civil Justice Committee recently highlighted concerns around shortages in legal practitioners which are attributable to the low rates of fees for legal aid work and are resulting in ‘legal aid deserts’ in some areas.⁷¹

In Scotland, the role of the Auditor of the Court of Session could be considered equivalent to the role of the Taxing Master in Northern Ireland. The office was established in 1806 but the Auditor is now appointed under Section 14 of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018. The Auditor taxes judicial accounts of expenses incurred in civil litigation; agent and client accounts where the account relates to litigation or the solicitor is suing for recovery of fees; accounts referred by the SLAB where SLAB is in dispute with a solicitor or counsel acting for a legally aided client; and accounts in relation to judicial factors, trustees in bankruptcies and liquidators of companies.⁷² There is also an Auditor of the Sheriff Appeal Court and an Auditor of the Sheriff Court.⁷³

SLAB provides detail on the process of assessing an account used to determine the sum payable from the legal aid fund.⁷⁴ Where it is not possible to reach an accommodation with a legal practitioner, then the auditor essentially performs an appellate role. The role of the auditor in a legal aid case is the same as in any other taxation. In this regard, the respective roles of the auditor and the court were defined by Lord Woolman in the case of *Marilyn Stewart and others v Mrs. Amanda Reid and another* [2015] CSOH 175 at paragraph 25:

⁶⁹ See Scottish Legal Aid Board, [Legal Aid Fees](#)

⁷⁰ Scottish Parliament’s Equalities, Human Rights and Civil Justice Committee, [Inquiry Report into Civil Legal Assistance in Scotland](#) (September 2025), page 8

⁷¹ Ibid

⁷² Scottish Civil Justice Council, [Scottish Civil Courts Review Volume 2: Chapters 10-15](#) (September 2009), page 89

⁷³ More information on the sheriffdoms in Scotland can be found via the [Scottish Courts and Tribunals Service](#) and the [Judiciary of Scotland](#)

⁷⁴ Scottish Legal Aid Board, Taxation and Note of Objections Procedure for [Civil Accounts](#) and [Criminal Accounts](#)

“[25] The Auditor acts essentially as a valuer. He is expected to apply his knowledge and experience in carrying out his task of assessing a fair and reasonable fee. The court will be slow to disturb his decision if he has properly exercised his discretion. It will not substitute its own views for those of the Auditor. It will not attempt to tax an account itself. The court will, however, intervene if the Auditor did not have sufficient materials on which to proceed, or his decision is unreasonable”.

The Auditor issues a report at the conclusion of the taxation having considered all the documentation and where appropriate heard submissions. According to SLAB, the majority of accounts received are paid as claimed and the need to proceed to taxation is rare.⁷⁵

4 Scrutiny Points

- Clause 28 of the Justice Bill as introduced would preclude the High Court and the Court of Appeal from making an order for taxation of a person's costs for any proceedings which relate to civil legal services or criminal defence services funded by the Department - what is the impact of the Department's revised approach to taxation on clause 28 of the Justice Bill as drafted? Will the further amendment to the Bill on this matter be made available to the Justice Committee ahead of Consideration Stage of the Bill? If this amendment gives the Department the power to set a fixed hourly rate at a later stage, then what is the timeframe for this being done via remuneration order under the Access to Justice (Northern Ireland) Order 2003? Is it appropriate that these remuneration orders are subject to the negative resolution procedure?
- How will the rates be set and can detail be provided around the methodology that will underpin this? How often would hourly fees be reviewed? Will there be a staged approach to setting rates for solicitors and counsel? If so, what does this look like? Does the Department envisage cost savings as part of this? If so, how much would be saved?

⁷⁵ Scottish Legal Aid Board, [Assessment of an account – the process and role of the assessor](#)

- Why has the Department changed approach at this stage given the work that has been ongoing in this space since the public consultation in 2022? How is this new approach different to the phased approach (initially involving High Court bail, Criminal Court of Appeal and Judicial Review) previously outlined in the original Enabling Access to Justice Reform Programme? And how will this new approach expedite reform? How much more quickly it is envisaged that it can be implemented?
- Has the Department conducted an equality impact assessment or human rights impact assessment on this revised approach? What are the views of the stakeholders on this revised approach? What is the timeline for any further public consultation, particularly given that secondary legislation will be required to give effect to any new hourly rate? How will the Department develop a further process of engagement with the legal professions and other stakeholders on this?