

**EXPLANATORY MEMORANDUM TO
THE CRIMINAL DEFENCE SERVICE (FUNDING)(AMENDMENT)
ORDER 2005**

2005 No. 2621

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument relates to the payment of remuneration to barristers and solicitors in publicly funded criminal cases. It amends the Criminal Defence Service (Funding) Order 2001 (S.I. 2001/855) by

- bringing those guilty pleas that currently escape the scheme of Graduated Fees for Crown Court advocacy within that scheme;
- making the cuts to both advocates' and litigators' rates of remuneration that the Secretary of State considers necessary;
- making several minor changes to the Criminal Graduated Fee Scheme, and
- altering the appeal process when lodging an appeal to the High Court from a decision of a Costs Judge of the Supreme Court Costs Office.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Formal consultations with the General Council of the Bar and Law Society were commenced on 5 July, with the stated intention that the necessary instrument would come into force on 3 October. The Secretary of State agreed to consultations continuing beyond the intended conclusion date (originally 12 August extended to 19 August) in order to consider further representations from both the Bar Council and Law Society. Meeting with the professions continued into September.

3.2. During the consultation period we have been trying to take account of, and balance, the interests of the public purse and those of the people affected by the order. All interested parties, including the Legal Services Commission and Her Majesty's Court Service (who will need to alter their computer systems to reflect these changes) have been working to the 3 October implementation date. The cost of even a few days delay would result in extra expenditure, for example we estimate in the region of £400,000 if the delay were for a week. For these reasons it will regrettably be necessary to infringe the normal rule whereby a statutory instrument should be laid at least 21 days before it comes into force.

4. Legislative Background

4.1. This Order is made by the Secretary of State, in exercise of the powers originally conferred upon the Lord Chancellor, under section 14(3) of the Access to Justice Act 1999 and is subject to the negative resolution procedure under section 25(10) of that Act.

4.2 In accordance with section 25(2) of the 1999 Act, the Secretary of State has consulted the General Council of the Bar and Law Society about this remuneration order. Both the General Council of the Bar and Law Society have requested that any decision on the proposed cuts be deferred to await the outcome of Lord Carter's review of legal aid procurement. However, the Secretary of State, having considered the factors under section 25(3) of the 1999 Act, has decided that immediate cuts are required. See Policy Background below.

4.3 Section 25(3) of the 1999 Act states that:-

“When making any remuneration order the Lord Chancellor (Secretary of State) shall have regard to-

- (a) the need to secure the provision of services of the description to which the order relates by a sufficient number of competent persons and bodies,
- (b) the cost to public funds, and
- (c) the need to secure value for money.”

The Secretary of State has had regard to these matters.

4.4 An identical amendment to that being made to paragraph 22(7) of Schedule 1 to the Criminal Defence Service (Funding) Order 2001 (costs; appeal process) under this statutory instrument is being made to regulation 11(7) of the Costs in Criminal Cases (General) Regulations 1986 by the Costs in Criminal Cases (General) (Amendment) Regulations 2005 for which there is a separate explanatory memorandum.

5. Extent

5.1. The Instrument applies only to England and Wales.

6. European Convention on Human Rights

6.1. As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Legal Services Commission produces regular forecasts of spending that are monitored by officials in DCA HQ. The Commission has forecast an overspend of some £130M on criminal legal aid. The Secretary of State, in accordance with his statutory duties under section 25(3) of the Access to Justice Act 1999, has decided to take appropriate emergency action. These

include cuts to both advocates and litigators rates in both Graduated Fee and Very High Cost Cases.

- 7.2 It is estimated that the package of cuts will lead to a RAB saving in 2005/6 and 2006/7 of some £5.1M and £20.8M respectively. The eventual annual savings from these measures are estimated to be some £28.4M.
- 7.3 The proposed amendment to the Criminal Defence Service (Funding) Order 2001 will also bring about the long-term aim of bringing all guilty pleas within the Graduated Fee Scheme.

8. Impact

- 8.1. A regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

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