

**EXPLANATORY MEMORANDUM TO
THE COMMUNITY LEGAL SERVICE (FINANCIAL) (AMENDMENT)
REGULATIONS 2006**

2006 No. 713

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the House of Lords Select Committee on the Merits of Statutory Instruments and the Joint Committee on Statutory Instruments.

2. Description

2.1 This instrument amends the Community Legal Service (Financial) Regulations 2000 (S.I. 2000/516) which govern the financial aspects of the provision of publicly funded legal services by the Legal Services Commission (LSC).

2.2 The main effects of this instrument are as follows:

Annual uprating

2.2.1 It amends the current financial eligibility for all levels of service by uprating the gross income cap and the disposable income limits, including contribution bands, in line with the cost of living. For example, the monthly income limit (gross income cap) will change from the current figure of £2,288.00 to £2,350.00, and the lower and upper disposable income limits will change from £272 and £632 to £279 and £649. The calculations are based on the Retail Price Index (RPI) as at September 2005 of 2.7%.

Independent Living Allowances

2.2.2 It adds Independent Living Allowances to the list of payments that are disregarded from gross and disposable income calculations in means tests. Payments from the Independent Living Funds (ILFs) are available to people living with a disability to pay for employing a care agency or personal assistant(s) to help with personal and domestic tasks, eg, bathing, cooking and shopping. To clarify the term for the purposes of this instrument, The Independent Living Funds means the Independent Living Fund, the Independent Living (Extension) Fund and the Independent Living (1993) Fund. The Independent Living (Extension) Fund and The Independent Living (1993) Fund means the Trust of that name established by deeds dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part. This definition is summarised from *The Council Tax Benefit Regulations 2006*.

Asylum and Immigration cases

2.2.3 It adds National Asylum Support Service (NASS) support to the list of passported benefits for Legal Help [help at court] and Controlled Legal Representation in asylum and immigration cases. Recipients of this financial support will be automatically

financially eligible for legal aid for these cases as with other income related benefits such as Income Support and Job Seekers' Allowance.

Capital limit increase for asylum cases

- 2.2.4 Finally, this instrument raises the capital limit for asylum cases from the current £3,000.00 to £8,000.00 in line with the rest of the civil scheme. This enables applicants such as asylum seekers who are not in receipt of NASS to be eligible with a higher amount of capital, although in practice they are unlikely to have any significant capital or income. Asylum cases are defined in accordance with existing statutory provisions.

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

- 3.1 None.

4. Legislative Background

- 4.1 These Regulations are made by the Lord Chancellor, in exercise of the powers conferred upon him by sections 7 and 10 of the Access to Justice Act 1999.

5. Extent

- 5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

- 7.1 In relation to the annual uprating, it is usual practice to raise all income eligibility limits each April in line with the general uprating of welfare benefits. The last routine annual uprating was done in April 2003 (SI 650 2003). Since then, the joint LSC DCA consultation 'A new focus for civil legal aid' launched in July 2004 proposed to simplify the eligibility limits for income and capital and reflect an uprating (the upper disposable income limit for Legal Help was increased to £632 to reflect an inflation increase and the limit for Legal Representation was reduced to the same level). As a consequence, no uprating took place in April 2004. In April 2005 the new eligibility and capital limits came into force. Uprating the income limits that determine eligibility is necessary to ensure that the eligibility thresholds remain meaningful by reflecting trends in national income levels and maintains the proportion of the population covered by LSC services.

- 7.2 At the time of drafting the CLS (Financial) Regulations it was advised that the scheme had ceased, and that ILF payments were obsolete. Direct Payments under the Community Care (Direct Payments) Act 1996 and Health and Social Care Act 2001 were however included in the list of benefits to be disregarded from income and capital under Regulation 19 and 33 of the Regulations. Clearly, however, ILF payments have continued for recipients. In practice, the LSC disregards payments from the legal aid financial test as a matter of guidance and therefore this amendment

will merely formalise what is an already established convention in respect of these payments.

- 7.3 In relation to asylum and immigration cases, the NASS eligibility assessment takes into account all cash and savings that are reasonably available to the applicant and his/her dependants. The amount of support paid is worth approximately 70% of income support levels. Clearly those individuals who are eligible for NASS will always qualify for legal aid as they will be well within the capital and income eligibility limits. When carrying out an assessment NASS takes into account all the capital that the individual has and the level of support provided is lower than that payable to those receiving passporting benefits such as income support. Individuals on NASS will have less capital and income than those who are currently on passported benefits and therefore the carrying out of means assessments in these cases is clearly unnecessary as they will always qualify for legal aid on the basis of means in respect of asylum and immigration cases. This change in particular will be welcomed by suppliers as a commitment by DCA and the LSC to reduce unnecessary work.
- 7.4 The capital limit will be raised to £8,000 for asylum appeals, for those asylum seekers who are not in receipt of NASS support. The capital limit for CLR in non-asylum cases will remain at £3,000 for the time being. Further work is being undertaken to look at further harmonising the capital limits for CLR for non-asylum work and certificated work

8. Impact

- 8.1 The LSC have undertaken research and analysis of forecasting data and conclude that in terms of financial impact, this does not apply to the annual uprating as the LSC had already embedded the annual uprating into their data systems and financial forecasts for the next financial years account for the projected cost increases. There will be no financial impact of including ILF payments as disregarded payments because this is happening in practice. For the inclusion of NASS support as a passported benefit, again, this will have little financial impact as recipients of this financial support will already be eligible as the level of this support is below the current passported benefits. This particular amendment will reduce the administrative burden on suppliers as they will no longer need to undertake means assessments for NASS support recipients. Finally, raising the capital limit to £8,000.00 for these cases will again, have a negligible financial impact as most applicants in this category are unlikely to be in possession of such capital and therefore this change is unlikely to have any impact on the numbers of applicants eligible.

9. Contact

- 9.1 Yasmin Tengnah at the Department for Constitutional Affairs: tel: 0207 210 0601, (e-mail: yasmin.tengnah@dca.gsi.gov.uk), can answer any queries regarding this instrument.

Helen Johns at the Department for Constitutional Affairs: tel: 0207 210 1490, (e-mail: helen.johns@dca.gsi.gov.uk), can answer any queries regarding the changes to the financial eligibility criteria for asylum and immigration appeals in this instrument.