

EXPLANATORY MEMORANDUM TO
THE COMMUNITY LEGAL SERVICE (FINANCIAL) (AMENDMENT NO.2)
REGULATIONS 2007

2007 No. 2442

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Description

- 2.1. These Regulations facilitate the introduction of the new civil legal aid fee schemes by making amendments to the levels of service, means assessment procedures, and statutory charge arrangements.

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

- 3.1 None.

4. Legislative Background

- 4.1. The Lord Chancellor makes these Regulations in exercise of the powers conferred by sections 7 and 10 of the Access to Justice Act 1999.

5. Extent

- 5.1. The Regulations apply 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. Lord Carter of Coles published his Review of Legal Aid Procurement on 13 July 2006, when the Department for Constitutional Affairs (DCA) and the Legal Services Commission (LSC) issued their joint consultation paper on his proposals, *Legal Aid: A Sustainable Future*. The consultation period lasted until 12 October 2006.
- 7.2. On 28 November 2006, the DCA and LSC jointly published *Legal Aid Reform: The Way Ahead*. This document set out plans to defer implementation of the fee schemes from April to October 2007, and to re-consult on aspects of the Family Private and Care Proceedings schemes. The re-consultation ran for 6 weeks from

1 March to 16 April. The Tailored Fixed Fee Replacement scheme (for civil law) and Immigration and Asylum schemes were agreed by Ministers and published on 28 November 2006 and 1 March 2007 respectively. The Mental Health, Family Private and Care Proceedings fee schemes were agreed by Ministers and published on 22 June.

- 7.3. These Regulations make the necessary amendments to the CLS (Financial) Regulations 2000 in order to reflect the new levels of service under Family Help Private and Care Proceedings fee schemes: Family Help (Lower) and Family Help (Higher). These levels of service replace the old levels of General Family Help and Help With Mediation.
- 7.4. These Regulations also make 'Family Help (Lower)' available without reference to the client's financial resources when it is used to support negotiations with a local authority when it has issued notice of its intention to issue child care proceedings. This level of service is available both to parents and those with parental responsibility.
- 7.5. These Regulations extend the statutory charge exemption so that cases concluding at Legal Help or Family Help (Lower) will be exempt from the statutory charge. Exceptional cases at this level will not be exempt, but they will benefit from a disregard equal to three times the standard fee. This will ensure that clients continue to be incentivised to settle their cases through mediation where appropriate.
- 7.6. These Regulations reflect the new Independent Living Fund. The Independent Living Fund, the Independent Living (Extension) Fund and the Independent Living (1993) Fund are being combined into a new single fund - The Independent Living Fund (2006). The funds, which are fully funded by the Department for Work and Pensions, provide financial assistance to severely disabled people to enable them to live independently. The new fund has been created to provide for simpler administration and reporting of the previous funds and to provide for administrative and technical improvements as well as to give greater flexibility for the future, however, the basic objective behind the funds has not changed and the approximately 19,000 customers currently supported will instead be provided with continuing support from the new fund (provided they continue to meet the entitlement conditions for support).
- 7.7. To enable the new Independent Living Fund (2006) to become operative, a change to primary legislation was required to amend the Disability (Grants) Act 1993 to enable the Secretary of State and the Department for Social Development in Northern Ireland to make grants to it. The new Fund will start providing financial assistance to individuals from 1 October 2007. The Community Legal Service (Financial) Regulations 2000 contain references to the old Funds, because payments from these funds are disregarded from the means assessment for civil legal aid eligibility. The amendment regulations replace references to the

old funds with a reference to The Independent Living Fund (2006) instead, so that payment from this Fund will continue to be disregarded in means assessment.

- 7.8. These Regulations make initial advice on an application to the Mental Health Review Tribunal (MHRT) available without reference to the client's financial resources. This is to correct the anomaly that, whilst preparation for and representation at the MHRT hearing is currently non-means tested, initial advice is currently subject to the test. The means test will continue to apply to all non-Tribunal work undertaken separately from Tribunal work, including work relating to the Mental Capacity Act.

Consultation

- 7.9. The new fee schemes for civil and family legal aid work have been consulted upon extensively. During the summer of 2006, the then-legal aid minister, Vera Baird QC MP, toured the country and held some twenty-five meetings over the summer to meet practitioners and to listen to their views on the proposals. The LSC also met practitioners to explain the proposals and to answer questions. The DCA and the LSC received 2372 written consultation responses to *A Sustainable Future*; all of these were analysed and considered before decisions on the final fee schemes were taken.

- 7.10. In addition to being subject to extensive consultation, the new fee schemes have also been subject to Parliamentary scrutiny and debate. The Government initiated a full Commons debate on the legal aid reform programme on 11 January 2007. In addition, there have been three separate debates on legal aid reform in Westminster Hall this year, a detailed report by the Constitutional Affairs Select Committee (CASC), and two debates in July on changes to the Funding Code.

- 7.11. These Regulations were also subject to statutory consultation with the Law Society and the Bar Council, but we have also consulted with the Legal Aid Practitioners' Group (LAPG), the Immigration Law Practitioners' Association (ILPA), the Mental Health Lawyers' Association, Resolution (formerly the Solicitors' Family Law Association) and the Association of Lawyers for Children. The consultation ran from 3 July until 24 July. This was a consultation on whether the Regulations met their policy objective, rather than a consultation on the policy itself. Both the Law Society and the LAPG raised some policy objections to the legal aid reform programme, but made no substantive points on the Regulations themselves.

8. Impact

- 8.1. Impact assessments have been prepared and were included in the full Impact Assessment which accompanied the documents 'Legal Aid Reform: Family and

Family Mediation Fee Schemes for October 2007' and 'Legal Aid Reform: Mental Health Fixed Fees'. They are attached to this Explanatory Memorandum.

9. Contact

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