

**EXPLANATORY MEMORANDUM TO THE
COMMUNITY LEGAL SERVICE (FUNDING) (AMENDMENT) ORDER 2005**

2005 No.571

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 Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 This instrument amends the Community Legal Service (Funding) Order 2000 which relates to the remuneration of suppliers under the Community Legal Service. The amendments are consequential to the creation of the Asylum and Immigration Tribunal (AIT) which is created by section 26 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The Order will come into force on 4 April. The Order is subject to negative resolution.

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

- 3.1 None.

4. **Legislative Background**

- 4.1 Section 26 of the AI(TC) Act establishes a single tier Tribunal called the Asylum and Immigration Tribunal (AIT). It also introduced a new system of higher court oversight for decisions of the AIT and, by inserting a new section 103D into the Nationality, Immigration and Asylum Act 2002, new retrospective legal aid arrangements. Draft regulations under section 103D (the Community Legal Service (Asylum and Immigration Appeals) Regulations 2005) were laid before Parliament on 23 February 2005.
- 4.2 This Order is made under section 6(4) of the Access to Justice Act 1999. It contains amendments to the 2000 Order consequential on the establishment of the AIT.
- 4.3 Article 5 of the 2000 Order provides that, subject to exceptions, prescribed maximum rates of payment shall apply to the provision of services by legal representatives under contracts with the Legal Services Commission. The amendments made by this Order include amendments to article 5 to provide that the prescribed maximum rates of payment for legal representation do not apply in relation to proceedings for the review and reconsideration of decisions of the AIT.

5. **Extent**

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 The AI(TC) Act contains measures to support the Government's proposals on asylum reform. This includes unifying the immigration and asylum appeals system into a single tier of appeal with limited onward review or appeal. To reduce exploitation of the system the Act also introduces retrospective legal aid arrangements for the onward review stage of the process.

7.2 The consultation paper, The Asylum and Immigration Tribunal – The Legal Aid Arrangements for Onward Appeals, outlining the proposals for the new arrangements, was published on 8 November 2004. The consultation ended on 17 December. 24 responses were received.

7.3 It is part of these proposals that where a legal representative is retrospectively granted funding, payment should be at higher rates than the usual legal aid rates. The amendments made by this Order to article 5 of the 2000 Order are to facilitate that policy, by providing that prescribed maximum rates of payment for legal representation do not apply in this type of case.

7.4 The changes, which are consequential to the creation of the AIT, were consulted on at the same time.

8. Impact

8.1 A Regulatory Impact Assessment was conducted for the AI(TC) Act. The view of the Small Business Service was that the changes proposed are largely social. Whilst it recognises that there is some impact on specific business sectors, this income only exists as a function of the current immigration appeals system and should not necessarily have been viewed by those businesses as sustainable income from the public purse. The DCA's view is that this position has not changed because the regulations support the original aims of the AI(TC) Act.

9. Contact

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