

**EXPLANATORY MEMORANDUM TO
THE COMMUNITY LEGAL SERVICE (FINANCIAL) (AMENDMENT)
REGULATIONS 2008**

2008 No. 658

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. This Instrument amends the Community Legal Service (Financial) Regulations 2000 (“the Regulations”) which relate to financial eligibility for, and contributions towards, civil legal aid.

2.2. The main effects of this instrument are as follows:

2.2.1. To include expectant parents within the category of people for whom pre-proceedings advice is available without reference to their financial resources in certain circumstances.

2.2.2. To increase the financial eligibility limits for civil legal aid.

2.2.3. To enable the Legal Services Commission to carry out a further assessment when a client is no longer in receipt of a relevant benefit, and to call for retrospective contributions, once they cease to be eligible for funding.

2.2.4. To include disbursements when calculating the statutory charge in exceptional family help cases.

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 Parliamentary Under Secretary of State, by authority of the Lord Chancellor in exercise of powers conferred upon him by sections 7 and 10 of the Access to Justice Act.

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. 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 increases are in line with inflation and (based on the Retail Price Index)

The amendments relating to expectant parents are intended to encourage meetings to resolve and avoid potential care proceedings. Legal aid without reference to means is already available to parents and people with parental responsibility who are in this situation. However although such proceedings may also take place before a baby is born, the means exemption does not apply to expectant parents under the current regulations. The amendment extends the means exemption to include expectant parents.

In relation to the amendment on calculating the statutory charge, the amendments that were made to the Regulations in October 2007 included amendments to the calculation of the statutory charge in Family Help (Lower) cases. However those amendments did not specify that disbursements counted towards calculation of the statutory charge. It has since been realised that disbursements should count towards the statutory charge, and this amendment is designed to achieve that. This will result in modest savings to the legal aid fund as any disbursements, e.g. experts reports which are obtained under Family help will be recoverable from the client through the statutory charge, rather than the legal aid fund.

The amendment relating to further assessments enables the Legal Services Commission to carry out a further assessment of a client who was previously in receipt of a passported benefit, and to call for a retrospective contribution from such a client where the certificate is discharged as a result of the further assessment.

- 7.2. These changes were subject to a limited consultation with key practitioners' groups, including the Law Society, Bar Council, Family Law Bar Association, Resolution, the Legal Aid Practitioners' Group and the Association of Lawyers for Children. The consultation began on 18 January 2008, a draft of the amended Regulations was sent to all consultees.

- 7.3. The Law Society expressed concern over the proposal to amend the regulations concerning reassessments and retrospective contributions. They do not agree that retrospective contributions should be called for, being concerned that the LSC's guidance relating to reassessments in other circumstances appeared to give a wide discretion to allow them to call for contributions when the amount of capital involved could be relatively small. No specific action has been taken in response to this concern as in fact it is not intended that the LSC guidance will be drafted in such broad terms as the Law Society fear.

8. Impact

- 8.1. A full regulatory impact assessment has not been made for this instrument, as it has no significant impact on the cost of businesses, charities or voluntary bodies.

9. Contact

- 9.1. Enquiries about the contents of this memorandum should be addressed to:

Mandy Banks
Civil & Family Legal Aid Strategy
Ministry of Justice
Email: Mandy.Banks@justice.gsi.gov.uk
0207 210 8882