

**EXPLANATORY MEMORANDUM TO**  
**THE LEGAL SERVICES ACT 2007 (COMMENCEMENT NO. 12, SUPPLEMENTARY**  
**AND TRANSITORY PROVISION) ORDER 2014**

**2014 No. 3307 (C. 152)**

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This instrument brings into force section 161 of the Legal Services Act 2007 (“the 2007 Act”), which extends the scope of the Legal Ombudsman scheme in Part 6 of the 2007 Act so as to allow the ombudsman, established under that Part, to consider complaints about the service provided by persons regulated by the Claims Management Services Regulator (“the CMR”).

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

- 3.1 Articles 3 and 4 of this instrument enable the Legal Ombudsman to consider claims management complaints where the act or omission which is the subject of the complaint took place before the commencement of section 161. This is consistent with the intention of Parliament in the 2007 Act, which, by means of section 125(2), intended pre-commencement acts or omissions to fall within the Legal Ombudsman’s jurisdiction. The provision made by article 3 is necessary due to the fact that section 161 is being commenced later than the rest of Part 6 of the 2007 Act, and the provision in article 4 is supplementary to ensure that persons authorised by the CMR can be respondents to a complaint relating to a pre-commencement act or omission.

4. **Legislative Context**

- 4.1 The 2007 Act governs the regulation of legal services in England and Wales. Under the 2007 Act, only a person who is authorised by an approved regulator or who is exempt from the requirement to be authorised may carry on a reserved legal activity. Part 2 of the 2007 Act established the Legal Services Board (“the LSB”) as the oversight regulator with responsibility for approved regulators. Part 6 of the 2007 Act established the Office for Legal Complaints (“the OLC”) which established the Legal Ombudsman scheme to handle complaints about authorised legal services providers.

- 4.2 In order to bring claims management complaints within the jurisdiction of the Legal Ombudsman, two other linked statutory instruments are being made in addition to this commencement order. The first, the Legal Services Act 2007 (Claims Management Complaints) (Fees) Regulations 2014 (“the Fees S.I.”), enables the Lord Chancellor to charge fees to authorised claims management companies in respect of the expenditure incurred by the Office for Legal Complaints in relation to claims management services.
- 4.3 The second linked statutory instrument, the Compensation (Claims Management Services) (Amendment) Regulations 2015 (“the claims management amendment S.I.”), amends the Compensation (Claims Management Services) Regulations 2006 to make them compatible with the requirements of Part 6 of the 2007 Act. For example, that instrument removes the CMR’s power to direct a company to make redress to a consumer as a result of a complaint, as this will now be a function of the Legal Ombudsman, and it provides for information sharing between the CMR and the Legal Ombudsman.
- 4.4 The start date for the Legal Ombudsman’s jurisdiction over claims management complaints is 28 January 2015.

## **5. Territorial Extent and Application**

- 5.1 This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

- 6.1 As this is a negative procedure instrument, no statement of compatibility is required.

## **7. Policy background**

- *What is being done and why*

- 7.1 This instrument is the twelfth Commencement Order made under the 2007 Act. Article 2 commences section 161 of the 2007 Act. Section 161(3) will be commenced on 20 January 2015 in order to facilitate the making of the claims management amendment S.I. and the other parts of section 161 will be commenced on 28 January 2015, consistent with the overall start date for the Legal Ombudsman’s jurisdiction over claims management complaints.
- 7.2 Article 3 adapts section 125 of the 2007 Act. Section 125 makes provision for the Legal Ombudsman to have jurisdiction over acts or omissions which occurred before the commencement of that section. Article 3 adapts the 2007 Act so that the Legal Ombudsman will have jurisdiction to consider complaints about acts or omissions by authorised claims management companies that occurred before section 161 of the 2007 Act is commenced. In doing so, it makes the Legal

Ombudsman's jurisdiction over claims management complaints consistent with the Ombudsman's jurisdiction over complaints about other authorised persons under the 2007 Act.

7.3 Article 4 makes supplementary provision to ensure that persons authorised by the CMR are respondents for the purposes of the Legal Ombudsman scheme, where the act or omission which is the subject of the complaint took place before the commencement of section 161.

7.4 Article 5 modifies the wording of section 161(4)(b) until paragraph 3(7) of Schedule 19 to the 2007 Act is brought into force, so that the reference to "the Board" is to be read as a reference to "the Secretary of State who is exercising the functions under section 5(9) of the Compensation Act 2006." This is because there is currently no designated CMR and the Secretary of State fulfils the role.

- ***Consolidation***

7.5 This is a standalone order which does not make amendments to any other SI, so no question of consolidation arises.

## **8. Consultation outcome**

8.1 The Government announced its intention to commence section 161 of the 2007 Act in August 2012. Although the Government consulted on the linked Fees S.I., no consultation was necessary specifically on this instrument given its limited nature: it commences one section of the 2007 Act and makes other provision to ensure that claims management complaints are dealt with on the same basis as complaints against other legal services providers.

## **9. Guidance**

9.1 The CMR and the Legal Ombudsman will publicise the changes.

9.2 Regarding the linked Fees S.I., the consultation document on the proposed fee structure was sent to all authorised claims management companies.

## **10. Impact**

10.1 There is no anticipated impact on charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 No impact assessment was carried out for this instrument specifically. This is because the costs to business flowing from the commencement of section 161 were explored in an impact assessment that was included in the Government's

consultation response on the fees which will be charged to regulated claims management companies as part of bringing claims management complaints under the jurisdiction of the Legal Ombudsman. This is available at <https://consult.justice.gov.uk/>.

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 Small and micro businesses are included within the legislation as they are subject to regulation by the CMR and therefore, under the 2007 Act, will fall within the remit of the Legal Ombudsman once the Ombudsman's remit is extended. The proposed changes could not feasibly be applied without impacting small and micro businesses due to the large proportion that make up the claims management industry. This measure is not, however, expected to have any disproportionate impact on small firms.

## **12. Monitoring & review**

12.1 This measure will be reviewed by the Ministry of Justice in April 2018.

## **13. Contact**

Please contact John Russell at the Ministry of Justice (Tel: 0203 334 3626 or email: [John.Russell2@justice.gsi.gov.uk](mailto:John.Russell2@justice.gsi.gov.uk)) about any queries regarding this instrument.