

EXPLANATORY MEMORANDUM TO
THE COMMUNITY LEGAL SERVICE (FUNDING) (COUNSEL IN FAMILY
PROCEEDINGS) (AMENDMENT No. 2) ORDER 2007

2007 No. 3169

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 Order recognises and makes reference to the hearings and stages contained in the draft Public Law Outline (PLO), a case management protocol which is currently operative in 10 initiative areas and applies to child care proceedings cases only. Because the existing Order only refers to the current Protocol for Judicial Management in Public Law Children Act Cases (“PLP”), it needs to be amended to also include references to the draft PLO.

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

3.1 None.

4. Legislative Background

4.1. The Lord Chancellor makes this Order in exercise of the power conferred by section 6(4) of the Access to Justice Act 1999. The Lord Chancellor has consulted the General Council of the Bar and the Law Society in accordance with section 25(2) of that Act and has had regard to the matters specified in section 25(3) of that Act.

5. Extent

5.1. The Order extends 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. The PLP was introduced in November 2003. It was intended to reduce delay in care proceedings cases, and set a 40-week guideline for the completion of such cases.

- 7.2. In 2005 the Department for Constitutional Affairs (DCA) published *A Fairer Deal for Legal Aid*, which recommended that a further separate child care proceedings review be carried out. *The Review of the Child Care Proceedings System in England and Wales* (“Childcare Review”) was published jointly by the DCA and the Department for Education and Skills in May 2006.
- 7.3. The Childcare Review made a number of recommendations, including introducing pre-proceedings advice for parents where local authorities are considering bringing care proceedings (to try to avoid such proceedings), and issuing revised guidance to local authorities. The Care Review also recommended revising the PLP by streamlining proceedings (reducing the 6 stages to 4) and focusing more on the early stages of care proceedings in order to avoid delay.
- 7.4. To this end, the President of the Family Division developed a revised judicial case management protocol, the Public Law Outline (PLO). A draft version was published for consultation between 21 June and 13 September 2007, and this version is being tested in 10 initiative areas around the country between June 2007 and April 2008. In these areas local Designated Family Judges have been given the discretion to engage locally with other agencies and implement the PLO when ready. The outcomes of these initiatives will inform the President’s final draft of the PLO, which is to be published early next year, following the agreement of the Lord Chancellor. The PLO is due to be implemented nationally in April 2008, when it will replace the PLP.

Consultation

- 7.5. These changes to the Order have been subject to a statutory consultation with The Bar Council and the Law Society. We also consulted the Legal Aid Practitioners’ Group (LAPG), Resolution, the Association of Lawyers for Children (ALC) and the judiciary. The 15-day consultation, which closed on 30 October 2007, focused on whether the changes to the Order meet our policy objectives, rather than on the PLO itself (which was the subject of a separate consultation, as set out above). Responses were received from the Law Society and the Bar Council; neither raised any objections to the Order.

8. Impact

- 8.1. An Impact Assessment has not been prepared for this instrument as it has no impact on businesses, charities or voluntary bodies.
- 8.2. However, a Regulatory Impact Assessment (RIA) has been prepared in relation to the Child Care Proceedings Review recommendations, which include the Public Law Outline itself. That RIA is available at www.dca.gov.uk/publications/reports_reviews/childcare_psria.pdf

9. Contact

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