

**EXPLANATORY MEMORANDUM TO  
THE COMMUNITY LEGAL SERVICE (FINANCIAL) (AMENDMENT)  
REGULATIONS 2007**

**2007 NO. 906**

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1. This Instrument amends the Community Legal Service (Financial) Regulations 2000 which are made under section 7 and 10 of the Access to Justice Act 1999.

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

2.2.1. It aggregates a parent's means with those of their child, in line with general harmonisation between legal help and representation in certain proceedings throughout the CLS.

2.2.2. It will clarify the present situation with regard to means testing for final appeals in Special Children Act cases.

2.2.3. It will allow General Family Help to be used as an interim mechanism (prior to the introduction of the new funding schemes in October 2007) for funding pre-proceedings advice in relation to cases where the state may make an application to take a child into care.

2.2.4. It will further harmonise various eligibility limits (e.g. to ensure consistent application of an £8,000 capital limit, and extend the circumstances where an existing domestic violence eligibility waiver can be used).

2.2.5. It will increase exemptions from the 'statutory charge'. Costs incurred in light of the public duty to promote disability equality will be exempt, as will legally aided pension lump sum recovery orders.

2.2.6. It will remove the 'statutory charge' exemption for Employment Appeal Tribunals.

2.2.7. It will increase income eligibility limits for civil legal aid in line with inflation (based on the Retail Price Index). This is done on an annual basis.

**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.

#### **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. During the “New Focus” reforms (implemented in 2005), the Department for Constitutional Affairs began the process of simplifying and harmonising means assessment for civil legal aid eligibility. The upper eligibility limits have already been harmonised, so we are now seeking to achieve simpler, more uniform eligibility rules for all forms of Community Legal Service (CLS) funding, where possible. Our overall aim is to achieve a simpler and more streamlined scheme, which is easier to administer and which will benefit CLS clients, legal services providers, and ensure greater efficiency of the Legal Services Commission administration budget.
- 7.2. These generally technical changes were subject to a limited consultation with key practitioners’ groups, including the Law Society, Bar Council, Resolution, the Legal Aid Practitioners’ Group and the Association of Lawyers for Children. The consultation began on 20 December 2006. At this time the policy intentions were clearly spelt out. On 8 February 2007 the proposed draft amended regulations were sent to consultees.
- 7.3. Whilst the Law Society did not agree with all the proposals, they did agree with the general principle of simplifying these eligibility limits. Concerns expressed by the Law Society and the Immigration Law Practitioners Association about immigration proposals have been considered, and the proposal to alter the immigration capital limit for controlled legal representation from £3,000 to £8,000 will not be taken forward in April 2007.

#### **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:

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