

**EXPLANATORY MEMORANDUM TO THE  
THE COMMUNITY LEGAL SERVICE (FUNDING) (AMENDMENT NO. 2) ORDER  
2004**

**2004 No. 2900**

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 Select Committee on the Merits of 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. It implements remuneration increases for specific areas of publicly funded housing law work and facilitates the operation by the Legal Services Commission of different payment schemes and structures within the Community Legal Service.
  - 2.2 These amendment order also inserts the requirement under Article 7 for the preparation of applications for legal help for the transmission of applications for legal aid in cross border disputes. The order confers power on the Legal Services Commission to fund Legal Help relating to the preparation of the applications for legal aid in connection with cross-border disputes which are to be determined in another Member State, for transmission to the authorities of the other Member State under the provisions of the Directive. This enables the Community Legal Service to comply with the European Legal Aid Directive (Council Directive 2002/8/EC of 27<sup>th</sup> January 2003).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 Provisions are being introduced in order to ensure that publicly funded legal services under the Community Legal Service comply with the European Legal Aid Directive (Council Directive 2002/8/EC of 27 January 2003).
4. **Legislative Background**
  - 4.1 This Order is made by the Secretary of State and Lord Chancellor, in exercise of the powers conferred upon him by sections 6(4) and 19 of the Access to Justice Act 1999, having regard to the matters specified in section 25 (2) and (3) and having consulted the General Council of the Bar and the Law Society.
  - 4.2 The Instrument implements provisions in the European Legal Aid Directive Council Directive 2002/8/EC of 27 January 2003, and a Transposition Note is attached.
  - 4.3 An Explanatory Memorandum on the Directive was deposited in February 2002. Scrutiny was cleared in the House of Lords on 9 October 2002.

Parliamentary scrutiny overridden in the House of Commons due to pressures of time, although the text of the Directive was subsequently cleared by the House of Commons Committee the following week.

## **5. Extent**

5.1 This instrument applies to England and Wales.

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

6.1 This instrument is subject to negative resolution and does not amend primary legislation. It is considered, however, that the provisions of this instrument are compatible with the European Convention on Human Rights.

## **7. Policy background**

7.1 The Directive was proposed by the European Commission pursuant to the conclusions reached by heads of government at the Tampere European Council, in Finland, in October 1999, as part of an effort to improve access to justice across European borders. Civil measures which have already been agreed since 1999 include a decision to create a civil judicial network, to help co-operations between courts and legal systems work more smoothly, and a measure to streamline the taking of evidence in cross-border civil proceedings.

The Directive is an important part of the EU's ongoing programme of work aimed at making it easier for citizens to resolve civil disputes across European borders. UK citizens who are financially eligible according to member states' rules will be able to receive legal aid and assistance in civil disputes throughout the European Union from 30 November 2004.

The Directive only applies to cross-border civil cases and provides that legal aid should be made available in the country where the dispute is taking place without discrimination on the grounds of the applicant's nationality (a rule that reflects the existing practice in the UK and some other countries). It will ensure that costs specifically related to the cross-border nature of the case are covered, including interpretation and translation of any necessary documents. Applications will remain subject both to financial eligibility and merits tests according to Member States' national rules. Member states will not be obliged to give legal aid where conditional fee agreements or other funding mechanisms are available or in simple proceedings, for example those in the small claims courts. The recent reforms to the UK legal aid system have been recognised by our European partners. As such, important parts of the Lord Chancellor's recent reforms, in particular conditional fee agreements, have been reflected in the Directive.

7.2 The Access to Justice Act 1999 was the principal enabler of a major reform programme of the legal aid system. This programme was targeted at better spending of civil legal aid and improving the efficiency of criminal legal aid. The Legal Services Commission was created by the Act with the role to fund legal and advice services in England and Wales and to develop suppliers and innovative services to meet identified priority needs. The Commission operates the Community Legal Service (CLS), implemented from April 2000, to fund and deliver civil legal and advice services and civil representation. A key element of the CLS is the network of quality assured suppliers of legal services who operate under contract with the

Commission. Under the contracting system funded clients have the benefit of receiving quality assured services and the Commission has greater control over expenditure and better value for money. The Community Legal Service (Funding) Order 2000 prescribed the remuneration rates to be paid to contracted providers within the CLS. This instrument makes increases to rates to ensure that an adequate supply of contracted suppliers in all areas of law is maintained.

The Bar Council, the Law Society and other professional bodies and interested groups and individuals were consulted on the proposed remuneration changes and the draft instrument. There was little interest and only two responses were received.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

## **9. Contact**

Helen Johns at the Department for Constitutional Affairs: Tel: 020 7210 1490 or e-mail: [helen.johns@dca.gsi.gov.uk](mailto:helen.johns@dca.gsi.gov.uk) can answer any queries regarding the Legal Aid Directive aspects of the instrument.

Helen Bateman at the Department for Constitutional Affairs: Tel: 020 7210 8763 or e-mail: [helen.bateman@dca.gsi.gov.uk](mailto:helen.bateman@dca.gsi.gov.uk) can answer any queries regarding the Legal Help Remuneration aspects of the instrument.