

**EXPLANATORY MEMORANDUM TO THE  
CIVIL LEGAL AID (GENERAL) (AMENDMENT NO.2) REGULATIONS 2005**

**2005 No. 1802**

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 House of Lords Select Committee on the Merits of Statutory Instruments and the Joint Committee on Statutory Instruments.

**2. Description**

2.1 This instrument amends the Civil Legal Aid (General) Regulations 1989 (SI 1989/339), which relate to the provision of civil legal aid under the Legal Aid Act 1988. The 1989 Regulations continue to have effect in relation to legal aid granted under the 1988 Act, but have otherwise lapsed as a result of the repeal of their enabling provisions by the Access to Justice Act 1999.

2.2 In particular, the instrument inserts a new regulation 96A into the 1989 Regulations. It provides for deferment of enforcement of the statutory charge only if it appears to the Board that it is unreasonable for the client to repay the amount of the charge and also provides for the Board to review, at any time, any decision to defer enforcement of the charge.

2.3 Additionally, this instrument makes minor amendments to regulations 97 and 99 consequent upon new regulation 96A.

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

3.1 None

**4. Legislative Background**

4.1 The Civil Legal Aid (General) Regulations 1989 were made under enabling powers in the Legal Aid Act 1988, which was repealed by the Access to Justice Act 1999 subject to savings contained in the Access to Justice Act 1999 (Commencement No. 3, Transitional Provisions and Savings) Order 2000 (S.I. 2000/774).

4.2 In particular, by virtue of article 5(1) of the 2000 Order certain provisions of the 1988 Act remain in force in relation to, inter alia, legal aid granted pursuant to an application signed before 1<sup>st</sup> April 2000 and received by the Legal Aid Board before 2<sup>nd</sup> May 2000. The 1989 Regulations remain in force in relation to such services, subject to the modifications in article 5(2). Article 5(4) specifically provides that the repeal of the enabling powers in sections 34 and 36 of the 1988 Act does not affect the power under that Act to make regulations in relation to the services mentioned in article 5(1).

- 4.3 Part XI of the 1989 Regulations, which includes regulations 96 to 99, makes provision about the operation of the statutory charge under section 16 of the Legal Aid Act 1988 upon property or costs recovered for assisted persons.

## **5. Extent**

- 5.1 This instrument applies to England and Wales.

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

- 6.1 Not applicable.

## **7. Policy background**

- 7.1 In July 2004, a consultation paper ‘A new focus for civil legal aid’ was published jointly by the LSC and the Department for Constitutional Affairs (DCA). This proposed a number of changes aimed at targeting legal aid in a better way, through reform of the merits test and scope of the civil legal aid scheme, in order to encourage early resolution of disputes and discourage unnecessary litigation. The legal aid budget is seriously under pressure and the proposals, while aimed at tightening up the existing funding arrangements, and considering whether any case types should be removed from scope, were carefully designed not to reduce access to funding for deserving cases in priority areas of law.

- 7.2 The consultation closed in October 2004. As part of the consultation, officials from the LSC and DCA held discussions with key stakeholders including the Legal Aid Practitioners Group ; Solicitors Family Law Association (now Resolution); The Law Society; The Official Solicitor. In addition, Ministers held meetings with the Child Poverty Action Group ; Public Law Project , Legal Aid Practitioners Group; Advice Services Alliance; the Bar and Law Society as part of this consultation process. Following careful consideration of the 136 written responses and issues raised during meetings, a number of proposals were not taken forward, and the final package represents a balanced set of measures. One of the strongest messages arising from the consultation was that in response to budget pressures, rather than reducing the scope of services offered, it was far preferable to increase the effectiveness of mechanisms to recover costs back into the fund at the end of a case. There was therefore much support for wider powers to seek repayment of the statutory charge from those clients who had the resources to do so.

- 7.3 These current regulation changes implement the second phase of the reforms which in particular focus on tightening up the LSC’s operation of the statutory charge and abolishing support funding. It should be noted that new provisions will apply to charges postponed under the Legal Aid Act 1988 though there would be relatively few cases where a Certificate was granted under the 1988 Act (ie, before April 2000) and the decision to postpone occurs after July 2005.

## **8. Impact**

- 8.1 The Final Combined Regulatory and Race Impact Assessment was signed by Ministers on 20 March 2005 and published shortly thereafter. The Small Business Service did not anticipate that these proposals would have a significant impact on

business. A copy is attached to Community Legal Service (Financial) (Amendment No.3) Regulations 2005.

**9. Contact**

- 9.1 Yasmin Tengahan at the Department for Constitutional Affairs: tel: 0207 210 0601, (e-mail: [yasmin.tengahan@dca.gsi.gov.uk](mailto:yasmin.tengahan@dca.gsi.gov.uk)), can answer any queries regarding this instrument.