

EXPLANATORY MEMORANDUM TO

The Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2006

2006 No. [2364]

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 Joint Committee on Statutory Instruments and the House of Lords Select Committee on the Merits of Statutory Instruments.
2. **Description**
 - 2.1 This instrument amends the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001 (S.I. 2001/1077) which governs the systems for the payment of graduated fees for counsel for work in family proceedings. The 2001 Order also covers how and when claims for payment are to be made, and appeals and review of payments.
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 Lord Chancellor, in exercise of the powers conferred by section 6(4) of the Access to Justice Act 1999.
 - 4.2 Part I of the Access to Justice Act 1999 established the Legal Services Commission and Community Legal Service as a coherent framework for the provision of legal services. In particular, sections 4 to 11 of the Act contain provision about the funding of civil legal aid through the Community Legal Service.
 - 4.3 This Order changes the references to those within the LSC who are responsible for considering certain claims.
 - 4.4 It changes all references to Legal Service Commission (LSC) “Funding Review Committees” to “Independent Funding Adjudicators” following the LSC consultations on the reform of their applications and appeals procedures and the LSC Funding Code procedures.
 - 4.6 It reflects recent organisational changes to the role of Regional Directors in the LSC, which are also set out in the revised LSC Funding Code.
5. **Extent**

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and it does not amend primary legislation, no statement is required.

7. Policy Background

7.1 The LSC's recent consultation paper the "Reform of the LSC's Applications and Appeals Procedures" proposed improving the LSC's processes for internal review when a client wishes to appeal against the refusal or discharge of a legal aid certificate; and replacing existing committee structures for determining appeals (the Funding Review Committee) with single Independent Funding Adjudicators specialist in the subject matter of the application.

7.1.2 The Funding Code Procedures set out the suggested legal framework for these changes (so that consultees can consider the principles alongside the legal framework for the new appeals process). The revised Procedures also seek to reflect recent and planned organisational changes within the LSC, particularly in relation to the role of Regional Directors.

7.1.3 Legal aid has always been administered by regional offices within England and Wales each managed by a Regional Director. Traditionally applications for funding and for assessment of costs are made by the solicitor to his or her local regional office and all decisions taken in that office are made by lawyers and caseworkers on behalf of the Regional Director.

7.1.4 In recent years it has become no longer necessary or efficient for all offices to determine applications in all categories of work. Applications have been moved between offices to match the resources and skills available. This has contributed significantly to the increased performance of the LSC in terms of speed of processing of applications. Over time the LSC intends to concentrate the processing of applications and bills in three Business Delivery Centres.

7.1.5 This leaves the role of the Regional Director to concentrate on assessing need within each region and contracting for services to meet that need, whilst forging links with other stakeholders in the region. As described in the LSC's Preferred Supplier consultation paper, Regional Directors will be responsible for the relationship managers who will work directly with local suppliers.

7.1.6 To reflect the division between the new Regional Director role and responsibility for the processing of applications, staff responsible for applications will report to a new Director of Business Delivery or the Director of the Special Cases Unit and the Funding Code procedures are proposed to be amended accordingly.

8. Impact

8.1 No RIA has been prepared as these changes are either minor or technical changes and have no impact on business, charities or voluntary bodies.

9. Contact

9.1 Karen Finlay at the Department for Constitutional Affairs: (Tel - 020 7210 8745 E Mail - Karen.Finlay@dca.gsi.gov.uk) can answer any queries regarding this instrument.