

EXPLANATORY MEMORANDUM TO
THE COMMUNITY LEGAL SERVICE (FUNDING) ORDER 2007

2007 No. 2441

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 implements new civil legal aid fee schemes. It replaces the Community Legal Service (Funding) Order 2000 which set out rates for legal aid work. This Order incorporates a Schedule which sets out the rates for the new fixed fee schemes.

2.2. The fee schemes implemented by this Order are the Tailored Fixed Fee Replacement Scheme (Table 1 in the Schedule), the Immigration and Asylum Graduated Fee Scheme, the Family Help (Private) Fee Scheme and the Care Proceedings Graduated Fee Scheme, which are to be implemented on 1 October 2007. The Mental Health Standard Fee Scheme, also set out in the Schedule, is to be implemented on 1 January 2008 by this Order.

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 powers conferred by sections 6(4) and 19 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 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. Lord Carter of Coles published his Review of Legal Aid Procurement on 13 July 2006, when the Department for Constitutional Affairs (DCA) and the Legal Services Commission (LSC) issued their joint consultation paper on his proposals, *Legal Aid: A Sustainable Future*. The consultation period lasted until 12 October 2006.
- 7.2. On 28 November 2006, the DCA and LSC jointly published *Legal Aid Reform: The Way Ahead*. This document set out plans to defer implementation of the fee schemes from April to October 2007, and to re-consult on aspects of the Family Private and Care Proceedings schemes. The re-consultation ran for 6 weeks from 1 March to 16 April. The Tailored Fixed Fee Replacement scheme (for civil law) and Immigration and Asylum schemes were agreed by Ministers and published on 28 November 2006 and 1 March 2007 respectively. The Mental Health, Family Private and Care Proceedings fee schemes were agreed by Ministers and published on 22 June.

Consultation

- 7.3. The new fee schemes for civil and family legal aid work have been consulted upon extensively. During the summer of 2006, the then-legal aid minister, Vera Baird QC MP, toured the country and held some twenty-five meetings to meet practitioners and listen to their views on the proposals. The LSC also met practitioners to explain the proposals and to answer questions. The DCA and the LSC received 2372 written consultation responses to *A Sustainable Future*; all of these were analysed and considered before decisions on the final fee schemes were taken.
- 7.4. In addition to being subject to extensive consultation, the new fee schemes have also been subject to Parliamentary scrutiny and debate. The Government initiated a full Commons debate on the legal aid reform programme on 11 January 2007. In addition, there have been three separate debates on legal aid reform in Westminster Hall this year, a detailed report by the Constitutional Affairs Select Committee (CASC) and two debates in July on change to the Funding Code.
- 7.5. This Order was also subject to statutory consultation with the Law Society and the Bar Council, but we also consulted with the Legal Aid Practitioners' Group (LAPG), the Immigration Law Practitioners' Association (ILPA), the Mental Health Lawyers' Association, Resolution (formerly the Solicitors' Family Law Association) and the Association of Lawyers for Children. The consultation ran from 3 July until 24 July. This was a consultation on whether the Order met its policy objective, rather than a consultation on the policy itself.
- 7.6. Comments were received from the Law Society, LAPG and ILPA. Both the Law Society and the LAPG raised some policy objections to the legal aid reform programme, but made no substantive points on the Order itself. ILPA raised general concerns about fee levels being too low, and a technical point about the

transitional arrangements for new cases, which has now been clarified. No other comments were received.

8. Impact

8.1. Impact assessments have been prepared and were included in the full Impact Assessments which accompanied the documents 'Legal Aid Reform: The Way Ahead', 'Legal Aid Reform: Family and Family Mediation Fee Schemes for October 2007', 'Legal Aid Reform: Final Immigration and Asylum Fee Schemes' and 'Legal Aid Reform: Mental Health Fixed Fees'. They are attached to this Explanatory Memorandum.

9. Contact

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