

2010 No. 95

**LEGAL SERVICES COMMISSION, ENGLAND AND
WALES**

**The Community Legal Service (Funding) (Amendment) Order
2010**

<i>Made</i>	- - - -	<i>20th January 2010</i>
<i>Laid before Parliament</i>		<i>25th January 2010</i>
<i>Coming into force</i>	- -	<i>15th February 2010</i>

The Lord Chancellor makes the following Order in exercise of the powers conferred by section 6(4) of the Access to Justice Act 1999 (a). 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.

Citation, commencement, interpretation and transitional provisions

1. This Order may be cited as the Community Legal Service (Funding) (Amendment) Order 2010.

2. This Order shall come into force on 15th February 2010.

3. In this Order —

- (a) “the 2002 Act” means the Nationality, Immigration and Asylum Act 2002(b);
- (b) “the 2007 Act” means the Tribunals, Courts and Enforcement Act 2007(c);
- (c) “the 2010 Order” means the Transfer of Functions of the Asylum and Immigration Tribunal Order 2010(d).

4. This Order does not apply to proceedings to which section 103D of the 2002 Act or the Community Legal Service (Asylum and Immigration Appeals) Regulations 2005(e) continue to apply by virtue of the saving provisions in paragraph 20 of Schedule 4 to the 2010 Order.

5. The reference in article 10 to cases remitted to the Upper Tribunal under section 14 of the 2007 Act includes cases restored under section 103C of the 2002 Act, and cases remitted under section 103B, 103C or 103E of that Act, insofar as those sections are saved by paragraph 19 of Schedule 4 to the 2010 Order.

(a) 1999 c. 22. The powers were transferred to the Secretary of State by S.I. 2003/1887 and transferred back to the Lord Chancellor by S.I. 2005/3429.
(b) 2002 c. 41; sections 103A to 103E were inserted by section 26(6) of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 (c. 19).
(c) 2007 c. 15.
(d) S.I. 2010/21.
(e) S.I. 2005/966 as amended by S.I. 2007/1317.

Amendments to the Community Legal Service (Funding) Order 2007

6. The Community Legal Service (Funding) Order 2007(a) is amended as follows.

7. In article 3(1)—

(a) after the definition of “the Act”, insert—

““ the 2007 Act” means the Tribunals, Courts and Enforcement Act 2007;”.

(b) after the definition of “Higher Courts”, insert—

““Immigration and Asylum Chamber of the First-tier Tribunal” and “Immigration and Asylum Chamber of the Upper Tribunal” are the Chambers referred to in articles 2(f) and 6(d) respectively of the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008(b);”.

8. In the Schedule, in Part 1, sub-part 4, table 4(b), for “Representation at substantive Asylum and Immigration Tribunal hearing” substitute “Representation at a substantive hearing in the Immigration and Asylum Chamber of the First-tier Tribunal”.

9. In the Schedule, in Part 2, sub-part 7, for the words from “Advice as to the merits” to “103E of that Act” following table 7(b) substitute—

“Advice as to the merits of an application for permission to appeal to the Immigration and Asylum Chamber of the Upper Tribunal under section 11 of the 2007 Act (where advice has not been received under stage 2 of the graduated fee scheme), and advice as to the merits of an application for permission to appeal to the Court of Appeal from that Chamber under section 13 of that Act”.

10. In the Schedule, in Part 2, sub-part 8—

(a) for the words from “Applications under section 103A” to “103D of that Act” following table 8(a) substitute—

“Proceedings in the Immigration and Asylum Chamber of the First-tier Tribunal, except applications for permission to appeal to the Upper Tribunal under section 11 of the 2007 Act in cases where, if the application were granted, the appeal would fall within table 8(b).

The following proceedings in the Immigration and Asylum Chamber of the Upper Tribunal—

- Appeals, and applications for permission to bring such appeals, from the Immigration and Asylum Chamber of the First-tier Tribunal under section 11 of the 2007 Act where—
 - the Secretary of State is the appellant or the applicant for permission to appeal to the Upper Tribunal; or
 - the appeal is a fast-track case as defined in the Tribunal Procedure (Upper Tribunal) Rules 2008(c);
- Reviews under section 10 of the 2007 Act of decisions of the Upper Tribunal in relation to such appeals;
- Applications under section 13 of the 2007 Act for permission to appeal against a decision of the Upper Tribunal to the Court of Appeal;
- Cases remitted under section 14 of the 2007 Act.”

(b) for the heading to Table 8(b) substitute —

“Immigration – those matters listed after this Table”

(a) S.I. 2007/2441; relevant amending instruments are S.I. 2008/1328, 2008/2704 and 2009/2468.

(b) S.I. 2008/2684; relevant amending instruments are S.I. 2009/196, 2009/1021, 2009/1590 and 2010/40.

(c) S.I. 2008/2698, amended by S.I. 2010/44; there are other amending instruments but none is relevant.

(c) after Table 8(b) insert—

“The following proceedings in the Immigration and Asylum Chamber of the Upper Tribunal—

- Appeals from the Immigration and Asylum Chamber of the First-tier Tribunal under section 11 of the 2007 Act other than those listed after Table 8(a);
- Applications for permission to bring such appeals;
- Reviews under section 10 of the 2007 Act of decisions of the Upper Tribunal in relation to such appeals.”

Signed by the authority of the Lord Chancellor

Bach
Parliamentary Under Secretary of State
Ministry of Justice

20th January 2010

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Community Legal Service (Funding) Order 2007. The 2007 Order limits the power of the Legal Services Commission to pay remuneration under contract for the provision of funded services, and sets out remuneration rates which are payable for funded services.

This Order makes consequential amendments arising from the Tribunals, Courts and Enforcement Act 2007, which replaces individual tribunals, including the Asylum and Immigration Tribunal, with a new First-tier and Upper Tribunal, grouped into chambers. The 2007 Order contains references to the Asylum and Immigration Tribunal which will cease to exist under the Act.

One of the consequences of the 2007 Act is that the ‘review and reconsideration’ process established by the Nationality, Immigration and Asylum Act 2002 will cease to exist. As a result, the system of funding review and reconsideration applications will also cease to exist.

A full regulatory impact assessment has not been made for this instrument, as it has no significant impact on the costs of businesses, charities or voluntary bodies.

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STATUTORY INSTRUMENTS

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£4.00