

EXPLANATORY MEMORANDUM TO
THE LEGAL SERVICES COMMISSION (NUMBER OF COMMISSIONERS)
ORDER 2011

2011 No. 1191

1. This explanatory memorandum has been prepared by the Ministry of Justice (MoJ) and is laid before Parliament by Command of Her Majesty. It contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1. This Order relates to the Legal Services Commission, which administers the legal aid system in England and Wales. It reduces the maximum number of Commissioners from twelve to six and the minimum number from seven to four. This is pending the abolition of the Legal Services Commission as a statutory Non Departmental Public Body.

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

3.1 None.

4. Legislative Context

4.1. The Lord Chancellor makes this Order in exercise of the powers conferred by section 1(3) of the Access to Justice Act 1999.

4.2. The instrument is subject to the negative resolution procedure under section 25(10) of the Access to Justice Act 1999.

5. Territorial Extent and Application

5.1. The Order extends to England and Wales.

6. European Convention on Human Rights

6.1. In the view of the Parliamentary Under Secretary of State, Jonathan Djanogly MP, the provisions of the Legal Services Commission (Number of Commissioners) Order 2011 are compatible with the Convention rights.

7. Policy Background

7.1 The Legal Services Commission was established as a statutory Non Departmental Public Body under the Access to Justice Act 1999 to administer legal aid services in England and Wales. Its statutory duties are to establish, maintain and develop

two services: the Community Legal Service (essentially civil legal aid) and the Criminal Defence Service (criminal legal aid).

- 7.2 As well as their statutory functions in relation to the Community Legal Service and the Criminal Defence Service, Commissioners, as members of the Legal Services Commission Board are responsible for overseeing the discharge of the Legal Services Commission's functions. The Commission also ensures that effective arrangements are in place to provide assurance on risk management, governance and internal control. More information on the roles and responsibilities of the Commission and the Legal Services Commission Board can be found in the Framework Document between MoJ and the Legal Services Commission. This is available at: http://www.legalservices.gov.uk/docs/about_us_main/Framework_document_web.pdf. The Commission will retain its legal status and functions until abolition. Its activities will not be scaled down and there will be no transfer of its functions to MoJ/the agency during the interim period.
- 7.3 Section 1(3) of the Access to Justice Act 1999 specifies that the Commission shall consist of not fewer than seven members and not more than twelve members but allows, by order, the Lord Chancellor to substitute such other numbers as he considers appropriate. Due to a resignation, the Commission currently has six members and one vacancy.
- 7.4 The Government's consultation paper, Proposals for the Reform of Legal Aid in England and Wales (Chapter 10), sets out the intention to abolish the Legal Services Commission as a Non Departmental Public Body and to replace it with an executive agency of the Ministry of Justice. However, the abolition of the Legal Services Commission and the changes to the minimum and maximum numbers of Commissioners were not specifically consulted on. The Government has already announced its intention to abolish the Commission. The consultation ran from 15 November 2010 to 14 February 2011 and the response will be published in due course. The consultation document can be found at: <http://www.justice.gov.uk/consultations/633.htm>.
- 7.5 The abolition of the Legal Services Commission will not be effected via the Public Bodies Bill but through a separate legislative vehicle which will be introduced as soon as Parliamentary time allows. Subject to that Parliamentary time being available, current planning assumes that the new agency will be established from 1 October 2012.
- 7.6 This Order seeks to amend the minimum number of Commissioners to four and the maximum to six in order to offer some flexibility in numbers in the transition to agency status, whilst ensuring that an appropriate mix of knowledge and expertise is retained. The proposed reduction in the minimum number of Commissioners proceeds on the assumption that the Commission would be able to fulfill its statutory functions at this lower level.

8 Consultation Outcome

- 8.1 The Legal Services Commission has been consulted and is aware of the intention to amend the minimum and maximum number of Commissioners required under the Access to Justice Act 1999.

9. Guidance

- 9.1 Information on the Commissioners of the Legal Services Commission can be found on the Legal Services Commission's website at:
<http://www.legalservices.gov.uk/aboutus/how/commissioners.asp>

10. Impact

- 10.1 An Impact Assessment has not been prepared for this instrument because no impact is foreseen on the private or voluntary sector.

11. Regulating small business

- 11.1 The legislation does not apply to small businesses.

12. Monitoring and review

- 12.1 It is not anticipated that there will be any requirement further to review the numbers, given the intention to replace the Legal Services Commission with an executive agency

13. Contact

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