EXPLANATORY MEMORANDUM TO

THE CIVIL LEGAL AID (FINANCIAL RESOURCES AND PAYMENT FOR SERVICES) (AMENDMENT) REGULATIONS 2017

2017 No. 745

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 (the "Means Regulations"), following the Grenfell Tower fire. The amendments allow payments made to victims of the fire by the government, charities, and members of the public to be fully disregarded for the purpose of calculating entitlement to civil legal aid.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument comes into force less than 21 days after it is laid to mitigate circumstances where payments made to victims of the fire, such as those from the government's Grenfell Tower Residents' Discretionary Fund announced on 17 June 2017, would be taken into account by the Director of Legal Aid Casework ("the Director") when determining eligibility for civil legal services. Early payments are being made for those in immediate need and an urgent amendment is required to give the Director the ability to disregard payments from these emergency funds should recipients submit applications for legal aid.

3.2 The changes made by this instrument would give individuals affected certainty about the funding position as quickly as possible. However, the Lord Chancellor has no function in relation to exercise of the discretion introduced by this instrument, which is solely exercisable by the Director independently of the Lord Chancellor. The circumstances in which this instrument comes into force is no indication of how the Lord Chancellor considers that discretion should be exercised in an individual case.

Other matters of interest to the House of Commons

3.3 As this instrument is subject to the negative resolution procedure, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Legal aid is available to an individual under section 9 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 ("LASPO") if the service in question is a civil legal service described in Part of Schedule 1 (or if the Director has made an

exceptional case determination under section 10(2)) and the Director has determined that the individual qualifies for the service. The qualification criteria include an assessment of the individual's financial resources in accordance with section 21 of LASPO and the Means Regulations.

4.2 Regulations 6 to 8 of the Means Regulations specify the financial eligibility limits in respect of an individual's gross or disposable income; and in respect of disposable capital.

4.3 Regulations 24 and 40 specify certain payments that the Director must disregard when calculating an individual's gross or disposable income and capital for the purpose of determining whether they satisfy the limits set out in Regulations 6 to 8.

4.4 Regulations 41 to 43 give the Director discretion to disregard specified payments or in the case of specified individuals.

4.5 Prior to the changes made by this instrument there were no provisions that would give the Director the ability to disregard income or capital received by individuals as emergency support following the Grenfell Tower fire, whether that comes from the Grenfell Tower Residents' Discretionary Fund, charitable sources or elsewhere. This instrument amends Regulations 24 and 40 to give the Director a discretion to do so for most sources of income or capital.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 The Grenfell Tower Residents' Discretionary Fund came into being following the fire at the Grenfell Tower on 14 June 2017. The fund is, and will continue to be, making payments to households whose homes were destroyed by the fire. The fund was created by the government to provide immediate assistance with clothing, food and other essentials. The government anticipates it will be extended to provide assistance with accommodation and funeral costs.

7.2 Access to the fund is one element of the financial support that individuals affected by the fire may receive. Other potential sources include charitable donations and support, money donated by members of the public, and contributions from fundraising campaigns.

7.3 The rules of entitlement for legal aid mean that some individuals would fail the financial eligibility criteria as a result of receiving payments from emergency funds. The Means Regulations already contain exceptions that would allow some sources of income and capital to be disregarded.

7.4 The policy in relation to payments received from emergency funds is that they should also be capable of being disregarded, so that they do not affect an individual's eligibility for legal aid.

7.5 The Department does not hold information in relation to the financial resources of those affected by the fire. We cannot therefore identify precisely how many individuals will be affected by the proposed changes. It is likely that the numbers affected will be very small, and limited to residents of, or visitors to, the Grenfell Tower at the time of the fire, those in the area surrounding the Tower whose homes were evacuated and close relatives of the deceased.

Consolidation

7.6 There have been other changes made to the Means Regulations, but there are currently no plans to consolidate these Regulations.

8. Consultation outcome

8.1 Due to the urgent nature of the amendment required, no public consultation was carried out. The Department considers it would be disproportionate given the limited impact this amendment will have on the legal aid system as a whole.

9. Guidance

9.1 The Legal Aid Agency ("LAA") will make changes to its Provider Pack, forms and website and is liaising with providers about the changes.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is confined to the LAA. There is no real financial impact on the LAA, except for some slight additional administrative costs of exercising the discretion when considering new applications for legal aid.

10.3 An Impact Assessment has not been prepared for this instrument, this is because only a limited number of businesses will be affected to a limited extent, and there will be no or negligible impact on public finances.

11. Regulating small business

11.1 Legal aid is out of scope of the regulatory agenda. It is excluded by section 22(4)(c) of the Small Business Enterprise and Employment Act 2015 on the grounds that it relates to 'the giving of grants or other financial assistance by or on behalf of a public authority'. The measure does not require Reducing Regulation Committee or Regulatory Policy Committee clearance.

12. Monitoring & review

12.1 The operation of and expenditure on the legal aid scheme is continually monitored by the Ministry of Justice and the Legal Aid Agency.

13. Contact

13.1 David Martin at the Ministry of Justice Telephone: 0203 334 4019 or email: David.Martin@justice.gov.uk can answer any queries regarding the instrument.