EXPLANATORY MEMORANDUM TO

THE CIVIL LEGAL AID (GENERAL) (AMENDMENT) REGULATIONS 2005

2005 No. 591

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 House of Lords Select Committee on the Merits of Statutory Instruments and the Joint Committee on Statutory Instruments.

2. Description

2.1 This instrument amends the Civil Legal Aid (General) Regulations 1989 (SI 1989/339), which relate to the provision of civil legal aid under the Legal Aid Act 1988. The 1989 Regulations continue to have effect in relation to legal aid granted under the 1988 Act, but have otherwise lapsed as a result of the repeal of their enabling provisions by the Access to Justice Act 1999.

2.2 In particular, the instrument amends regulation 99 of the 1989 Regulations, which specifies the interest rates to be applied where enforcement of a statutory charge in favour of the Legal Services Commission (as the successor to the Legal Aid Board) is postponed. It specifies the interest rates to operate from 1 April 2005 (5%) and 1 October 2005 (8%).

2.3 Additionally, this instrument makes minor amendments to regulation 95 of the 1989 Regulations which are consequential upon the enactment of the Land Registration Act 2002 and repeal of the Land Registration Act 1925.

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

3.1 None

4. Legislative Background

4.1 The Civil Legal Aid (General) Regulations 1989 were made under enabling powers in the Legal Aid Act 1988, which was repealed by the Access to Justice Act 1999 subject to savings contained in the Access to Justice Act 1999 (Commencement No. 3, Transitional Provisions and Savings) Order 2000 (S.I. 2000/774).

4.2 In particular, by virtue of article 5(1) of the 2000 Order certain provisions of the 1988 Act remain in force in relation to, inter alia, legal aid granted pursuant to an application signed before 1st April 2000 and received by the Legal Aid Board before 2nd May 2000. The 1989 Regulations remain in force in relation to such services, subject to the modifications in article 5(2). Article 5(4) specifically provides that the repeal of the enabling powers in sections 34 and 36 of the 1988 Act does not affect the power under that Act to make regulations in relation to the services mentioned in article 5(1).

4.3 Part XI of the 1989 Regulations, which includes regulations 95 and 99, makes provision about the operation of the statutory charge under section 16 of the Legal Aid Act 1988 upon property or costs recovered for assisted persons.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 The amendment to the interest rates payable following postponement of the statutory charge is being made for consistency with a corresponding amendment to regulation 53 of the Community Legal Service (Financial) Regulations 2000 (SI 2000/516), which specifies the interest rates payable following postponement of the statutory charge in favour of the Legal Services Commission under section 10(7) of the Access to Justice Act 1999.

7.2 That amendment is included in the Community Legal Service (Financial) (Amendment) Regulations 2005, to be laid before Parliament at the same time as this instrument, as part of a package of changes following a consultation paper 'A new focus for civil legal aid' jointly published by the Legal Services Commission and the Department for Constitutional Affairs. Further details of that consultation are contained in the explanatory memorandum accompanying that instrument.

8. Impact

8.1 A Partial Regulatory Impact Assessment was produced prior to the publication of the Consultation paper in July 2004. The Small Business Service did not anticipate that these proposals would have a significant impact on business but discussions with the SBS continued throughout the consultation period. A Final Regulatory Impact Assessment has been prepared and is currently with the Small Business Service for comment. We expect to publish the Final RIA shortly.

9. Contact

9.1 Yasmin Tengnah at the Department for Constitutional Affairs: tel: 0207 210 0601, (e-mail: yasmin.tengnah@dca.gsi.gov.uk), can answer any queries regarding this instrument.