EXPLANATORY MEMORANDUM TO

THE CIVIL LEGAL AID (REMUNERATION) (AMENDMENT) REGULATIONS 2014

2014 No. 7

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

2. Purpose of the instrument

2.1 This instrument amends the Civil Legal Aid (Remuneration) Regulations 2013 (SI 2013/422) (the "Remuneration Regulations") by introducing a new fixed case fee for work done under the 2014 Standard Civil Contract (Welfare Benefits) (the "2014 Welfare Benefits Contract") which will commence on 1 February 2014.

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

3.1 None.

4. Legislative Context

4.1 The Remuneration Regulations make provision for the payment of remuneration by the Lord Chancellor to persons who provide civil legal services under arrangements for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012.

5. Territorial Extent and Application

5.1 This instrument applies 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 The implementation of LASPO on 1 April 2013, removed most welfare benefits work from the scope of legal aid. However, Legal Help remains available for advice work concerning welfare benefits-related appeals on a point of law in the Upper Tribunal, Court of Appeal or Supreme Court and appeals on a point of law regarding a council tax reduction scheme in the High Court, Court of Appeal or Supreme Court. Representation is available for such appeals in the Court of Appeal or Supreme Court. It was not possible to include this service as part of the main 2013 Standard Civil Contract tender exercise, which was run to reflect the changes to scope contained in LASPO, and therefore an interim solution was put in place using providers with contracts to deliver welfare benefits advice through the existing Community Legal Advice (CLA) telephone helpline. Remuneration

for Legal Help provided under these contracts was set on a price competitive basis and, accordingly, was not subject to the Remuneration Regulations.

7.2 The Legal Aid Agency (LAA) originally tendered to let new Welfare Benefits contracts for providing Legal Help on a price competitive basis with a view to awarding a contract to a single provider in each of four specified procurement areas. Contracts were successfully let in two areas (Midlands & East and London & South East) on this basis and commenced under the 2013 Standard Civil Contract (Welfare Benefits) on 1 November 2013. However, it was not possible to let contracts in the other two areas (North and South West & Wales) on this basis and the interim solution was extended in these areas until 1 February 2014.

7.3 To provide greater certainty to providers interested in bidding for Welfare Benefit contracts, the LAA is running an Expressions of Interest (EOI) with firms who hold a 2013 Civil Legal Aid Contract, with a view to awarding contracts in each of the remaining two areas on the basis of a fixed case fee of £208 per case. The EOI is due to close on 13 January 2014, with new contracts based on the fixed case fee commencing on 1 February 2014.

7.4 Providers with a 2014 Welfare Benefits Contract will therefore be paid a fixed case fee of £208 (exclusive of VAT) for each Welfare Benefits Legal Help case properly reported. This fixed case fee is based on 2011/12 data and represents the national average cost of the limited volume of welfare benefits advice work remaining in the scope of legal aid following the implementation of LASPO.

7.5 The fixed case fee for Legal Help for welfare benefits advice work contained in Table 1 to Schedule 1 of the Civil Legal Aid (Remuneration) Regulations remains in place following this instrument. That is because that is the fee that applies to any out of scope welfare benefits case that receives exceptional funding under section 10 of LASPO.

7.6 There are no current plans to produce a consolidated version of the Remuneration Regulations.

8. Consultation outcome

8.1 The LAA has not undertaken a formal consultation on the 2014 Welfare Benefits Contract but has conducted informal discussions with the Representative Bodies and the providers delivering advice services under the 2013 Welfare Benefits Contract to inform them of their proposed tender approach. None of these groups have raised any concerns about the proposed approach. We have not consulted specifically on this instrument.

9. Guidance

9.1 Guidance is not being prepared specifically on this instrument.

10. Impact

10.1 The impacts of the Government's programme of legal aid reform implemented through LASPO are set out in an Impact Assessment, which was

updated following the Act receiving Royal Assent. This is available at: http://www.justice.gov.uk/legislation/billsand-acts/acts/legal-aid-and-sentencing-act/laspo-background-information. An Impact Assessment has not been prepared specifically for this instrument.

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

10.3 There is no impact on the public sector arising from this instrument beyond those accounted for in the Royal Assent Impact Assessment.

11. Regulating small business

11.1 The legislation applies to small business, only insofar as it affects the contractual relationship between the Legal Aid Agency and providers of legal aid services.

11.2 The Ministry of Justice has not taken any specific steps to minimise the impact of the requirements on firms employing up to 20 people but the instrument does not impose any additional regulatory burdens on small firms.

12. Monitoring & review

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

13. Contact

13.1 Any enquiries about the contents of this memorandum should be addressed to: Christine Okiya, Legal Aid Policy and Legal Services, Ministry of Justice, 102 Petty France, London SW1H 9AJ
Telephone number: 0203 334 5625
Email address: Christine.okiya@justice.gsi.gov.uk