EXPLANATORY MEMORANDUM TO

THE COMMUNITY LEGAL SERVICE (FINANCIAL) (AMENDMENT No.2) REGULATIONS 2010

2010 No. 818

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 Community Legal Service (Financial) Regulations 2000 which set out the financial eligibility criteria for civil legal aid.

2.2 These Regulations also include provision for the eligibility limits (and the need for contributions towards funding) to be waived in certain circumstances. The Lord Chancellor has the power under sections 5C and 38 of the Regulations to waive both financial eligibility limits and contributions for the family of the deceased at an inquest.

2.3 This instrument will enable the Lord Chancellor to waive the financial eligibility limits and contributions for other persons at an inquest.

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

3.1 It is a convention that an instrument should not come into force less than 21 days before it is laid before Parliament. However, the exceptional circumstances of the 7th July bombings, and the urgent need for representation at the Coroner's inquest for survivors of the bombings, means that we need to bring this change into force without delay. If this instrument were not to come into force until 21 days after being laid before Parliament, we will be unable to clarify the funding position in time for survivors to make representations to the Coroner, as to their status, in advance of the deadline the Coroner has set.

4. Legislative Context

4.1 These Regulations are made by the Parliamentary Under Secretary of State, by authority of the Lord Chancellor, in exercise of powers conferred upon him by sections 7, 10 and 26 of the Access to Justice Act 1999. They are subject to the negative resolution procedure, by virtue of section 25(10) of that Act.

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 Legal aid is not normally available at inquests. Funding for representation at inquests is excluded from the Community Legal Services scheme because the inquest procedure is designed to be inquisitorial and non-adversarial in nature. However, funding may be available for any excluded service via individual authorisations by the Lord Chancellor, under section 6(8)(b) of the Access to Justice Act 1999, providing the Legal Services Commission first recommends it. Funding will only usually be granted where the criteria in the published 'exceptional funding' guidance are met.

7.2 Further to the above, the Lord Chancellor's guidance on 'exceptional funding' states that a waiver of the financial eligibility limits may be granted giving regard to the history of the case and the nature of the allegations to be raised at the inquest. Where it is appropriate to do so, contributions may also be disregarded in whole or in part.

7.3 Regulations 5C and 38 (10) of the Community Legal Service (Financial) Regulations 2000 as amended, give the Lord Chancellor the legal power to waive the financial eligibility limits and the need to pay a contribution towards the legal costs in certain inquests following a request from the Legal Services Commission. However, the provisions refer only to funding for a member of the immediate family of the deceased.

7.4 This new provision makes it possible for the financial eligibility criteria (also encompassing contributions) to be disregarded by the Lord Chancellor for applicants who are not immediately related to the deceased at inquests.

7.5 The amendment in this instrument was not subject to consultation given the urgency, nature and purpose of the change. The change is necessary to make funding available to financially ineligible survivors of the 7th July bombings.

8. Consultation outcome

8.1 No consultation took place given the urgency, nature and purpose of the change to the Community Legal Service scheme. The change is necessary to make funding available to financially ineligible survivors of the 7th July bombings.

9. Guidance

9.1 The Legal Services Commission is liaising with solicitors about the changes.

10. Impact

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

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Ministry of Justice and the Legal Services Commission keep under review the eligibility schemes for legal aid.

13. Contact

David Stokes at the Ministry of Justice, Tel: 020 3334 4281 or email: David.Stokes@justice.gsi.gov.uk can answer any queries regarding the instrument.