EXPLANATORY MEMORANDUM TO THE

COMMUNITY LEGAL SERVICE (FINANCIAL) (AMENDMENT NO.3) REGULATIONS 2005

2005 No. 1793

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 Community Legal Service (Financial) Regulations 2000 (S.I. 2000/516) which govern the financial aspects of the provision of publicly funded legal services by the Legal Services Commission (LSC).

2.2 The main effects of this instrument are as follows:

2.2.1 It provides for amendments to the 2000 Regulations consequent upon:

(a) a change to the Funding Code criteria which abolishes the existing system of Support Funding (Investigative Support and Litigation Support) for high cost personal injury cases; and

(b) the repeal and replacement of Council Regulation EC No. 1347/2000 by Council Regulation EC No. 2201/2003 (on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility). Under the terms of Regulation EC No. 2201/2003 persons applying for registration and or enforcement of a maintenance order or judgment here who benefited from complete or partial assistance with or exemption from costs in the country in which the maintenance order or judgment was made are eligible for legal representation without means testing in proceedings taken to register and enforce such judgments.

2.2.2 It makes further provision in relation to the enforcement of the statutory charge. Enforcement will only be postponed if it appears to the LSC that it is unreasonable for the client to repay the charge. The LSC also has the power to review any decision to postpone at any time.

2.2.3 It makes the position on which parties are entitled to non-means tested services in relation to proceedings which are linked to certain proceedings under the Children Act 1989 clearer.

2.2.4 It also relates to the funding of legal services at certain inquests. It extends the Secretary of State's power to waive the financial eligibility limits where any legal services, and not only advocacy, are provided, should the LSC request him to do so. It also extends the LSC's power to waive some or all of a client's financial contributions for these inquests.

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

3.1 None.

4. Legislative Background

4.1 These Regulations are made by the Secretary of State for Constitutional Affairs, in exercise of the powers conferred on the Lord Chancellor and now vested in him by sections 7,10 and 26 of the Access to Justice Act 1999.

4.2 Part I of the Access to Justice Act 1999 established the LSC and Community Legal Service as a coherent framework for the provision of legal services. In particular, sections 4 to 11 of the Act contain provision about the funding of civil legal aid through the Community Legal Service. The Community Legal Service (Financial) Regulations 2000, made under sections 7 and 10 of the Act, contain provisions about financial eligibility for funded services, and about the operation of the statutory charge under section 10(7) of the Act which applies to property recovered or preserved by a party who has received funded services.

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 In July 2004, a joint consultation paper 'A new focus for civil legal aid' was published jointly by the LSC and the Department for Constitutional Affairs (DCA). This proposed a number of changes aimed at targeting legal aid in a better way, through reform of the merits test and scope of the civil legal aid scheme, in order to encourage early resolution of disputes and discourage unnecessary litigation. The legal aid budget is seriously under pressure and the proposals, while aimed at tightening up the existing funding arrangements, and considering whether any case types should be removed from scope, were carefully designed not to reduce access to funding for deserving cases in priority areas of law.

7.2 The consultation closed in October 2004. As part of the consultation, officials from the LSC and DCA held discussions with key stakeholders including the Legal Aid Practitioners Group ; Solicitors Family Law Association (now Resolution); The Law Society; The Official Solicitor. In addition, Ministers held meetings with the Child Poverty Action Group ; Public Law Project , Legal Aid Practitioners Group; Advice Services Alliance; the Bar and Law Society as part of this consultation process. Following careful consideration of the 136 written responses and issues raised during meetings, a number of proposals were not taken forward, and the final package represents a balanced set of measures. One of the strongest messages arising from the consultation was that in response to budget pressures, rather than reducing the scope of services offered, it was far preferable to increase the effectiveness of mechanisms to recover costs back into the fund at the end of a case. There was therefore much

support for wider powers to seek repayment of the statutory charge from those clients who had the resources to do so.

7.3 Some of the current regulation changes implement the second phase of the reforms which focus on tightening up the LSC's operation of the statutory charge and arise from the abolition of Support Funding. These regulations also implement a change required to aid interpretation of the 2000 Regulations and from a repeal of an EC Council Regulation.

7.4 The amendments to inquest funding results from problems encountered in the operation of the current financial eligibility limit waiver for inquests, which came into force in December 2003. In particular, the LSC have been unable to fund work preparatory to the inquest for financially ineligible clients. They were also unable to waive contributions (which may occasionally be substantial), for financially *eligible* clients in Article 2 inquests. The amendments correct these problems, and follow a limited consultation exercise with key stakeholders.

8. Impact

8.1 The Final Combined Regulatory and Race Impact Assessment was signed by Ministers on 20 March 2005 and published shortly thereafter. The Small Business Service did not anticipate that these proposals would have a significant impact on business. A copy is attached to Community Legal Service (Financial) (Amendment No.3) Regulations 2005.

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.