EXPLANATORY MEMORANDUM

THE COMMUNITY LEGAL SERVICE (FINANCIAL) (AMENDMENT) REGULATIONS 2004

2004 No. 2899

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 Select Committee on the Merits of Statutory Instruments.

2. Description

2.1 This instrument amends the Community Legal Service (Financial) Regulations 2000 that governs the financial aspects of the provision of publicly funded legal services by the Legal Services Commission (LSC). It adds a provision which requires the LSC to waive the usual financial eligibility limits and contributions where a client who is domiciled or habitually resident in another Member State of the European Union (except Denmark) applies for funded services in connection with a cross-border dispute in which proceedings are taking place, or any proceedings would take place, in England and Wales.

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

3.1 These provisions are being introduced in order that the financial eligibility tests for publicly funded legal services under the Community Legal Service comply with European Legal Aid Directive (Council Directive 2002/8/EC of 27 January 2003).

4. Legislative Background

4.1 These Regulations is made by the Secretary of State and Lord Chancellor, in exercise of the powers conferred upon him by section 7 and 10 of the Access to Justice Act 1999.

4.2 The Instrument implements provisions in the European Legal Aid Directive Council Directive 2002/8/EC of 27 January 2003), and a Transposition Note is attached.

4.3 An Explanatory Memorandum on the Directive was deposited in February 2002. Scrutiny was cleared in the House of Lords on 9 October 2002. Parliamentary scrutiny overridden in the House of Commons due to pressures of time, although the text of the Directive was subsequently cleared by the House of Commons Committee the following week.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

This instrument is subject to negative resolution and does not amend primary legislation. It is considered, however, that the provisions of this instrument are compatible with the European Convention on Human Rights.

7. Policy background

7.1 The Directive was proposed by the European Commission pursuant to the conclusions reached by heads of government at the Tampere European Council, in Finland, in October 1999, as part of an effort to improve access to justice across European borders. Civil measures which have already been agreed since 1999 include a decision to create a civil judicial network, to help co-operations between courts and legal systems work more smoothly, and a measure to streamline the taking of evidence in cross-border civil proceedings.

7.2 The Directive is an important part of the EU's ongoing programme of work aimed at making it easier for citizens to resolve civil disputes across European borders. UK citizens who are financially eligible according to member states' rules will be able to receive legal aid and assistance in civil disputes throughout the European Union from 30 November 2004. The directive only applies to cross-border civil cases and provides that legal aid should be made available in the country where the dispute is taking place without discrimination on the grounds of the applicant's nationality (a rule that reflects the existing practice in the UK and some other countries). It will ensure that costs specifically related to the cross-border nature of the case are covered, including interpretation and translation of any necessary documents. Applications will remain subject both to financial eligibility and merits tests according to Member States' national rules. Member states will not be obliged to give legal aid where conditional fee agreements or other funding mechanisms are available or in simple proceedings, for example those in the small claims courts. Reforms to the UK legal aid system have been recognised by our European partners. As such, important parts of the Lord Chancellor's reforms, in particular conditional fee agreements, have been reflected in the Directive.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has minimal impact on business, charities or voluntary bodies.

9. Contact

Helen Johns at the Department for Constitutional Affairs: Tel: 020 7210 1490 or e-mail: helen.johns@dca.gsi.gov.uk can answer any queries regarding the instrument.