EXPLANATORY MEMORANDUM TO

THE COMMUNITY LEGAL SERVICE (FINANCIAL) (AMENDMENT) REGULATIONS 2010

2010 No. 96

1. This explanatory memorandum has been prepared by the Ministry of Justices 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 govern the financial aspects of the provision of services funded by the Legal Services Commission in civil and family matters. The purpose of this amendment is to ensure that the financial eligibility criteria for legal aid for immigration and asylum matters continue to apply when the Asylum and Immigration Tribunal is replaced with the Immigration and Asylum Chamber of the First-tier and Upper Tribunals.

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

3.1 None

4. Legislative Context

4.1 This instrument makes consequential amendments arising from the Tribunals, Courts and Enforcement Act 2007, which replaces individual tribunals, with a new First-tier and Upper Tribunal grouped into chambers. The functions of the Asylum and Immigration Tribunal will be transferred into the new system by the Transfer of Functions of the Asylum and Immigration Tribunal Order 2010, and the Asylum and Immigration Tribunal will cease to exist under the Act. This instrument therefore replaces references to that Tribunal with references to proceedings in the Immigration and Asylum Chamber of the First-tier and Upper Tribunals.

These regulations are made by the Parliament Under Secretary of State, by authority of the Lord Chancellor in exercise of powers conferred upon him by section 6(4) of the Access to Justice Act.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The amendments to the financial regulations are to ensure that the same financial eligibility criteria continues to apply to asylum and immigration cases upon the transfer to the Unified Structure. This applies to both First-tier cases and Upper Tribunal cases (except for judicial review hearings)

7.2 The regulations replace references to 'AIT' with 'Immigration and Asylum Chamber of the First-tier Tribunal'. This includes for example, substantive appeals, applications for permission to appeal, remitted hearings, reviews etc. The distinction between immigration and asylum hearings is preserved as in the current regulations.

7.3 References to s103A applications are replaced with 'Immigration and Asylum of the Upper Tribunal'. This includes all relevant hearings in the Upper Tribunal. e.g. substantive appeals, applications for permission to appeal, remitted hearings, reviews etc except judicial review hearings. The distinction between immigration and asylum hearings is preserved as in current regulations.

8. Consultation outcome

8.1 From 7 July until 21 August 2009 we consulted on proposals to ensure that the same financial eligibility criteria applied in the First-tier and Upper Tribunals (except judicial reviews) as in the current Asylum and Immigration Tribunal. There were no substantive issues raised in relation to the financial eligibility criteria to apply in the First-tier and Upper Tribunals.

9. Guidance

9.1 The LSC will issue guidance to practitioners as to the implementation of the changes

10. Impact

10.1 An impact assessment has not been prepared for this instrument as the change simply transfers across the same financial eligibility criteria to the new system therefore there is no new impact on businesses, charities or the voluntary sector.

11. Regulating small business

11.1 As above, the change simply transfers across current the same financial eligibility critera to the new system therefore there is no new impact on small businesses.

12. Monitoring & review

12.1 Monitoring will continue as part of the normal process of maintaining business as usual.

13. Contact

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