EXPLANATORY MEMORANDUM TO
THE CRIMINAL DEFENCE SERVICE (FUNDING) (AMENDMENT) ORDER 2006

2006 No. 389

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument relates to the remuneration of solicitors in publicly funded criminal cases. It amends the Criminal Defence Service (Funding) Order 2001 (S.I. 2001/855) by:-

- giving a solicitor the right to seek a reclassification of certain offences without having to request the advocate to do so on its behalf.

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

3.1 None.

4. Legislative Background

4.1 This Order is made by the Lord Chancellor under section 14(3) of the Access to Justice Act 1999 and is subject to the negative resolution procedure under section 25(10) of that Act.

4.2 In accordance with section 25(2) of the 1999 Act, the Lord Chancellor has consulted the General Council of the Bar and Law Society about this remuneration order. Both the General Council of the Bar and Law Society are content with the proposed amendment.

5. Extent

5.1 The instrument applies only 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 As part of the October 2005 ‘emergency cuts package’, the Secretary of State (Lord Chancellor) restricted the ability of a solicitor to seek enhanced rates to certain offences that appear in a schedule forming part of the advocates’ graduated fee scheme. In the schedule an offence that is not specifically assigned an offence class falls within class H. A solicitor is unable to seek

enhanced rates in respect of class H offences. Under the graduated fee scheme an advocate is able to seek a reclassification of a class H offence. It was thought that the October 2005 amendment (S.I. 2005 No. 2621) also permitted a solicitor to seek a reclassification. However, we have now been advised that a solicitor cannot seek a reclassification independently of the advocate in the case.

7.2 The proposed amendment gives effect to our original policy intention of permitting a solicitor to seek a reclassification of a class H offence independently of the advocate.

8. Impact

8.1 A regulatory impact assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

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