EXPLANATORY MEMORANDUM TO

THE LEGAL SERVICES ACT 2007 (CLAIMS MANAGEMENT COMPLAINTS) (FEES) (AMENDMENT) REGULATIONS 2016

2016 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations amend the Legal Services Act 2007 (Claims Management Complaints) (Fees) Regulations 2014 (S.I. 2014/3316)[1] ("the 2014 Regulations"). They amend the level of fees set by the 2014 Regulations and payable by authorised claims management companies, for the year beginning 1 April 2016 and subsequent years.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These Regulations increase the fees that are to be charged to authorised claims management companies. This is to ensure that the Lord Chancellor can recover the total costs related to the Legal Ombudsman dealing with complaints about the claims industry, in the context of the number of authorised claims management companies having decreased.

3.2 We have considered the JCSI's comments in its first report of 2014-15 with regard to the commencement of affirmative instruments and have taken the view that it is not applicable to this instrument. This is because this instrument amends the level of existing fees. As such, it does not impose a new duty and we do not anticipate that claims management companies will adopt a different pattern of behaviour in consequence of the increased fee levels. Claims management companies will be informed of the intended fee increases when the instrument is laid in Parliament. Subject to Parliament approving this instrument, an invoice for the fees will be sent out in February or March, however this will not be payable until April 2016.

Other matters of interest to the House of Commons

3.3 This entire instrument applies only to England and Wales.

3.4 The instrument only applies to England and Wales because it will only amend the fees in respect of claims management companies in England and Wales. The Legal Services Act 2007, which sets the jurisdiction of the Legal Ombudsman applies only to England and Wales. Provisions in the Compensation Act 2006, which set out the framework for

[1] http://www.legislation.gov.uk/uksi/2014/3316/contents/made

claims management regulation, apply only to England and Wales. The instrument does not have minor or consequential effects outside England and Wales.

3.5 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament.

3.6 The Department has reached this view because it considers that the primary purpose of the instrument relates to the regulation of claims management companies, which is within the devolved legislative competence of both of the devolved legislatures: the primary purpose of the subject matter of the instrument is not within Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); the primary purpose of the subject matter of the instrument is not within Schedules 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act).

4. Legislative Context

4.1 The Legal Services Act 2007 ("the 2007 Act") governs the regulation of legal services in England and Wales. Part 6 of the 2007 Act established the Office for Legal Complaints ("the OLC") which established the Legal Ombudsman scheme ("the Legal Ombudsman") to handle complaints about authorised legal services providers. The Legal Ombudsman is funded by a levy imposed on the approved regulators of legal services providers. The levy is provided for by sections 173 and 174 of the 2007 Act and is payable to the Legal Services Board, which is established by Part 2 of the 2007 Act and which has oversight responsibility for the OLC.

4.2 Section 161 of the 2007 Act, which came into force in January 2015, extended the complaints handling remit of the Legal Ombudsman to authorised claims management companies. This provision treats the designated Claims Management Regulator as an approved regulator to be levied in the same way as other approved regulators for the costs of the Legal Ombudsman. However, there is currently no designated Claims Management Regulator and the function is fulfilled by the Secretary of State under section 5(9) of the Compensation Act 2006.

4.3 Section 174A of the 2007 Act, therefore, provides that the costs incurred and the income received by the OLC in exercise of its functions in relation to complaints about claims management services are to be disregarded from the calculation of the expenditure of the OLC that can be levied against regulators of the legal profession. The Lord Chancellor funds the Legal Ombudsman for dealing with complaints about claims management companies through the grant in aid power at section 172(1)(b) of the 2007 Act and reclaims the sums from authorised claims management companies by charging them fees.

4.4 The 2014 Regulations enable the Lord Chancellor to charge fees to authorised claims management companies for this purpose.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons."

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State, Shailesh Vara MP, has made the following statement regarding Human Rights:

> "In my view the provisions of the Legal Services Act 2007 (Claims Management Complaints) (Fees) (Amendment) Regulations 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 These Regulations amend the 2014 Regulations by amending the fees that will be charged to authorised claims management companies. The purpose of these fees is to recover the costs the Lord Chancellor will incur in respect of the Legal Ombudsman dealing with complaints about such companies, for the year beginning 1 April 2016, and subsequent years.

7.2 The fees require to be amended to reflect the OLC's revised budget for 2016-17, the continuing decrease in the size of the regulated claims management market and to reflect the shortfall in the amount invoiced for the collection of fees for the 2014-15 and 2015-16 financial years.

7.3 The fee levels set out in these Regulations have been calculated by reference to the turnover of the claims management businesses covered by the Legal Ombudsman scheme, whereby firms with a larger turnover will pay higher fees. It allows for simplicity of fee levels and ensures that the fees do not place a disproportionate burden on small and medium authorised claims management companies.

7.4 Fee levels may change each year dependent on the expected complaint volume, associated costs, the Legal Ombudsman's anticipated case fee income (the case fee is a separate fee that the Legal Ombudsman charges directly to a business for each case it considers against that business, the case fee is waived in some circumstances) and changes to the claims management market. Should the Legal Ombudsman's costs in relation to dealing with claims management complaints have been materially over or under estimated, the Lord Chancellor will lay new draft regulations in Parliament to revise the fee levels being charged.

Consolidation

7.5 This order amends the 2014 Regulations. Consolidation is not relevant.

8. Consultation outcome

8.1 Prior to the implementation of the 2014 Regulations, the Government consulted on the fee structure between 7 May 2014 and 6 June 2014. The Government published a

consultation response document on 3 November 20142, confirming that the fee structure would be implemented as proposed.

8.2 The purpose of amending the existing regulations is to ensure that the level of fees is sufficient to ensure full cost recovery on the part of the Lord Chancellor. It was made clear at the implementation of the 2014 Regulations that the fees would be amended in response to the changing costs of the Legal Ombudsman and market changes The fees structure, which was consulted on prior to implementation of the fee, has been retained. No meaningful changes could have been implemented to the fee levels as a result of consultation and therefore consultation on these Regulations was not considered to be appropriate.

9. Guidance

9.1 The Ministry of Justice will notify authorised claims management companies of the updated fees. In light of this, the Ministry of Justice concluded that it is not necessary to issue guidance specifically on this instrument.

10. Impact

10.1 There is no impact on charities or voluntary bodies. The impact on business is the annual additional cost to the claims management industry. This is estimated to be around £0.8m in 2016-17. The precise impact on individual firms would depend on their revenue.

10.2 The impact on the public sector is that the Ministry of Justice will benefit from not having to meet the Legal Ombudsman's cost in relation to dealing with consumer complaints about claims management companies. This would provide annual savings of around £0.8m per annum.

10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 Small and micro businesses are included within the legislation as they are subject to regulation by the Claims Management Regulator and therefore, under the Legal Services Act 2007, do fall within the remit of the Legal Ombudsman now that the Legal Ombudsman's jurisdiction has been extended. These changes could not feasibly be applied without impacting small and micro businesses due to the large proportion that make up the claims management industry. This instrument is not, however, expected to have any disproportionate impact on small firms, as the fees have been calculated by reference to the turnover of the businesses covered by the Legal Ombudsman scheme, whereby firms with a larger turnover will pay higher fees. A full 'Small and micro business test' is included at Annex B of the impact assessment.

[2] The consultation and the consultation response are available at: https://consult.justice.gov.uk/digital-communications/consultation-fees-framework

12. Monitoring & review

12.1 This measure will be reviewed by the Ministry of Justice in April 2018, taking into account trends in claims management complaints to the Legal Ombudsman. As a result the structure of the fee may be amended. The fee levels will also be kept under review to ensure there is no material under or over estimation.

13. Contact

13.1 John Russell at the Ministry of Justice (Tel: 0203 334 3626 or email: John.Russell2@justice.gsi.gov.uk) can answer any queries regarding the instrument.