EXPLANATORY MEMORANDUM

THE LEGAL SERVICES ACT 2007 (CLAIMS MANAGEMENT COMPLAINTS) (FEES) REGULATIONS 2014

2014 No. XXX

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

2. Purpose of the instrument

2.1 These regulations enable the Lord Chancellor to charge fees to authorised claims management companies to recover the costs associated with the Legal Ombudsman dealing with complaints about the industry.

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

3.1 None.

4. Legislative Context

4.1 The Legal Services Act 2007 ("the 2007 Act") governs the regulation of legal services in England and Wales. Under the 2007 Act, only a person who is authorised by an approved regulator or who is exempt from the requirement to be authorised may carry on a reserved legal activity. Part 2 of the 2007 Act established the Legal Services Board ("the LSB") as the oversight regulator with responsibility for approved regulators. 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 approved regulators, who then, in turn, recover the costs from the businesses they regulate. The levy is provided for by sections 173 and 174 of the 2007 Act and is payable to the LSB, which has oversight responsibility for the OLC.

4.2 Section 161 of the 2007 Act, which will be commenced before these regulations come into force, extends the complaints handling remit of the Legal Ombudsman to authorised claims management companies. This provision treats the 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, as 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, this funding mechanism does not work. Section 140 of the Financial Services (Banking Reform) Act 2013 inserted section 174A into the 2007 Act

which is to have effect at any time when no-one is designated as the Claims Management Regulator.

4.3 Section 174A ensures that there is no cross-subsidisation by the legal profession of the costs incurred and the income received by the OLC in handling complaints by claims management companies. It does this by providing that the costs incurred and the income received by the OLC in exercise of its functions in relation to complaints about claims management services is 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 will fund 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 reclaim the sums from authorised claims management companies by charging them fees.

4.4 These regulations enable the Lord Chancellor to charge fees to authorised claims management companies in respect of the expenditure incurred by the Legal Ombudsman in relation to claims management services.

4.5 As part of the same project, a separate Statutory Instrument, the Compensation (Claims Management Services) (Amendment) Regulations 2015, is expected to come into force on the same day as these regulations, which amends the Compensation (Claims Management Services) Regulations 2006, to remove the Claims Management Regulator's power to direct a company to make redress to a consumer as a result of a complaint, as this will now be a function of the Legal Ombudsman. The amendments also provide the Regulator with powers to share information with the Legal Ombudsman. Amendments to the Claims Management Regulator's Complaint Handling Rules also come into force on the same day, which ensure that where appropriate claims management companies signpost their clients to the Legal Ombudsman rather than the Regulator for a review of a complaint. The amendments also require claims management companies to co-operate with requests made by the Legal Ombudsman in relation to investigations and the provision of information and documents, as well as requiring claims management companies to comply with any direction issued by the Legal Ombudsman in determining a complaint.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

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) Regulations 2014 are compatible with the Convention rights."

7. Policy background

- ***What is being done and why***

7.1 These regulations set out the fees that will be charged to authorised claims management companies, to recover the costs the Lord Chancellor will incur in respect of the Legal Ombudsman dealing with complaints about such companies, once the Ombudsman's remit is extended to include complaints about the regulated claims industry.

7.2 The Legal Ombudsman is an independent ombudsman scheme, set up to resolve complaints about lawyers, in an impartial, fair and effective way. It currently has the power to consider complaints about the services provided by authorised legal professionals and firms in England and Wales, regulated under the 2007 Act. Section 161 of the 2007 Act allows the Legal Ombudsman's remit to be extended to include complaints about claims management companies authorised by the Claims Management Regulator under the Compensation Act 2006.

7.3 The Legal Ombudsman has wider powers to award redress than those available to the Claims Management Regulator. The Legal Ombudsman will provide consumers of authorised claims management services with an independent complaints resolution service, thus providing added benefits to consumers and contributing towards reducing poor practice within the regulated claims industry.

7.4 Once the Legal Ombudsman's remit is extended, all authorised claims management companies will automatically be covered by the scheme. It has always been the intention that the full costs of the Legal Ombudsman will be recovered from the companies covered by the scheme. This is in line with the current situation with the regulated legal services sector, where the approved legal regulators fund the full costs of the Legal Ombudsman, and then recover these sums from the businesses that they regulate.

7.5 The Legal Ombudsman has estimated the volume of complaints it expects to investigate and its costs for dealing with these complaints. The start up costs the Legal Ombudsman incurs will also be charged back to authorised claims management companies, as part of the fees, spread over the first 3 years of the scheme. The fees set out in the regulations therefore cover the estimated costs of complaints handling, start up costs, and standing costs, such as staff and infrastructure, as well as the costs of the Legal Ombudsman's wider work in relation to dealing with complaints about authorised claims management companies, including the provision of consumer information services, working with consumer groups, engaging with the industry as a whole and data sharing.

7.6 The fee levels set out in these regulations have been calculated by reference to the turnover of the businesses covered by the scheme, whereby firms with a larger turnover will pay higher fees. This is a system which the industry is familiar with, as it is used currently by the Claims Management Regulator in calculating annual

regulation 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.

7.7 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.

7.8 These regulations enable the Claims Management Regulator to collect the fees payable to the Lord Chancellor. This is to ensure ease of administration.

- ***Consolidation***

7.9 This is a standalone order which does not make amendments to any other SI. However, in connection with these changes, a separate Statutory Instrument will make amendments to the Compensation (Claims Management Services) Regulations 2006 and a further order will commence section 161 of the 2007 Act.

8. Consultation outcome

8.1 The Government consulted on the proposed fee structure between 7 May 2014 and 6 June 2014 and 24 responses were received. While the overall response was mixed, with some supporting the proposed framework for the fees and others against it, the response to the consultation raised no unforeseen issues with the proposed fee framework, or new evidence or arguments on the impact of the fees. Of the 19 respondents who commented on the intention to charge a sliding scale of fees based on companies' turnover, 11 supported the proposal. Of those that were opposed, most thought that companies with high turnover would be unfairly subsidising others in the claims management industry, including those with poor complaint handling records. Several respondents suggested that there should be an increased element of companies having to pay for the costs of consideration of complaints against them. The fee structure will be kept under review, taking into account trends in claims management complaints to the Legal Ombudsman.

8.2 The Government issued a consultation response document on 3 November, confirming that the fee structure would be implemented as proposed, but revising the implementation date and therefore updating the estimated costs and fee levels to reflect this[1].

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

9. Guidance

9.1 No other public guidance or other publicity is necessary in connection with these regulations. The consultation document was sent to all authorised claims management companies, who have been aware of this measure for some time, and the Claims Management Regulator and Legal Ombudsman will also publicise this as necessary.

10. Impact

10.1 There is no anticipated impact on charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.2 An Impact Assessment was included in the Government's consultation response document which is available at https://consult.justice.gov.uk/, or from the Head of Legal Services Policy, Law and Access to Justice Group, Ministry of Justice, 102 Petty France, London, SW1H 9AJ.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 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, will fall within the remit of the Legal Ombudsman once the Ombudsman's jurisdiction is extended. The proposed 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 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.

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 charging.

13. Contact

Please contact John Russell at the Ministry of Justice (Tel: 0203 334 3626 or email: John.Russell2@justice.gsi.gov.uk) about any queries regarding this instrument.