EXPLANATORY MEMORANDUM TO

The Legal Aid in Family Proceedings (Remuneration) (Amendment) Regulations 2007

2007 No. 742

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 amends the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 which are made under sections 34 and 43 of the Legal Aid Act 1988.

2.2. The main effects of this instrument are as follows:

2.2.1 It harmonises solicitors' legal aid rates in private law family representation by paying the same rates for all work in both the county court and the Family Proceedings Court at an intermediate level between the two existing levels of fees.

2.2.2. It allows the uplifts that are currently claimable for work in the county court to also apply to the Family Proceedings Court.

2.2.3. It is intended that harmonisation be implemented on a temporary basis pending the planned implementation of new family fee schemes in October 2007.

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

3.1. None.

4. Legislative Background

4.1. These regulations are made by the Parliamentary Under Secretary of State, by authority of the Lord Chancellor.

4.2. The Lord Chancellor has consulted the General Council of the Bar and the Law Society in accordance with the Legal Aid Act 1988 and has had regard to the matters specified in section 34(9) of that Act. The Regulations are made with the consent of Her Majesty's Treasury.

5. Extent

5.1. The Regulations apply 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. In July 2005 the Judicial Resources Review published its report (Judicial Resources Review Final Report July 2005). This joint review between the Department for Constitutional Affairs and the judiciary was initiated following calls to increase the size of the High Court bench to meet growing pressures. It set out a number of recommendations designed to improve the service provided to the public and relieve pressure on higher tiers of court by redirecting work to lower tiers of court where appropriate. This involves reducing pressure at county court level by removing the existing financial disincentive for solicitors to issue publicly funded family law private cases in the Family Proceedings Court by harmonising their rates for both tiers of court – a measure designed to be cost neutral.

7.2. In July 2006, a joint consultation paper 'Legal Aid: a sustainable future' was published by the Legal Services Commission (LSC) and the DCA. This proposed the phasing in of new procurement and remuneration structures for many areas of legal aid services in order to simplify the system and to provider better value for money for the taxpayer. The consultation paper also set out the proposed scope and rates for harmonisation.

7.3. 65% of the 200 consultees who responded to the questions about harmonisation in the 'Legal Aid: a sustainable future' consultation were in favour of harmonising rates, with many expressing a preference for an equalised set of rates at the current county court level.

7.4. 'Legal Aid Reform: the Way Ahead', published in November 2006, confirmed that harmonisation would be implemented as planned in April 2007.

7.5. In February 2007 the DCA held a three-week consultation on the draft amendment regulations with key practitioners' groups, including the Law Society, Resolution, the Legal Aid Practitioners' Group (LAPG) and the Association of Lawyers for Children. The consultation concluded on 19 February. Consultation responses from the judiciary confirmed their support for harmonisation.

8. Impact

8.1. An impact assessment was included in the full Regulatory Impact Assessment which was signed by legal aid Minister, Vera Baird QC MP, on 19 January 2007 and which accompanied 'Legal Aid Reform: the Way Ahead'. A copy is attached for information.

9. Contact

9.1. Enquiries about the contents of this memorandum should be addressed to:

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