EXPLANATORY MEMORANDUM

ACCESS TO JUSTICE ACT 1999

Legal Services Complaints Commissioner (Maximum Penalty) Order 2004

This explanatory memorandum is laid before Parliament by Command of Her Majesty.

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

Department Responsible: The Department for Constitutional Affairs.

Description: Section 52(3) of the Access to Justice Act 1999 [the 1999 Act] specifies that the Legal Services Complaints Commissioner (LSCC) can impose, if appropriate, a penalty on a professional body that has failed to submit an adequate plan for the handling of complaints, or for failing to handle complaints in accordance with a plan previously submitted to her. This Instrument specifies the maximum penalty that the LSCC can impose.

Matters of special interest to the Joint Committee on Statutory Instruments: Section 52(5) of the Access to Justice Act 1999 imposes a duty on the Secretary of State to specify the maximum amount of any penalty under section 52(3). This duty arose on 1st November 2003 (the date that Section 52 came into force). The Department accepts that the Secretary of State has been in breach of the duty to specify the maximum penalty since 1 November 2003. The reason for the breach is that the Secretary of State consulted the professional bodies on specific and general directions for the LSCC and on the formula for calculating the amount of the maximum penalty. This consultation process has unfortunately led the Secretary of State to breach his duty under section 52(5). The Department apologises for this delay.

Legislative Background: Section 51 of the 1999 Act provided for the appointment of a Legal Services Complaints Commissioner (LSCC) to oversee the complaints-handling performance of any professional body that was failing to handle complaints about its members effectively and efficiently. In September 2003 the Secretary of State decided that the Law Society of England and Wales had failed to handle complaints effectively and efficiently and appointed an LSCC with powers to be directed at them. Under Section 52(2) (a-e) the LSCC has the following powers:

- gathering information;
- investigating the handling of complaints about the members of a professional body;
- setting targets for the handling of complaints by failing bodies;
- making recommendations to the failing bodies about their complaints systems; and

- requiring failing authorised bodies to submit a plan for the handling complaints.

If the LSCC requires a professional body to submit a plan and either the LSCC finds the plan to be inadequate or the professional body fails to comply with the plan, the LSCC can levy the professional body an appropriatepenalty. Before the penalty can be levied, the maximum amount of the penalty has to be agreed by an affirmative resolution in both Houses. The Secretary of State has consulted with the LSCC and the professional bodies and has decided to propose to Parliament that the maximum penalty should be 1% of a professional body's total annual income to the maximum of £1m. A levy of the maximum penalty will be reserved for the most serious failing on the part of the professional body.

1. **Extent:** England and Wales.

2. **European Convention on Human Rights:** The Parliamentary Under Secretary of State has signed a statement that the legislation is compatible with Convention rights.

3. **Policy background:** The LSCC was appointed to oversee the complaints-handling of the Law Society in order to ensure that the consumers gets the high standard of service that they are entitled to expect. The power to levy a penalty is a key tool for the LSCC in achieving this aim, as it will act both as an incentive and a deterrent for the Law Society to improve its performance.

4. **Impact:** Monies from the penalties imposed will be sent to the Exchequer. No impact is anticipated on the private or voluntary sector, nor any costs to the Exchequer.

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