EXPLANATORY MEMORANDUM TO

THE LEGAL SERVICES OMBUDSMAN (JURISDICTION) (AMENDMENT) ORDER 2006

2006 No. 3362

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

Description

2. This Order will extend the remit of the Legal Services Ombudsman (Jurisdiction) Order 1990 so that she may investigate allegations about the way in which the Association of Law Costs Draftsmen has handled complaints made to it following the making of the Association of Law Costs Draftsmen Order 2006.

2.1 The Association of Law Costs Draftsmen Order 2006 will come into force on 1 January 2007. The Order designates the Association of Law Costs Draftsmen as an authorised body for the purposes of sections 27 and 28 of the Courts and Legal Services Act 1990, under which authorised bodies may grant rights of audience and rights to conduct litigation.

Matters of special interest to the Joint Committee on Statutory Instruments

3. None.

Legislative background

4. The Order is made under section 22(11) of the Courts and Legal Services Act 1990 ("the Act"). Section 22 authorises the Legal Services Ombudsman to investigate allegations relating to the manner in which a professional body has dealt with a complaint made against an authorised advocate or authorised litigator (respectively, a person who has the right of audience and one who has the right to conduct litigation) who is one of its members. For the purposes of that section, "professional body" includes any body that has disciplinary powers over an authorised advocate or authorised litigator and is specified by the Secretary of State in an order made for the purposes of section 22.

4.1 Section 27 of the Act provides for the right of audience before the courts (that is, the right to appear before and address a court, including the right to call and examine witnesses) of barristers and solicitors. Section 27(9)(c) authorises the making of Orders in Council to designate other bodies (that is, other than the Law Society and the General Council of the Bar) as authorised bodies with the power to grant rights of audience to appropriately qualified members. Section 28 of the Act provides for the right to conduct litigation (that is, the right to issue proceedings before a court, including ancillary functions such as entering appearances) of barristers and solicitors. Section 28(5)(b) authorises the making of Orders in Council to designate other bodies (that is, other than the Law Society, the General Council of the Bar and the Institute of Legal Executives) as authorised

bodies with the power to grant rights to conduct litigation to appropriately qualified members.

4.2 By Order in Council the Association of Law Costs Draftsmen has been designated as an authorised body for the purposes of sections 27 and 28 of the Act. It is now to be specified as a professional body, and will become subject to the jurisdiction of the Legal Services Ombudsman.

Extent

5. The Order extends to England and Wales.

European Convention on Human Rights

6. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

Policy background

7. The Association of Law Costs Draftsmen is the professional body representing and regulating law costs draftsmen working in England and Wales. Costs draftsmen draw up and analyse bills relating to all aspects of the legal costs included in solicitors' bills in relation to cases in all courts. They also appear at court hearings where assessment of such bills takes place. An assessment involves a detailed examination by a costs judge of each item on a bill, whether it was properly charged and whether the service charged for was necessary for the proper administration of justice between the parties. The Association sought designation as an authorised body so that it can grant the right of audience and the right to conduct litigation in legal costs matters to properly qualified and trained members. This will allow those members to act independently of solicitors in costs proceedings and to address the court during assessment hearings.

7.2 If the Legal Services Ombudsman's remit is not extended to include the Association of Law Costs Draftsmen, there will be no oversight of any complaints handling that may arise from the Association of Law Costs Draftsmen's new rights. It is therefore in the consumer interest that the Association of Law Costs Draftsmen be brought within the Legal Services Ombudsman's remit. A similar Order was laid in respect of the Institute of Trade Mark Attorneys when they were granted rights of audience in 2005.

Impact

8. There are no identifiable costs to the public nor to the Exchequer.

Contact

9. Barbara Smith at the Department for Constitutional Affairs (telephone 020 7210 2675; email barbara.smith@dca.gsi.gov.uk) can answer queries regarding the Order.