EXPLANATORY MEMORANDUM TO THE

COMMUNITY LEGAL SERVICE (FINANCIAL) (AMENDMENT No.2) REGULATIONS 2005

2005 No. 1097

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1. This instrument amends the Community Legal Service (Financial) Regulations 2000 that governs the financial aspects of the provision of publicly funded legal services by the Legal Services Commission (LSC). It adds provisions that disapply the financial eligibility tests for publicly funded legal services under the Community Legal Service to proceedings relating to control orders in the Prevention of Terrorism Act 2005 in England and Wales.

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

3.1. These provisions are to come into effect immediately, breaching the usual 21-day rule. The Prevention of Terrorism Act 2005 received Royal Assent on 10 March 2005, leading to the necessity for these provisions relating to the availability of legal aid to come into force forthwith. Proceedings may be instigated against individuals at any time, and it is necessary that these arrangements be in place to allow for a swift and fair appeals process.

4. Legislative Background

4.1.These Regulations are made by the Secretary of State and Lord Chancellor, in exercise of the powers conferred upon him by section 7 of the Access to Justice Act 1999.

4.2.Part 1 of the Access to Justice Act 1999 established the Legal Services Commission and the Community Legal Service as a coherent framework for provision of public legal services. In particular, sections 4 to 11 of the Act contain provisions about the funding of civil legal aid through the Community Legal Service. The Community Legal Service (Financial) Regulations 2000, made under section 7 of the Act, contain provisions about financial eligibility for funded services.

4.3.This instrument amends regulation 3(1) and 3(2) of the Community Legal Service (Financial) Regulations 2000 to so that legal help and representation under the Community Legal Service is available to a person subject to a control order under the Prevention of Terrorism Act 2005 without reference to the individual's financial resources.

4.4.The Prevention of Terrorism Act 2005 provides for the making of control orders imposing obligations on individuals suspected of involvement in terrorism-related activity.

4.5. The legislation draws a distinction between two types of control order – a derogating control order and a non-derogating control order. A derogating control order is an order which amounts to a deprivation of liberty but which is made in respect of a designated derogation from Article 5 of the European Convention on Human rights (the right to liberty). All other control orders are non-derogating control orders. The question of involvement in terrorist related activity must be satisfied to the civil standard of proof (balance of probabilities when applying for a derogating control order.

5. Extent

5.1. This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1. Not applicable.

7. Policy background

7.1. Under the arrangements in the Prevention of Terrorism Act 2005, the court has to hold an immediate preliminary hearing following an application by the Secretary of State for a derogating control order. If, at this hearing, it decides to make an order the court also has to give directions for holding a full hearing to confirm the order. In the case of a non derogating order, if the application is granted the court has to give directions for a full hearing as soon as reasonably practicable. In cases of urgency the Secretary of State can make a non derogating order but the order must then be immediately referred to the court and the court must begin hearing the case within seven days.

7.2. As there is now a high degree of urgency to the arrangements for both derogating and non derogating orders arising from this time limit, together with the serious implications for the individuals involved, means testing is being removed for publicly funded legal services for all control order proceedings.

8. Impact

8.1. No RIA has been prepared as no impact on the private or voluntary sector is foreseen. There will be a consequential increase in legal aid expenditure, and additional work for legal aid suppliers.

9. Contact

9.1. Helen Johns at the Department for Constitutional Affairs:Tel: 020 7210 1490 or e-mail: helen.johns@dca.gsi.gov.uk can answer any queries regarding this instrument.