EXPLANATORY MEMORANDUM TO

THE COMMUNITY LEGAL SERVICE (FINANCIAL) (AMENDMENT NO. 2) REGULATIONS 2009

2009 No. 1894

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 This instrument amends the Community Legal Service (Financial) Regulations 2000 ("the Regulations"), which relate to financial eligibility for civil legal aid.

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

3.1 None

4. Legislative Context

4.1 This instrument clarifies those provisions of the Regulations which relate to the Legal Services Commission's handling of applications for funded services by people claiming to be on certain benefits.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 These Regulations amend the Regulations which govern the financial aspects of the provision of legal aid services funded by the Legal Services Commission in civil and family matters. A person who receives specified benefits, such as income support, is entitled to funded services without needing to make a financial contribution. These minor changes to the Regulations makes it clear that in assessing whether such a person is, or is any longer, financially eligible for services, the Legal Services Commission (LSC) must be satisfied that the person is not only in receipt of the benefits as a matter of fact but is also entitled to them.

8. Consultation outcome

8.1 The Department ran a limited consultation, which is shorter than the standard 12 week consultation period, between 1 June and 15 June 2009 because these are minor changes, literally the insertion of a word, and the reordering of a sentence. The major stakeholders were consulted, comprising the Law Society,

the Bar Council, the Advice Services Alliance, and the Legal Aid Practitioners Group (LAPG).

8.2 The Department only received one response, from the LAPG. The LAPG expressed concern that the LSC would become involved in assessing whether applicants were entitled to benefits, and as a consequence, legal aid, when the assessment of benefits is not an area LSC staff are experts in. They were concerned that the LSC would arbitrarily terminate funding, which could lead to protracted correspondence between solicitors, on behalf of applicants, and the LSC to clarify entitlement to funding.

8.3 The Department does not believe that LSC staff will become involved in assessing entitlement to benefits. The changes are designed to clarify the LSC's entitlement to raise questions with the Department for Work and Pensions (DWP) regarding a legal aid applicant's entitlement to benefits, in the event that allegations regarding that applicant's entitlement to benefits are made. The changes will help ensure that resources saved on any improper or fraudulent claims can be used to assist the most vulnerable applicants. Some legal aid applicants have questioned the LSC's ability to take up an applicant's benefit entitlement with the DWP. While the LSC contends that it already has the power to do this, the changes are intended to provide certainty on this point. To facilitate closer working between the LSC and DWP a protocol is being agreed to improve the interface between the LSC and DWP, and to improve the efficiency of checks on legal aid and benefit entitlement.

8.4 The Department is also considering whether section 4(3) of the Community Legal Service (Financial) Regulations 2000 needs to be clarified in a similar way to regulation 4(2). Regulation 4(3) concerns receipt of financial support provided under sections 4 and 95 of the Immigration and Asylum Act 1999. We are not making these two changes together as we are concerned that this measure to tighten up against fraud across civil legal aid generally should be implemented without delay.

9. Guidance

9.1 The LSC will be issuing guidance as to the implementation of the changes in due course.

10. Impact

10.1 An impact assessment has not been prepared for this instrument as no impact on businesses, charities or the voluntary sector is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Legal Services Commission will monitor the effect of the changes, to ensure that the changes act as envisaged.

13. Contact

Mandy Banks at the Ministry of Justice, Tel: 0203 334 4205 or email: Mandy.Banks@justice.gsi.gov.uk can answer any queries regarding the instrument.