EXPLANATORY MEMORANDUM TO

THE CRIMINAL DEFENCE SERVICE (FUNDING) (AMENDMENT NO. 2) ORDER 2012

2012 No. 1343

THE PROSECUTION OF OFFENCES (CUSTODY TIME LIMITS) (AMENDMENT) REGULATIONS 2012

2012 No. 1344

AND

THE CRIME AND DISORDER ACT 1998 (SERVICE OF PROSECUTION EVIDENCE) (AMENDMENT) REGULATIONS 2012

2012 No. 1345

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 instruments

2.1 These instruments make amendments consequential on the commencement in certain areas of Schedule 3 to the Criminal Justice Act 2003 ("the 2003 Act"). Schedule 3 changes the procedure by which defendants in criminal proceedings reach the Crown Court from a magistrates' court. These instruments make consequential amendments to other secondary legislation in the light of these changes, including amending references in that legislation to the current procedure.

2.2 Schedule 3 will be brought into force in relation to twelve local justice areas and the Crown Court for certain purposes on 18 June 2012 by the Criminal Justice Act 2003 (Commencement No. 28 and Saving Provisions) Order 2012 (S.I. 2012/xxxx).

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

3.1 None.

4. Legislative Context

4.1 These instruments all relate to the partial commencement of Schedule 3 to the 2003 Act. Schedule 3 to that Act sets out detailed procedural provisions concerning three related matters: ***allocation***, deciding which court should deal with an offence which is capable of being tried either summarily in a magistrates' court or on indictment in the Crown Court (known as an

either-way offence); ***sending***, a procedure (to replace committal proceedings) by which either-way offences reach the Crown Court from a magistrates' court where it is decided that they should be tried there; ***committals for sentence***, the procedure by which someone convicted of an either-way offence in a magistrates' court can be committed for sentence to the Crown Court. The sending procedure is a modified version of the procedure in the Crime and Disorder Act 1998 ("the 1998 Act") that is already used for offences which can only be tried on indictment in the Crown Court.

4.2 Section 12 of the Access to Justice Act 1999 gives the Legal Services Commission ("LSC") responsibility for the Criminal Defence Service. Section 14(3) of that Act allows the Lord Chancellor to make provision about payments by the LSC to litigators and advocates. The Criminal Defence Service (Funding) Order 2007 ("the 2007 Order") makes such provision. Schedule 1 to that Order sets out the fees that are payable to advocates and the fees payable to litigators are set out at Schedule 2. The Criminal Defence Service (Funding) (Amendment No. 2) Order 2012 amends the 2007 Order by making changes to a number of Articles of the Order and to both Schedules 1 and 2 and also corrects an error in paragraph 15(1)(a) of Schedule 2 to the 2007 Order, which was highlighted to the department by the Joint Committee of Statutory Instruments when considering the Criminal Defence Service (Funding) (Amendment) Order 2012 (SI/2012/750).

4.3 The Prosecution of Offences (Custody Time Limits) Regulations 1987 ("the 1987 Regulations") limit the time for which defendants may be remanded in custody pending trial. The Prosecution of Offences (Custody Time Limits) (Amendment) Regulations 2012 amend the 1987 Regulations so that these time limits apply where a person is sent to the Crown Court for trial under the 1998 Act as amended by Schedule 3, as well as where a defendant is sent under the 1998 Act as in force before those amendments.

4.4 The Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2005 ("the 2005 Regulations") provide that where a person is sent for trial under the 1998 Act, copies of documents containing the evidence on which the charges are based are to be served within a prescribed period on the person sent for trial and the relevant Crown Court. As Schedule 3 expands the circumstances in which a person is to be sent by a magistrates' court to the Crown Court, the Crime And Disorder Act 1998 (Service of Prosecution Evidence) (Amendment) Regulations 2012 amend the 2005 Regulations so that they apply where a person is sent to the Crown Court for trial under the 1998 Act as amended by Schedule 3, as well as where a defendant is sent under the 1998 Act as in force before those amendments.

5. Territorial Extent and Application

5.1 These instruments extend to England and Wales.

6. European Convention on Human Rights

6.1 As the instruments are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 When Schedule 3 to the 2003 Act comes into force in twelve local justice areas and the Crown Court for certain purposes on 18 June 2012, one effect will be that in those areas offences triable either way will be sent from the magistrates' court to the Crown Court, rather than reaching the Crown Court by way of committal proceedings.

7.2 The amendments made by these instruments are consequential on the commencement of Schedule 3 and are required to ensure that provisions in the 2007 Order, the 1987 Regulations and 2005 Regulations are effective for cases that, under the commenced arrangements, are sent to the Crown Court and ensure that the provisions of those instruments that relate to indictable-only cases sent to the Crown Court also apply to cases that are sent pursuant to the commenced provisions of the 2003 Act.

7.3 A number of the amendments involve adding references to "sent for trial" in appropriate places or replacing existing references to the 1998 Act procedure with the same words. The term "sent for trial" is defined in the Interpretation Act 1978 by reference to the sending provisions in the 1998 Act.

7.4 The commencement of Schedule 3 to the 2003 Act on 18 June 2012 will be in relation to magistrates' courts in twelve local justice areas and in relation to the Crown Court where it deals with cases sent for trial or committed for sentence by one of those magistrates' courts. The intention is that Schedule 3 will later be commenced in stages in relation to other local justice areas and associated Crown Courts.

7.5 There are currently no plans to produce a consolidated version of the 2007 Order and the amendments to it, but it will be superseded in the next year or so by legislation made under the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

7.6 A consolidated version of the 1987 Regulations will be produced when implementation of Schedule 3 to the 2003 Act is completed.

8. Consultation outcome

8.1 These instruments have not been the subject of public consultation. However, in accordance with section 25(2) of the Access to Justice Act 1999, the Criminal Defence Service (Funding) (Amendment No. 2) Order 2012 has been the subject of consultation with the Law Society and the Bar Council, who made no substantive comment.

9. Guidance

9.1 Guidance will be issued to Crown Prosecutors on the effect of the coming into force of Schedule 3 to the 2003 Act that will cover the effect on custody time limits and service of prosecution evidence. Guidance on the effect of Schedule 3 is also being produced for magistrates' courts in the local justice areas where Schedule 3 is initially being commenced.

9.2 Guidance will be issued for those claiming fees as well as to staff processing graduated fee claims and claims under the magistrates' court scheme.

10. Impact

10.1 There will be no impact on charities, voluntary bodies or businesses.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been conducted.

11. Regulating small business

11.1 The Criminal Defence Service (Funding) (Amendment No. 2) Order 2012 applies to small business, but is not anticipated to have any detrimental effect.

11.2 The Ministry of Justice has not taken any specific steps to minimise the impact of the requirements on firms employing up to 20 people.

11.3. The Order does not impose any additional regulatory burdens on small firms. Instead the Order governs the fee paid to litigators and advocates who provide their services under the terms of the Criminal Defence Service.

12. Monitoring and review

12.1 The operation of Schedule 3 in the relevant areas will be kept under review.

12.2 Expenditure on legal aid is regularly monitored and reviewed by the Ministry of Justice and the LSC.

13. Contacts

James Macmillan at the Ministry of Justice, tel: 020 3334 4258 or email: james.macmillan2@justice.gsi.gov.uk, can answer any queries regarding the Criminal Defence Service (Funding) (Amendment No. 2) Order 2012; Richard Chown, tel: 020 3334 6077 or email: richard.chown@justice.gsi.gov.uk about the others.