EXPLANATORY MEMORANDUM TO

THE CRIMINAL DEFENCE SERVICE (INFORMATION REQUESTS) (AMENDMENT) REGULATIONS 2010

2010 No. 1184

THE CRIMINAL DEFENCE SERVICE (INFORMATION REQUESTS) (PRESCRIBED BENEFITS) (AMENDMENT) REGULATIONS 2010

2010 No. 141

THE CRIMINAL DEFENCE SERVICE (CONTRIBUTION ORDERS) (AMENDMENT) REGULATIONS 2010

2010 No. 142

1. This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the Instruments

2.1 These Instruments relate to the introduction of a new contributory scheme for criminal legal aid in the Crown Court.

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

3.1 None.

4. Legislative context

4.1 These Regulations are made under the Access to Justice Act 1999, as amended by the Coroners and Justice Act 2009.

4.2 These are further Regulations relating to the introduction of the new Crown Court means testing scheme. The main Regulations were considered by the Committee in November 2009, and came into force on 11 January 2010.

4.3 The Criminal Defence Service (Information Requests)(Amendment) Regulations 2010 were subject to the affirmative resolution procedure. The Criminal Defence Service (Information Requests) (Prescribed Benefits)(Amendment) Regulations 2010 and the Criminal Defence Service (Contribution Orders)(Amendment) Regulations 2010 were both subject to negative resolution procedure, in the case of the latter

because they were the second set of Regulations made under section 17A of the Access to Justice Act 1999 (see section 25(9A) of that Act).

5. Territorial Extent and Application

5.1 These Instruments apply to England and Wales.

6. European Convention on Human Rights

6.1 The Lord Bach, Parliamentary Under Secretary of State, has made the following statement regarding Human Rights:

In my view the provisions of the Criminal Defence Service (Information Requests) (Amendment) Regulations 2010 are compatible with the Convention rights.

6.2 As the Criminal Defence Service (Information Requirement) (Prescribed Benefits) (Amendment) Regulations 2010 and the Criminal Defence Service (Contribution Orders) (Amendment) Regulations 2010 were subject to the negative resolution procedure, and do not amend primary legislation, no statement is required.

7. Policy background

7.1 In October 2006, a new means testing scheme for criminal legal aid eligibility was introduced in the magistrates' courts. On 11 January 2010, a related scheme was extended to five Crown Courts across England and Wales. Crown Court means testing will be extended to all Crown Courts in England and Wales between April and June 2010.

7.2 Under the new scheme, every defendant who appears for trial at the Crown Court will be granted a representation order, on submission of a completed application form. Part of the application process involves declarations concerning income and assets.

7.3 Depending on the level of income declared, a Crown Court defendant will be issued with a contribution order, detailing how much he or she will be required to pay towards the cost of their defence, and depending on the level of assets declared, the amount that would have to be paid in the event of a conviction, if the income contributions proved not to cover a defendant's costs.

7.4 In order for those administering the new scheme to be able to check the accuracy of the information provided, it is necessary to extend the current power to request information about a defendant's financial position in the magistrates' court to those appearing in the Crown Court. This is what the Criminal Defence Service (Information Requests) (Amendment) Regulations 2010 and the Criminal Defence Service (Information Requests)(Prescribed Benefits) (Amendment) Regulations 2010 are designed to achieve. The Regulations are

consequential upon the enactment of section 151 of the Coroners and Justice Act 2009 , which amends the Access to Justice Act to allow information requests to be made for the purposes of means testing in the Crown Court and not only in the magistrates' court. The section makes other, minor amendments about information requests.

7.5 Section 152 of the Coroners and Justice Act 2009 amends the Access to Justice Act to provide that regulations may be made for the recovery of costs associated with the enforcement of a defendant's debt under a Crown Court contribution order. The Criminal Defence Service (Contribution Orders) (Amendment) Regulations 2010 provide that such enforcement costs may be added to the debt. They also prescribe the courts in which such action may be pursued.

Consolidation

7.6 These instruments amend the Criminal Defence Service (Contribution Orders) Regulations 2009, the Criminal Defence Service (Information Requests) Regulations 2009 and the Criminal Defence Service (Information Requests) (Prescribed Benefits) Regulations 2009. We do not propose to consolidate the relevant legislation at this time.

8. Consultation

8.1 Consultation exercises have been carried out over the last 12 months on the principle of Crown Court Means Testing, and on the main Regulations drafted to give effect to the new scheme. These three sets of Regulations are purely consequential on amendments made to the Access to Justice Act by the Coroners and Justice Act and no consultation was therefore necessary.

8.2 The Commissioners of Her Majesty's Revenue and Customs have approved the Criminal Defence Service (Information Requests) (Amendment) Regulations, as required by the Act.

9. Guidance

9.1 Guidance on the effect of the new regulations will be available to practitioners and to Her Majesty's Courts Service staff.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible.

10.3 Impact assessments have been prepared to accompany the policy consultations and the consultation on the main Regulations. These can be found at www.justice.go.uk

11. Regulating small business

11.1 There is no impact on small business.

12. Monitoring and review

12.1 The operational processes for administering the new scheme will be evaluated at the end of March 2010. A detailed Post-Implementation Review will be carried out at the end of 2010.

13. Contact

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