EXPLANATORY MEMORANDUM TO

THE CRIMINAL DEFENCE SERVICE (FINANCIAL ELIGIBILITY) (AMENDMENT NO 2) REGULATIONS 2007

2007 No. 2937

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

2. Description

These regulations are about criminal legal aid. These regulations amend the Criminal Defence Service (Financial Eligibility) Regulations 2006 (S.I. 2006/2492), which deals with financial eligibility for publicly funded representation in the magistrates' courts.

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

3.1 None.

4. Legislative Background

4.1 This instrument is made under paragraph 3B of Schedule 3 to the Access to Justice Act 1999, as inserted by the Criminal Defence Service Act 2006, which provides that the power to grant a right to representation may only be exercised where a person is financially eligible, under regulations, to be granted such a right. The power was first exercised in the Criminal Defence Service (Financial Eligibility) Regulations 2006 (S.I. 2006/2492). Whilst the first set of regulations under paragraph 3B of Schedule 3 were subject to the affirmative resolution procedure, subsequent regulations can be made in accordance with the negative resolution procedure (section 25(9A) and (10) of the 1999 Act).

4.2 The instrument extends the 'passporting' provisions so that all defendants under 18 are exempt from the financial eligibility test. They also provide the authority which reviews decisions on financial eligibility an additional power to quash a decision, and so allow the applicant to re-apply. Finally, the regulations add a reference to the definition of gross annual income to the Independent Living Fund (2006), a consequential amendment to changes made by the Department of Work and Pensions.

5. Extent

5.1 The statutory instruments apply only to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 The aim of the Criminal Defence Service Act 2006 and associated regulatory framework was to give effect to the Government's policy that those who can afford to pay for the costs of their own legal defence, should be asked to do so.

7.2 These amendments are principally a response to recent feedback from defence practitioners, court staff and the representative bodies. They clarify areas where we felt that there was ambiguity or a lack of consistency.

7.3 Copies of the proposed amendments to the regulations were sent to key stakeholders, namely the Law Society, the Justices' Clerks Society, the General Council of the Bar, Legal Aid Practitioners' Group (LAPG), London Criminal Courts Solicitors' Association, Criminal Law Solicitors Association, Criminal Bar Association, Magistrates' Association, and senior members of the Judiciary.

7.4 We received two responses to these proposals, both of which were supportive of the proposed amendments.

8. Impact

No Impact Assessment has been prepared because there is no regulatory impact on the private or voluntary sector. There are no implications for the Exchequer.

9. Contact

Stephen Gascoigne at the Ministry of Justice tel 020 7210 8865, email Stephen.Gascoigne@justice.gsi.gov.uk can answer any queries relating to this instrument.