EXPLANATORY MEMORANDUM TO

THE CRIMINAL DEFENCE SERVICE (GENERAL) (No. 2) (AMENDMENT) REGULATIONS 2011

2011 No. 1453

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 instrument

2.1 This instrument prescribes certain proceedings relating to domestic violence protection notices and domestic violence protection orders as criminal proceedings for legal aid purposes.

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

3.1 None.

4. Legislative Context

4.1 Section 12(2)(g) of the Access to Justice Act 1999 provides a power for the Lord Chancellor to prescribe proceedings as criminal proceedings so that appropriate advice, assistance and representation may be provided to the individuals concerned through the Criminal Defence Service.

4.2 Regulation 3(2) of the Criminal Defence Service (General) (No.2) Regulations 2001 lists the proceedings that have been prescribed. This instrument adds proceedings, relating to domestic violence protection notices and domestic violence protection orders, under sections 26, 27 and 29 of the Crime and Security Act 2010 to that list.

4.3 The Crime and Security Act 2010 (Domestic Violence: Pilot Schemes) Order 2011 commences sections 24-30 of the Crime and Security Act 2010 in three pilot areas of Greater Manchester Police, Wiltshire Police and West Mercia Police force areas.

4.4 This instrument makes provision for publicly funded legal services to be available as part of the Criminal Defence Service from 30 June 2011, the date from which the Crime and Security Act 2010 (Domestic Violence: Pilot Schemes) Order 2011 comes into force.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Criminal Defence Service provides a range of legal aid services. This varies from advice and assistance to individuals who are facing investigation by the police into alleged offences to legal representation at court for those who have been formally charge in respect of specific criminal offences.

7.2 The list of proceedings for which legal aid is made available as part of the Criminal Defence Service is reviewed and updated on a regular basis. Over recent years, proceedings have been introduced by legislation which, though classified as civil for other purposes, are sufficiently related to criminal proceedings to warrant funding through the Criminal Defence Service. Proceedings in relation to domestic violence protection notices and domestic violence protection orders are the most recent to be brought within the scope of the Criminal Defence Service for this purpose.

Consolidation

7.3 This instrument amends the Criminal Defence Service (General) (No.2) Regulations 2001. We are not proposing to consolidate the relevant legislation at this time.

8. Consultation outcome

8.1 No consultation was necessary on this particular instrument as it is simply an extension of a frequently applied and accepted policy of making criminal legal aid available for proceedings sufficiently related to criminal proceedings.

9. Guidance

9.1 Guidance will be made available to legal practitioners via the Legal Service Commission's website.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument because no significant impact on the private or voluntary sector is foreseen.

11. Regulating small business

11.1 This instrument does not apply to small businesses.

12. Monitoring & review

12.1 The provisions on domestic violence protection notices and domestic violence protection orders are subject to a 12 month pilot exercise, starting from 30 June 2011, which is being led by the Home Office. The pilot exercise will be followed by a full evaluation, including its impact on legal aid.

13. Contact

Stephen Gascoigne at the Ministry of Justice Tel: 020 3334 4232 or email: Stephen.gascoigne@justice.gsi.gov.uk can answer any queries regarding the instrument.