EXPLANATORY MEMORANDUM TO

THE CRIMINAL DEFENCE SERVICE (GENERAL) (NO. 2) (AMENDMENT NO.3) REGULATIONS 2009

2009 No. 2777

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 relates to criminal legal aid. It prescribes proceedings concerning Drinking Banning 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 allows proceedings to be prescribed as criminal proceedings so that appropriate advice, assistance and representation may be provided to the individuals concerned through the Criminal Defence Service. Drinking Banning Orders were introduced by Part 1 (sections 1 to 14) of the Violent Crime Reduction Act 2006.

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 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, as well as to representation at court for those who have been formally charged in respect of specific criminal offences.

7.2 The list of criminal proceedings for which legal aid is made available
is 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 Drinking Banning Orders are the most recent to be brought within the scope of the Criminal Defence Service. Individuals involved in such proceedings will be able to apply for legal representation, subject to passing the relevant financial eligibility criteria and satisfying the 'Interests of Justice' test.

- **Consolidation**

7.3 This order 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 in quasi-criminal proceedings.

9. Guidance

9.1 The general advice produced by the Legal Services Commission on applying for criminal legal aid will apply to Drinking Banning Orders. No separate guidance is necessary.

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.

11. Regulating small business

11.1 The legislation only applies indirectly to small businesses .

11.2 The impact on firms employing up to 20 people is minimal.

12. Monitoring & Review

12.1 These proceedings will be monitored and reviewed by the Legal Services Commission and Her Majesty's Court Service.

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.