EXPLANATORY MEMORANDUM TO

THE CIVIL LEGAL AID (MERITS CRITERIA) (AMENDMENT) REGULATIONS 2013

2013 No. [DRAFT]

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 instrument

2.1 The Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2013 substitute regulation 53(b) of the Civil Legal Aid (Merits Criteria) Regulations 2013 (S.I. 2013/104).

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

3.1 None.

4. Legislative Context

4.1 This is one of a number of statutory instruments which implement Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the Act").These instruments will be laid in time for the Act to come into force on 1 April 2013.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

The Minister of State for Justice, Lord McNally has made the following statement regarding Human Rights:

In my view the provisions of the Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2013 are compatible with the Convention Rights.

7. Policy background

7.1 The Civil Legal Aid (Merits Criteria) Regulations 2013 (S.I.2013/104)("the Merits Regulations") set out the merits criteria both for applications made for legal aid in relation to civil legal services described in Part 1 of Schedule 1 to the Act and in relation to civil legal services which are not described in Part 1 of Schedule 1 to the Act. The Regulations set out the merits tests for various forms of civil legal services and where certain forms of legal services are not appropriate in certain types of cases. These

regulations were debated in the House of Lords on the 3rd December 2012 and during the debate the Government undertook to amend regulation 53(b).

7.2 As a result these Regulations substitute regulation 53(b) of the Merits Regulations to give the Director of Legal Aid Casework the discretion to grant legal aid for public law claims if the Director is satisfied that alternative court or tribunal proceedings would not be effective in providing the remedy that the individual requires.

8. Consultation outcome

8.1 We have not consulted on the Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2013.

9. Guidance

9.1 Guidance is not being prepared specifically on this instrument. A programme of training and guidance is being prepared by the Legal Services Commission to support the transition to the new arrangements. This will be made available to legal aid providers ahead of the commencement of the Act on 1 April 2013.

10. Impact

10.1 The impacts of the Government's programme of legal aid reform are set out in an Impact Assessment, which was updated following the Act receiving Royal Assent. This is available at:
http://www.justice.gov.uk/legislation/bills-and-acts/acts/legal-aid-and-sentencing-act/laspo-background-information.
An Impact Assessment has not been prepared specifically for this instrument.

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

10.3 There is no impact on the public sector arising from this instrument beyond those accounted for in the Royal Assent Impact Assessment.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Ministry of Justice will conduct a post-implementation review of the Act between three to five years after implementation. This review will also consider the operation of the secondary legislation.

13. Contact

Narinder Tamana at the Ministry of Justice (Tel: 020 3334 3216 or email: narinder.tamana@justice.gsi.gov.uk) can answer any queries regarding the instrument.