EXPLANATORY MEMORANDUM TO

THE LEGAL AID (INFORMATION ABOUT FINANCIAL RESOURCES) (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 This instrument amends the Legal Aid (Information about Financial Resources) Regulations 2013 ("the 2013 Regulations") made under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the Act") to enable the Director of Legal Aid Casework ("the Director") to request information from the Secretary of State for Transport in order to facilitate a determination for the purpose of legal aid available under Part 1 of the Act that a relevant individual's financial resources include an interest in a motor vehicle. This instrument also adds Armed Forces Independence Payment ("AFIP") to the list of prescribed benefits in the Schedule to the 2013 Regulations. If the individual is in receipt of a prescribed benefit, the Director may request information about the benefit from the Department for Work and Pensions, the Department for Social Development in Northern Ireland and the Department of Finance and Personnel in Northern Ireland, including the amount the individual is receiving.

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

3.1 None.

4. Legislative context

4.1 The 2013 Regulations, which this instrument amends, came into force on 1 April 2013.

4.2 AFIP, which will be added to the list of prescribed benefits in the Schedule to the 2013 Regulations by regulation 4 of these regulations, was created by the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2013, which came into force on 8 April 2013.

4.3 Regulation 3 of these regulations anticipates the implementation of regulations made under Schedule 2 to the Act relating to Motor Vehicle Orders (the "MVO Regulations"). Those regulations are expected to come into force (subject to Parliamentary approval) in July 2013. The MVO Regulations will make provision in relation to motor vehicle orders to enforce payment following non-compliance of an individual's obligations to make a payment

under the Criminal Legal Aid (Contribution Orders) Regulations 2013 (the "Contribution Orders Regulations").

5. Territorial extent and application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

In my view the provisions of the Legal Aid (Information about Financial Resources) (Amendment) Regulations 2013 are compatible with the Convention Rights.

7. Policy background

7.1 Having accurate information about the financial resources of an individual who is applying for, or in receipt of, legal aid is an important part of ensuring that only those eligible for legal aid receive it, and that those who can afford to contribute to the cost of their legal representation are made to do so.

7.2 These regulations amend the 2013 Regulations, which make provision in relation to information requests under section 22 of the Act. Section 22 of the Act provides a statutory gateway for the Director or other named person to ask for information about an individual's financial resources for the purposes of criminal or civil legal aid. Information may only be requested under section 22 for the purposes of facilitating a determination about an individual's financial resources for the purpose of legal aid available under Part 1 of the Act, for example, that an individual is financially eligible for legal aid, or is liable to make a contribution toward the cost of their representation when in receipt of legal aid.

7.3 Regulation 3 of these regulations amends the 2013 Regulations to make provision for the Director to make information requests under section 22 of the Act to the Secretary of State for Transport in relation to information held by the Driver and Vehicle Licensing Agency ("DVLA"). This amendment is intended to support the MVO Regulations (subject to Parliamentary approval) when they come into force by helping the Director to establish that the subject of a contribution order made under the Contribution Orders Regulations has an interest in the motor vehicle.

7.4 The policy intention is to first ask the applicant for legal aid whether they (alone or with anyone else) own a motor vehicle, and if so, what the registration number of that vehicle is. The Director will then make an information request to DVLA under section 22 of the Act to confirm that the individual is the registered keeper of the vehicle to which the registration number that individual has supplied relates. The individual's statement that they own a vehicle taken together with DVLA's confirmation that the

individual is the registered keeper of the vehicle will provide a means of evidencing that the individual has an interest in the vehicle.

7.5 Regulation 4 of these regulations amends the Schedule to the 2013 Regulations to add AFIP to the list of prescribed benefits in that Schedule. AFIP is a benefit for armed forces veterans to protect them from any possible financial detriment as a consequence of the replacement of Disability Living Allowance (DLA) from 8 April 2013, by Personal Independence Payment (PIP), under the Welfare Reform Act 2012. Like DLA and PIP, AFIP is a benefit which is deducted from the gross income of an individual when calculating their eligibility for, or liability to make a contribution towards the cost of, legal aid made available under Part 1 of the Act. The 2013 Regulations were laid before Parliament in draft prior to the making of the secondary legislation that created AFIP, so AFIP could not be included in Schedule 1 when the 2013 Regulations were first made. It was always the intention of MOJ to add AFIP to Schedule 1 at the earliest opportunity.

8. Consultation outcome

8.1 We have not consulted on the Legal Aid (Information about Financial Resources) (Amendment) Regulations 2013.

8.2 The proposals underlying the MVO Regulations, which are supported by the amendments made by regulation 3 of these regulations, formed part of a consultation exercise that ran from 30 October 2012 to 11 December 2012 ('Crown Court means testing: the design of the scheme on implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012'). In its response to the consultation exercise, published on 5 March 2013, the Ministry of Justice stated that it wished to give further thought to the final shape of the MVO scheme and expected to implement the MVO Regulations in July 2013.

8.3 Details of the MVO scheme will be published in an addendum to the consultation response, alongside an updated Impact Assessment. Both documents will be published before the MVO Regulations are introduced.

9. Guidance

9.1 Guidance is not being prepared specifically on this instrument.

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 A full impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 These regulations do 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 and five years after implementation.

13. Contact

Samantha Toyn at the Ministry of Justice (tel: 020 3334 4285 or email: Samantha.Toyn@justice.gsi.gov.uk) can answer any queries regarding the instrument.