EXPLANATORY MEMORANDUM TO THE

LEGAL ADVICE AND ASSISTANCE (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2010 – S.R. 2010 No. 10

1. This Explanatory Memorandum has been prepared by the Northern Ireland Court Service 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 amends the Legal Advice and Assistance Regulations (Northern Ireland) 1981 in two respects:

(a) to reflect the change in title of the Life Sentence Review Commissioners to the Parole Commissioners for Northern Ireland;

(b) to bring within the scope of legal aid applications to vary or discharge restraining orders made under Article 7 or 7A of the Protection from Harassment (Northern Ireland) Order 1997.

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

3.1 None.

4. Legislative Context

4.1 The Legal Advice and Assistance Regulations (Northern Ireland) 1981 regulate the provision of legal advice and assistance (including assistance by way of representation) by solicitors and, where appropriate, counsel to those financially eligible for them. The amendments made by this instrument relate specifically to assistance by way of representation (ABWOR).

4.2 Under the Criminal Justice (Northern Ireland) Order 2008 the duties and functions of the Life Sentence Review Commissioners have now been transferred to the Parole Commissioners for Northern Ireland.

4.3 The Protection from Harassment (Northern Ireland) Order 1997 extends the courts' powers in Northern Ireland to impose a restraining order, on conviction or acquittal of any offence, protecting a person from conduct which amounts to harassment or fear of violence. Corresponding provisions have been introduced in England & Wales. The prosecution, defendant or any other person named in the order can apply to the court to have the order varied or discharged. Currently, legal aid is available for the defendant in such proceedings but not for any other person named in the order, including the victim. This instrument ensures the availability of funding in such cases which are funded by way of ABWOR. The Legal Aid (Scope) Regulations (Northern Ireland) 2010 – S.R. 2010 No. 9 make corresponding provision in respect of cases funded by way of civil legal aid.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland only.

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

7.1 The Criminal Justice (Northern Ireland) Order 2008 created a new independent body of Parole Commissioners for Northern Ireland. That Order also renamed the current Life Sentence Review Commissioners and transferred their duties and functions to the Parole Commissioners.

7.2 The Domestic Violence, Crime and Victims Act 2004 extends the courts' powers to impose a restraining order upon a person ("the defendant") protecting another person from conduct which amounts to harassment or will cause a fear of violence. Previously, such an order could only be made under Article 7 of the Protection from Harassment (Northern Ireland) Order 1997 where the defendant was convicted of an offence under that Order. However, the 2004 Act amended the 1997 Order to provide that a restraining order can now be made where the defendant is convicted of *any* offence.

7.3 Furthermore, the 2004 Act inserted a new provision (Article 7A) into the 1997 Order empowering a court to impose a restraining order when the defendant is acquitted of an offence, if it considers it necessary to do so to protect a person from harassment by the defendant. (The 2004 Act also made corresponding amendments to the Protection from Harassment Act 1997 in England & Wales.)

7.4 Restraining orders made in Northern Ireland are considered part of the criminal proceedings in which the defendant has been convicted or acquitted. Therefore, legal aid is currently available for those proceedings.

7.5 Under the 1997 Order the prosecution and defendant, or any person named in the restraining order, can apply to the court to have the order varied or discharged. Criminal legal aid is available for the defendant in any such proceedings. This, however, is not the case for any other person named in the order, including the victim. It is government policy that legal aid should be available for third parties in these circumstances. However, applications to vary or discharge restraining orders are currently out of scope for ABWOR. This instrument addresses that.

- **Consolidation**

7.6 The on-going reform programme for legal aid in Northern Ireland is expected to lead to the commencement of 'civil legal services' under the Access to Justice (Northern Ireland) Order 2003, together with supporting regulations, within two years. For that reason, we do not plan to bring forward a consolidated version of the Legal Advice and Assistance Regulations (Northern Ireland) 1981 at this time.

8. Consultation outcome

8.1 Since the amendments made by this instrument are:

(a) in respect of the Life Sentence Review Commissioners, of a minor technical nature, and

(b) in respect of the funding of applications to vary or discharge restraining orders, giving effect to changes made by way of primary legislation in accordance with government policy,

we have not conducted a separate consultation in respect of the instrument. Stakeholders have been consulted on the respective primary pieces of legislation.

9. Guidance

9.1 No specific guidance will be issued by the Northern Ireland Court Service. However, as part of our normal practice when bringing forward secondary legislation, the Court Service will be writing to relevant stakeholders – including the Law Society of Northern Ireland and the General Council of the Bar of Northern Ireland – to provide them with copies of these instruments and to explain the changes they will make.

9.2 An entry is also included in the Law Society's monthly publication *'The Writ'* to inform the legal profession of the new legislation and the changes made.

9.3 Furthermore, the Northern Ireland Legal Services Commission, which is responsible for the administration of legal aid here, will issue circulars to the legal profession detailing the changes being made to the legal aid scheme by this instrument – and by the Legal Aid (Scope) Regulations (Northern Ireland) 2010, referred to at paragraph 4.3 – and explaining how they operate. The circulars will be published on the Commission's website at http://www.nilsc.org.uk/

10. Impact

10.1 No impact on the private, voluntary or public sectors is foreseen. Accordingly, an Impact Assessment has not been prepared on this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Court Service and the Northern Ireland Legal Services Commission keep the operation of the legal aid scheme in Northern Ireland under review generally. However, the operation of this instrument will not be specifically monitored.

13. Contact

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