EXPLANATORY MEMORANDUM TO

THE CIVIL LEGAL AID (FINANCIAL RESOURCES AND PAYMENT FOR SERVICES) (AMENDMENT) REGULATIONS 2013

2013 No. 753

AND

THE LEGAL AID (FINANCIAL RESOURCES AND PAYMENT FOR SERVICES) (LEGAL PERSONS) (AMENDMENT) REGULATIONS 2013

2013 No. 754

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 The Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2013 (the "Financial Resources Regulations") and the Legal Aid (Financial Resources and Payment for Services) (Legal Persons) (Amendment) Regulations 2013 (the "Legal Persons Regulations") make provision for the financial eligibility rules for cases under the Convention on the international recovery of child support and other forms of family maintenance concluded at The Hague on 23 November 2007 (the "2007 Hague Convention").

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

3.1 The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2013 (the "2013 Order") amends Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the Act") to allow for civil legal aid to be provided in relation to applications under the 2007 Hague Convention. As the Financial Resources Regulations and Legal Persons Regulations refer to amendments made to Schedule 1 to the Act by the 2013 Order, they could only be made following the making of that Order. The amendments to Schedule 1 to the Act in relation to the 2007 Hague Convention were originally laid before Parliament on 29 October 2012, as part of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2012 (the "2012 Order"). A motion approving the 2012 Order was passed by the House of Commons but the House of Lords declined to approve it on 3 December 2012. Subsequently, these provisions were brought forward

again in the 2013 Order, which was laid in draft on 4 February 2013 and, following approval by the Commons on 12 March and the Lords on 27 March, was immediately made on 27 March 2013. As a result, these Regulations are being made less than 21 days before they are due to come into force on 1 April.

4. Legislative Context

4.1 This is one of a number of statutory instruments which implement Part 1 of the Act. These instruments will be laid in time for Part 1 of the Act to come into force on 1 April 2013.

4.2 The Financial Resources Regulations amends regulation 5 of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 to make provision for 2007 Hague Convention cases. The Legal Persons Regulations amends regulation 10 of the Legal Aid (Financial Resources and Payment for Services) (Legal Persons) Regulations 2013 to make similar provision for legal persons. These amendments facilitate, in part, Articles 14, 15 and 17 of the 2007 Hague Convention by providing that specified forms of civil legal services are available without a determination in respect of an individual's or a legal person's financial resources.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 The Act gives effect to the Government's policy position on legal aid. The Government believes that legal aid has expanded far beyond its original intentions and is available for a wide range of issues, many of which need not be resolved through the courts. Irrespective of the current economic situation, a wide ranging programme of reform is required to ensure that legal aid is targeted to those who need it most, for the most serious cases in which legal advice and representation is justified.

7.2 These Regulations make provision for the financial eligibility rules for applications under the 2007 Hague Convention. The Convention provides for circumstances in which individuals and legal persons should be provided with free legal assistance, without reference to their financial means. These regulations implement these obligations.

8. Consultation outcome

8.1 The consultation 'Proposals for the reform of legal aid in England and Wales' http://www.justice.gov.uk/downloads/consultations/legal-aid-reform-consultation.pdf was published on 15 November 2010 and closed on 14 February 2011.

8.2 Over 5,000 responses were received from representative bodies, practitioner and other organisations, individual members of the judiciary, members of the House of Commons and Lords, individual solicitors and barristers and members of the public. The majority of responses did not support the Government's proposals for reform, although there was some support for particular measures. Some of the original proposals were modified in light of the comments received from consultees.

8.3 A detailed Government response to the consultation exercise is available on the MoJ Website at http://www.justice.gov.uk/downloads/consultations/legal-aid-reform-government-response.pdf.

8.4 We have not consulted on the Financial Resources Regulations or the Legal Persons Regulations.

9. Guidance

9.1 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 in time for 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 in respect of the Act.

11. Regulating small business

11.1 The legislation does not add any regulatory burden on small businesses.

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

Michael Tyler at the Ministry of Justice Tel: 020 3334 2443 or email Michael.Tyler@justice.gsi.gov.uk can answer any queries regarding the instrument.