EXPLANATORY MEMORANDUM TO THE

LEGAL AID (GENERAL) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2010 – S.R. 2010 No. 93

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 Aid (General) Regulations (Northern Ireland) 1965 in terms of the exemptions from the statutory charge. The amendments cover three areas:

(a) to update the legislative references in regulation 17(9)(a);

(b) to update the references in regulation 17(9)(f) to certain welfare benefits;

(c) to insert an exemption from the statutory charge in relation to pension sharing orders made under Article 26A of the Matrimonial Causes (Northern Ireland) Order 1978 .

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

3.1 None.

4. Legislative Context

4.1 Article 12(5) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, together with regulation 17 of the 1965 Regulations, provides for the application of the statutory charge under civil legal aid. This instrument amends regulation 17(9) of the 1965 Regulations which sets out the exemptions from the statutory charge.

4.2 The legislative references contained in regulation 17(9)(a) are outdated and open to misinterpretation. Over the years, each of the various pieces of legislation referred to has been repealed and replaced. The effect of the amendments is to re-state the exemptions which currently apply by operation of the provision in section 29 (effect of substituting provisions) of the Interpretation Act (Northern Ireland) 1954.

4.3 Furthermore, over the years, some of the welfare benefits specified in regulation 17(9)(f) have been replaced with other benefits.

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 Where a person recovers or preserves property as a result of proceedings in which they have received civil legal aid, and a claim is being made on the Legal Aid Fund in respect of the costs incurred by their legal representatives, the person is subject to the operation of the statutory charge. The statutory charge ensures that recovered or preserved property is used to repay to the Legal Aid Fund the cost of providing legal services to the assisted person, less any financial contributions they have already made.

7.2 The statutory charge is designed:

(a) to put legally-aided persons, as far as possible, in the same position as successful non-legally aided persons;

(b) to ensure that legally-aided persons contribute towards the cost of funding their cases, so far as they are able; and

(c) to deter legally-aided persons from running up costs unreasonably.

7.3 Regulation 17(9) of the 1965 Regulations sets out a number of exemptions to the statutory charge. However, the legislative references in regulation 17(9)(a) detailing those exemptions are not up-to-date. This has led to some confusion, in particular regarding property adjustment orders made under Article 26 of the 1978 Order. The amendments made by this instrument make it clear that such orders are not exempt from the operation of the statutory charge.

7.4 In addition, the Northern Ireland Legal Services Commission (NILSC), which is responsible for the administration of legal aid here, wishes to include an exemption from the statutory charge in respect of pension sharing orders. Such orders did not exist when the 1965 Regulations were originally made.

- ***Consolidation***

7.5 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 Aid (General) Regulations (Northern Ireland) 1965 at this time.

8. Consultation outcome

8.1 Since the amendments being made by this instrument are, in large part, technical in nature, simply involving a restating of the original regulations, a public consultation has not taken place for the instrument. However, the NILSC conducted a brief consultation with the legal profession in relation to including an exemption for pension sharing orders. No views were expressed.

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 this instrument and to explain the changes it 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 NILSC will issue a circular to the legal profession detailing the changes being made to the legal aid scheme by this instrument and explaining how they operate. The circular 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 NILSC keep the operation of the legal aid scheme in Northern Ireland under review generally. It will include the operation of this instrument.

13. Contact

Padraig Cullen at the Northern Ireland Court Service, Tel: 028 9041 2235 or e-mail: padraigcullen@courtsni.gov.uk or Claire Gallogly, Tel: 028 9041 2261 or e-mail: clairegallogly@courtsni.gov.uk can answer any queries regarding this instrument.