EXPLANATORY MEMORANDUM TO

THE LEGAL AID (INFORMATION ABOUT FINANCIAL RESOURCES) (AMENDMENT) REGULATIONS 2014

2014 No. 901

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 This instrument amends the Legal Aid (Information about Financial Resources) Regulations 2013 (S.I.2013/628) ("the 2013 Regulations") made under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the Act") to include a maternity allowance for participating wives or civil partners of self employed earners in the list of prescribed benefits in the Schedule to the 2013 Regulations. If an individual is in receipt of a prescribed benefit, the Director of Legal Aid Casework may request information about the benefit from the Secretary of State 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 The instrument refers in the footnotes to two sets of regulations that have yet to be made. It is intended that this instrument will be laid and debated at the same time as the Social Security (Maternity Allowance) (Participating Wife or Civil Partner of Self-employed Earner) Regulations 2014 (which are being prepared by the Department for Work and Pensions). The Social Security (Maternity Allowance) (Participating Wife or Civil Partner of Self-employed Earner) Regulations (Northern Ireland) 2014 will be debated by the Northern Ireland Assembly around the same time as the Department for Work and Pensions' Regulations and this instrument. The intention is to sequence the making of the three sets of regulations so that this instrument will not be made until the other two sets of regulations have been made.

4. Legislative context

4.1 Regulation 2 of this instrument will add a new maternity allowance to the list of prescribed benefits in the Schedule to the 2013 Regulations. The new maternity allowance will be created by the Social Security (Maternity Allowance) (Participating Wife or Civil Partner of Self-employed Earner) Regulations 2014 and the Social Security (Maternity Allowance) (Participating Wife or Civil Partner of Self-employed Earner) Regulations (Northern Ireland) 2014. The new maternity allowance must be in place by 5 August 2014 to meet the implementation deadline for Directive

2010/41/EU of the European Parliament and of the Council of 7 July 2010 ("the Directive").

5. Territorial extent and application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Justice, Shailesh Vara, has made the following statement regarding Human Rights:

In my view the provisions of the Legal Aid (Information about Financial Resources) (Amendment) Regulations 2014 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 of Legal Aid Casework or other named person (at present no other person is named) 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 The new maternity allowance is for women who work with a spouse or civil partner who is engaged in self-employment. It is to be introduced by the Department for Work and Pensions to implement Article 8 of the Directive in respect of the women referred to in Article 2(b) of the Directive. The Explanatory Memorandum to the Social Security (Maternity Allowance) (Participating Wife or Civil Partner of Self-employed Earner) Regulations 2014[1] provides more detail on the policy behind the new maternity allowance. Regulation 2 of this instrument amends the Schedule to the 2013 Regulations to add maternity allowance for participating wives or civil partners of self employed earners to the list of prescribed benefits in that Schedule.

8. Consultation outcome

8.1 We have not consulted on the Legal Aid (Information about Financial Resources) (Amendment) Regulations 2014.

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[1] http://www.legislation.gov.uk/uksi/2014/606/memorandum/contents

9. Guidance

9.1 The nature of this instrument means that specific guidance on this amendment is not necessary.

10. Impact

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

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

Bridget Doherty at the Ministry of Justice (tel: 020 3334 4222 or email: bridget.doherty@justice.gsi.gov.uk) can answer any queries regarding the instrument.