

EXPLANATORY MEMORANDUM TO
THE CRIMINAL DEFENCE SERVICE (GENERAL)(No.2) (AMENDMENT NO.2)
REGULATIONS 2007

2007 No. 2936

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before the House of Commons by Command of Her Majesty.

2. **Description**

These regulations are about criminal legal aid. They are being made to clarify and amend the Criminal Defence Service (General) (No.2) Regulations 2001 following the introduction of the Criminal Defence Service Act 2006. They make a number of amendments relating to representation orders in proceedings in criminal courts.

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

3.1 None.

4. **Legislative Background**

4.1 Following the introduction of the Criminal Defence Act 2006, which re-introduced the means test in magistrates' courts, the Criminal Defence Service (General)(No.2) Regulations 2001 were amended. A number of areas have now been identified as needing clarification. The Department has also taken the opportunity to remove ambiguity and make updates in some areas. Specifically, the regulations amend the following:

- The terms 'solicitor', 'barrister' and 'representatives' have been replaced with 'litigator' and 'advocate' where appropriate to ensure consistency across the regulations.
- We have clarified that where a magistrates' court sends a case straight to the Crown Court under section 51 of the Crime and Disorder Act 1998 the proceedings in that court are preliminary to the proceedings in the Crown Court and so are not subject to the means test.
- In committals for sentence, an amending regulation sets out that a representation order granted in the magistrates' court will provide for a solicitor and an advocate where the case proceeds to the Crown Court.
- The anomaly whereby any defendant who had a representation order in the magistrates' court could not apply for a representation order for an appeal against sentence or conviction has been corrected.
- The circumstances on how to apply for grant of a representation order where the Court of Appeal has ordered a retrial, or where an application is made to the High Court, have been clarified.
- The circumstances in which a QC or more than one advocate can appear in the magistrates' court have been clarified.

4.2 The instrument is made under powers conferred on the Lord Chancellor by sections 13 and 15 of, and paragraphs 2 and 2A of Schedule 3 to, the Access to Justice Act 1999. They are subject to the negative resolution procedure (see section 25(10) of that Act.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales

6. European Convention on Human Rights

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

7. Policy background

7.1 These amendments are principally a response to recent feedback from defence practitioners, court staff and the representative bodies. They clarify areas where we felt that there was ambiguity or a lack of consistency.

7.2 Copies of the proposed amendments to the regulations were sent to key stakeholders, namely the Law Society, the Justices' Clerks Society, the General Council of the Bar, Legal Aid Practitioners' Group (LAPG), London Criminal Courts Solicitors' Association, Criminal Law Solicitors Association, Criminal Bar Association, Magistrates' Association, and senior members of the Judiciary.

7.3 We received only two responses to these proposals, both of which were supportive of the proposed amendments.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies

9. Contact

Samantha Toyn at the Ministry of Justice Tel: 020 7210 8062 or email:Samantha.toyn@justice.gsi.gov.uk can answer any queries regarding the instrument