

**EXPLANATORY MEMORANDUM TO**  
**THE CRIMINAL DEFENCE SERVICE (FINANCIAL ELIGIBILITY)**  
**(AMENDMENT) REGULATIONS 2008**

**2008 No. 723**

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty. It contains information for the House of Lords Select Committee on the Merits of Statutory Instruments and the Joint Committee on Statutory Instruments. This memorandum is coming into force alongside another for The Criminal Defence Service (General) (No.2) (Amendment) Regulations 2008.

**2. Description**

This instrument relates to financial eligibility for legal aid for criminal proceedings in magistrates' courts. It raises eligibility limits to reflect increases to benefits and allowances.

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

None

**4. Legislative Background**

These Regulations amend the Criminal Defence Service (Financial Eligibility) Regulations 2006 (S.I. 2006/2492). They are made under paragraph 3B(1) of Schedule 3 to the Access to Justice Act 1999, which was inserted by the Criminal Defence Service Act 2006 and which enables regulations to provide that publicly funded legal representation in criminal proceedings in magistrates' courts may only be granted to people who are financially eligible. The power was conferred by the 1999 Act on the Lord Chancellor, transferred to the Secretary of State and then transferred back to the Lord Chancellor. The instrument is subject to the negative resolution procedure (section 25(10) of the 1999 Act).

**5. Extent**

The Regulations apply to England and Wales.

**6. European Convention on Human Rights**

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

## **7. Policy Background**

Eligibility limits for representation are uprated annually to reflect the annual increases to welfare benefits and allowances made by the Department for Work and Pensions. These come into force on the first Monday after 6 April, the start of the tax year. For applications made on or after 7 April 2008 an uprating of the financial eligibility limits, representing a 3.9% increase in line with welfare benefit provision, is required for representation

The changes to the financial eligibility uprating are made on an annual basis and are aligned to increases to other allowances. The increase to the financial eligibility limits do not affect the numbers of individuals who are eligible for legal aid. The Department has not consulted on these changes for these reasons.

## **8. Impact**

No Regulatory Impact Assessment has been prepared because there is no regulatory impact on any part of the private or voluntary sector. There are no implications for the Exchequer.

## **9. Contact**

Any enquiries about the contents of this memorandum should be addressed to:  
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