

EXPLANATORY MEMORANDUM TO
THE CRIMINAL DEFENCE SERVICE (GENERAL) (No.2) (AMENDMENT)
REGULATIONS 2008

2008 No. 725

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 (Financial Eligibility) (Amendment) Regulations 2008.

2. Description

This instrument prescribes proceedings relating to Serious Crime Prevention Orders (SCPOs) as criminal for the purposes of legal aid. This instrument also relates to financial eligibility limits for criminal legal aid advice and assistance and advocacy assistance. 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

- 4.1. These Regulations amend the Criminal Defence Service (General) (No.2) Regulations 2001 (S.I. 2001/1437). They are made under Section 12(2)(g) of the Access to Justice Act 1999, which enables regulations to prescribe particular proceedings as criminal for legal aid purposes.
- 4.2 These Regulations also amend the same regulations under Section 13(1) of the Access to Justice Act 1999. This provides that advice and assistance shall be funded for individuals arrested and held or for individuals involved in criminal proceedings as may be prescribed. The power was conferred by the Act on the Lord Chancellor transferred to the Secretary of State and then transferred back to the Lord Chancellor. They are subject to the negative resolution procedure (section 25(10) of the 1999 Act).
- 4.3 The Serious Crime Act 2007 introduces Serious Crime Prevention Orders (SCPO's) which under the Act are civil orders, preventative and not punitive in nature, and can be made by the High Court and additionally by the Crown Court

on conviction. The relevant sections of the 2007 Act are to come into force on the 6 April 2008.

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

7.1 The CDS Regulations need to be amended to prescribe SCPO's as criminal proceedings. This will enable those individuals who may be subject to one of these orders following conviction, or who wish to appeal against the making of these orders to the Court of Appeal (Criminal Division) eligible for criminal legal aid. The provision of legal aid through the Criminal Defence Service is not a reflection on the criminal or civil nature of Serious Crime Prevention Orders. Rather, legal aid is to be provided using the Criminal Defence Service for reasons of efficiency and practicality. We have included provision for making them in the Crown Court as a matter of efficiency, as the court will already know a large amount of the context for the order from the trial. It would not make sense for the proposed subject to have to make a fresh application for legal aid on a civil basis with the attendant adjournments and delays that this would cause to the process.

7.2 An amendment is required to regulation 3(2) of the CDS (General) (No.2) Regulations 2001 under section 12(2)(g) to include proceedings relating to Serious Crime Prevention Orders and appeals against them.

7.3 By prescribing the Orders as criminal we have extended the scope of criminal legal aid and facilitated arrangements for funding in criminal proceedings. For this reason we did not consult on this amendment.

7.4 Eligibility limits for advice and assistance and advocacy assistance 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 advice and assistance and advocacy assistance.

7.5 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 advice and

assistance and advocacy assistance. 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

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