

**EXPLANATORY MEMORANDUM TO
THE CRIMINAL DEFENCE SERVICE (INFORMATION REQUESTS)
(PRESCRIBED BENEFITS) REGULATIONS 2009**

No. 212

1. 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Select Committee on Statutory Instruments.
2. **Purpose of the instrument**

2.1 This instrument relates to the assessment of a defendant's financial eligibility for criminal legal aid in magistrates' courts. It prescribes the benefits which constitute a person's benefit status, for the purpose of information requests made to the Department for Work and Pensions by the Legal Services Commission.
3. **Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments**

3.1 None
4. **Legislative Context**

4.1 These Regulations are made by the Lord Chancellor under section 26 of, and paragraph 8(2) of Schedule 3 to, the Access to Justice Act 1999. They are subject to the negative resolution procedure under section 25(10) of that Act.

4.2 There is a related instrument, the Criminal Defence Service (Information Requests) Regulations 2009, which are subject to the affirmative resolution procedure and which pending Parliament's approval will be made after these Regulations. That instrument has been laid before Parliament. The affirmative instrument and explanatory memorandum are available at the links:

http://www.opsi.gov.uk/si/si2009/draft/pdf/ukdsi_9780111473153_en.pdf

http://www.opsi.gov.uk/si/si2009/draft/em/ukdsiem_9780111473153_en.pdf
5. **Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

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**

7.1 Under regulations made under Schedule 3 to the Access to Justice Act 1999 the LSC, or delegated court officers or other persons, is the authority responsible for granting rights to publicly funded representation for criminal cases in magistrates' courts. The authority is required to assess individuals' incomes in order to determine their eligibility for such representation.

Paragraph 6 of Schedule 3, which was inserted by section 57 of the Criminal Justice and Immigration Act 2008, permits the relevant authority to make information requests to HMRC and the Secretary of State for information about the financial resources of an individual who has applied for representation, to facilitate the making of decisions regarding financial eligibility. Information requested of the Secretary of State (in practice the Secretary of State for Work and Pensions) may include information about a person's benefit status. These Regulations prescribe the relevant benefits and permit the authority to seek information about the amount of any prescribed benefits being received.

7.2 Previously a formal agreement existed between DWP and Her Majesty's Court Service (HMCS), which allowed HMCS to confirm whether the applicant was in receipt of a benefit which rendered them financially eligible without any further assessment of their income. There was also an informal agreement which allowed confirmation of other forms of income with Her Majesty's Revenue and Customs. By putting the gateway arrangements with DWP and HMRC on a statutory footing and extending them to HMRC the Act allows access to an applicant's or, if relevant, their partner's records, to confirm whether either of them was on a passported or other benefit and details of their income.

7.3 The LSC has an obligation to verify the accuracy of information provided by defendants in magistrates' courts in order to determine their financial eligibility for criminal legal aid. Checks are currently undertaken by DWP and HMRC, on the basis of written consent provided by the defendant on the application form.

Consolidation

7.4 This is a new Statutory Instrument.

8. **Consultation outcome**

8.1 The consultation paper on the draft regulations under paragraph 6 of Schedule 3 to the 1999 Act attracted three responses. These came from the Crown Prosecution Service, the Law Society and the Justices' Clerks' Society and were supportive. None of the consultees' comments related to the wording or policy of this SI in particular.

9. **Guidance**

9.1 No guidance is necessary.

10. **Impact**

10.1 An Impact Assessment has not been prepared for this instrument. An Impact Assessment was attached to the explanatory memorandum to the related instrument, the Criminal Defence Service (Information Requests) Regulations 2009. This is available at the link:

http://www.opsi.gov.uk/si/si2009/draft/em/ukdsiem_9780111473153_en.pdf

10.2 This illustrated that there is no impact on business, charities, voluntary bodies or the public sector.

11. **Regulating small business**

11.1 The legislation does not apply to small business.

12. **Monitoring & review**

12.1 The policy will be reviewed one year after implementation of the full statutory framework, including secondary legislation..

13. **Contact**

David Stobie at the Ministry of Justice Tel: 020 3334 4280 or email: david.stobie@justice.gsi.gov.uk can answer any queries regarding the instrument.