

**EXPLANATORY MEMORANDUM TO**  
**THE CRIMINAL DEFENCE SERVICE (GENERAL) (NO. 2) (AMENDMENT)**  
**REGULATIONS 2010**

**2010 No. 1848**

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 These Regulations amend the Criminal Defence Service (General) (No. 2) Regulations 2001 (SI 2001 No. 1437), the “2001 Regulations”, to provide a power to the High Court and the Court of Appeal to grant a right to representation for criminal proceedings before themselves and before the Supreme Court.

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

- 3.1 The primary purpose of these Regulations is to correct a defect in the 2009 Regulations. See below for further details.

4. **Legislative Context**

- 4.1 Regulation 10(7) of the 2001 Regulations prohibits the Supreme Court from granting a representation order for proceedings before it. The Criminal Defence Service (General)(No.2) (Amendment)(No.4) Regulations 2009 (“the 2009 Regulations”) amended regulation 7 of the 2001 Regulations, and inadvertently removed from the High Court and the Court of Appeal the power to grant representation orders for criminal proceedings before the Supreme Court.
- 4.2 These Regulations amend the 2001 Regulations to make clear that the High Court and the Court of Appeal may grant representation orders for criminal proceedings before themselves and the Supreme Court. They also make other consequential and minor amendments.

5. **Territorial Extent and Application**

- 5.1 This instrument applies to England and Wales.

6. **European Convention on Human Rights**

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

## **7. Policy background**

7.1 The Ministry has discussed with the Registrar of Statutory Instruments the implications of the effect the drafting error in the 2009 Regulations and is issuing the 2010 Regulations free of charge to all known recipients of the 2009 Amending Regulations (SI 2009/2876), on the basis that those Regulations were clearly in error and the primary purpose of this new Statutory Instrument is to correct that error.

- *Consolidation*

7.2 At this point, the Ministry has no plans to consolidate these amending Regulations into existing legislation.

## **8. Consultation outcome**

8.1 No consultation has been undertaken in respect of these amending Regulations, since their primary purpose is to correct an earlier error.

## **9. Guidance**

9.1 No guidance is required to underpin these Regulations.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 These Regulations restore to the High Court and the Court of Appeal their power to grant a representation order for proceedings before the Supreme Court. Given that, the Ministry does not intend to undertake a monitoring or review exercise.

## **13. Contact**

13.1 Nic Turner at the Ministry of Justice Tel: 020 3334 4286 or email: [nic.turner@justice.gsi.gov.uk](mailto:nic.turner@justice.gsi.gov.uk) can answer any queries regarding the instrument.