

EXPLANATORY MEMORANDUM TO
THE CRIMINAL DEFENCE SERVICE (GENERAL) (NO.2) (AMENDMENT)
REGULATIONS 2005

2005 No. 2784

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs (DCA) 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

2. Description

2.1. The Access to Justice Act 1999 ('the 1999 Act') provides for legal aid to be made available in criminal proceedings. In addition to ordinary criminal proceedings, proceedings related to criminal proceedings may also be included. These Regulations extend the list of such related proceedings, in the light of recent legislation. They also provide for an increase in the financial eligibility limits for advice and assistance.

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

3.1. 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(1)(g) of the 1999 Act, which allows for the prescribing of proceedings as 'criminal proceedings', and section 13, which allows for the prescribing of circumstances in which advice and assistance, including advocacy assistance, may be publicly funded. The Act conferred the powers on the Lord Chancellor; they are now exercisable by the Secretary of State as a result of the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887). They are subject to the negative resolution procedure (section 25(10) of the 1999 Act.)

5. Extent

5.1. The Regulations apply to England and Wales.

6. European Convention on Human Rights

6.1. No statement is required.

7. Policy Background

7.1. Recent legislation has introduced a number of proceedings which are not strictly criminal proceedings but which are sufficiently related to criminal proceedings for it to be preferable for legal aid in respect of them to be provided through the Criminal Defence Service of the Legal Services Commission. These proceedings are ones relating to:

(a) certain intervention orders under section 1G and 1H of the Crime and Disorder Act 1998 (introduced by the Drugs Act 2005);

(b) certain parenting orders under sections 20, 22, 26 and 28 of the Anti-Social Behaviour Act 2003 and Part 1 of Schedule 1A to the Powers of Criminal Courts (Sentencing) Act 2000;

(c) notification orders, sexual offences prevention orders, risk of sexual harm orders and foreign travel orders under sections 97, 100, 101, 104, 108, 109, 114, 118, 119, 123, 125, 126 and 127 of the Sexual Offences Act 2003;

(d) restraining orders on acquittal under section 5A of the Protection from Harassment Act 1997 (introduced by the Domestic Violence, Crime and Victims Act 2004).

7.2 Until now only exceptional funding was available to deal with requests for representation in respect of proceedings covered by the above legislation. This was strictly a short term and exceptional route.

7.3 For the changes to the financial eligibility uprating, a decision has to be taken whether to use the Retail Price Index or the ROSSI Index to increase these rates. Most contributory and non-contributory benefits will rise by the RPI increase of 3.1%. Most income related benefits will rise by the ROSSI index increase of 1%. (Figures as at December 2004). The ROSSI index is based on the RPI less housing costs.

7.4 Colleagues on the DCA Civil Legal Aid side chose to uprate by the ROSSI Index, rather than the RPI. They chose ROSSI for two reasons. Firstly, because ROSSI is used by the Department for Work and Pensions to uprate income related benefits such as Income support, Jobseekers Allowance, Housing Benefit and Council Tax. Secondly as it is a lower figure, it will be cheaper to uprate by the ROSSI than by the RPI.

7.5 The decision was taken to follow the ROSSI to keep it consistent with the Civil Legal Aid side.

8. Impact

8.1. 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

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