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STATUTORY INSTRUMENTS

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**2013 No. 511**

**LEGAL AID AND ADVICE,  
ENGLAND AND WALES**

**The Criminal Legal Aid (Recovery of  
Defence Costs Orders) Regulations 2013**

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|-------------------------------|---------|------------------------|
| <i>Made</i>                   | - - - - | <i>6th March 2013</i>  |
| <i>Laid before Parliament</i> |         | <i>11th March 2013</i> |
| <i>Coming into force</i>      | - -     | <i>1st April 2013</i>  |

The Lord Chancellor makes the following Regulations<sup>(1)</sup> in exercise of the powers conferred by sections 5(2) and (4), 23(1), (2), (4) to (9) and (11), 24(1) to (3), 30(2) and 41(1) to (3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012<sup>(2)</sup>.

**Citation and commencement**

1. These Regulations may be cited as the Criminal Legal Aid (Recovery of Defence Costs Orders) Regulations 2013 and come into force on 1st April 2013.

**Interpretation**

2. In these Regulations—

“the Act” means the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

“capital” means the amount or value of every resource of a capital nature;

“criminal legal aid” means representation made available under section 16 (representation for criminal proceedings) of the Act;

“gross annual income” means a represented individual’s total income from all sources during the year ending on the date on which the application for a determination under section 16 of the Act is made in relation to relevant proceedings;

“provider” means a person with whom the Lord Chancellor has made an arrangement under section 2(1) of the Act (arrangements) for the provision of criminal legal aid;

“qualifying benefit” means—

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(1) Section 42(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) provides that in Part 1 of that Act “regulations” means regulations made by the Lord Chancellor.

(2) 2012 c. 10.

- (a) income support payable under section 124 of the Social Security Contributions and Benefits Act 1992<sup>(3)</sup> or section 123 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>(4)</sup>;
- (b) income-based jobseeker’s allowance payable under the Jobseekers Act 1995<sup>(5)</sup> or an allowance payable under Part II of the Jobseekers (Northern Ireland) Order 1995<sup>(6)</sup>;
- (c) guarantee credit payable under section 1(3)(a) of the State Pension Credit Act 2002<sup>(7)</sup> or section 1(3)(a) of the State Pension Credit Act (Northern Ireland) 2002<sup>(8)</sup>;
- (d) income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007<sup>(9)</sup> or section 1(2)(b) of the Welfare Reform Act (Northern Ireland) 2007<sup>(10)</sup>; and
- (e) universal credit payable under Part 1 of the Welfare Reform Act 2012<sup>(11)</sup>;

“Recovery of Defence Costs Order (an “RDCO”)” means a document that records a determination made under these Regulations;

“registrar” means the registrar of the Supreme Court or the registrar of criminal appeals and any officer designated to act on their behalf;

“relevant court” means the court before which the proceedings are heard;

“relevant proceedings” means criminal proceedings before any court other than the magistrates’ court or the Crown Court; and

“represented individual” means an individual to whom representation is provided under section 16 of the Act in relation to relevant proceedings.

### Delegation

**3.** A function of the Director or Lord Chancellor under these Regulations may be exercised by, or by an employee of, a person authorised for that purpose by the Director or Lord Chancellor respectively<sup>(12)</sup>.

### General

**4.** These Regulations make provision for the relevant court to make a determination under section 23 of the Act (payment for services) that a represented individual is required to make a payment in respect of the cost of their representation in relevant proceedings.

### Recovery of defence costs orders

**5.—(1)** Subject to regulations 7 to 11, at the conclusion of any relevant proceedings involving a represented individual, the relevant court must make a determination that the represented individual is required to pay—

- (a) the cost of that individual’s representation in such proceedings; or

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<sup>(3)</sup> 1992 c. 4. Section 124 is to be repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 at a date to be appointed.

<sup>(4)</sup> 1992 c. 7.

<sup>(5)</sup> 1995 c. 18.

<sup>(6)</sup> S.I. 1995/2705 (N.I. 15).

<sup>(7)</sup> 2002 c. 16.

<sup>(8)</sup> 2002 c. 14.

<sup>(9)</sup> 2007 c. 5.

<sup>(10)</sup> 2007 c. 2.

<sup>(11)</sup> 2012 c. 5.

<sup>(12)</sup> Section 6 of the Act (authorisations) makes provision for authorisations given for the purpose of section 5 of the Act (delegation) or regulations under that section.

(b) such proportion of the cost of that individual's representation in the proceedings as the relevant court considers reasonable, having regard in particular to the financial resources of that individual.

(2) The maximum amount payable in respect of a determination made under these Regulations is the full cost of the represented individual's representation in the proceedings before the relevant court.

#### **Recovery of defence costs orders: general**

6.—(1) The relevant court must record a determination made under these Regulations in an RDCO.

(2) When a relevant court makes a determination under these Regulations it must give reasons for the terms of the determination.

(3) A determination under these Regulations may provide for immediate payment of the full amount payable in respect of the determination, or for periodic payment of specified instalments.

(4) Any payment due in respect of a determination made under these Regulations must be made to the Lord Chancellor in accordance with terms of the determination.

#### **Exceptions: children**

7. The relevant court must not make a determination under these Regulations in relation to a represented individual who is under the age of 18 on the date on which the application for a determination by the Director or the court under section 16 of the Act is made.

#### **Exceptions: acquitted individuals**

8.—(1) Subject to regulation 17, the relevant court must not make a determination under these Regulations in relation to a represented individual where—

- (a) the individual was before the relevant court to appeal against one or more convictions; and
- (b) in respect of every conviction the relevant court allowed the appeal,

unless the relevant court considers it reasonable in all the circumstances of the case to make a determination under these Regulations in relation to the individual.

(2) Where the relevant court makes a determination in relation to a represented individual in accordance with paragraph (1), it must give reasons for doing so.

#### **Exceptions: qualifying benefits**

9. Subject to regulation 17, the relevant court must not make a determination under these Regulations in relation to a represented individual who is, directly or indirectly, properly in receipt of a qualifying benefit.

#### **Exceptions: assets and income**

10.—(1) Subject to regulation 17, the relevant court must not make a determination under these Regulations in relation to a represented individual who has none of the following—

- (a) capital exceeding £3,000;
- (b) equity in the individual's main dwelling exceeding £100,000; and
- (c) gross annual income exceeding £22,325.

(2) For the purpose of paragraph (1), where an individual resides in more than one dwelling, the court must decide which dwelling is the main dwelling.

### **Other exceptions**

**11.**—(1) Subject to regulation 17, the relevant court must not make a determination under these Regulations if it is satisfied that—

- (a) it would not be reasonable to make such a determination, on the basis of the information and evidence available; or
- (b) requiring a represented individual to make a payment in respect of the cost of their representation in relevant proceedings would, owing to the exceptional circumstances of the case, involve undue financial hardship.

(2) Where the relevant court, in accordance with paragraph (1), does not make a determination in relation to a represented individual it must give reasons for not making such a determination at the conclusion of the proceedings.

### **Assessment of financial resources**

**12.**—(1) The relevant court, the registrar or the Director must assess the financial resources of the represented individual before the relevant court makes a determination in relation to that individual, taking into account in particular the capital and gross annual income of the represented individual.

(2) The relevant court or the registrar may refer information and documentary evidence about the financial resources of a represented individual to the Director for an assessment of the individual's financial resources.

(3) Where the relevant court or the registrar refer information and documentary evidence to the Director for assessment in accordance with paragraph (2) the Director must produce a report of the assessment for the relevant court or the registrar.

### **Financial resources of the represented individual's partner**

**13.**—(1) In these regulations, a reference to the financial resources of a represented individual includes the financial resources of the represented individual's partner, unless the partner has a contrary interest in the proceedings before the relevant court.

(2) In this regulation, "represented individual's partner" means—

- (a) an individual's spouse or civil partner, from whom the individual is not separated due to a breakdown in the relationship which is likely to be permanent;
- (b) a person with whom the individual lives as a couple; or
- (c) a person with whom the individual ordinarily lives as a couple, from whom they are not separated due to a breakdown in the relationship which is likely to be permanent.

### **Deprivation or transfer of financial resources and financial resources of another person**

**14.**—(1) If it appears to the relevant court, the registrar or the Director that a represented individual has, with intent to reduce the amount of their financial resources, whether to avoid having an RDCO made against them, reduce the amount of any RDCO made against them, or otherwise—

- (a) directly or indirectly deprived themselves of any financial resources;
- (b) transferred any financial resources to another person; or
- (c) converted any financial resources into resources which under these Regulations are to be wholly or partly disregarded,

the relevant court, the registrar or the Director must treat such financial resources as part of that individual's financial resources, or as not so converted as the case may be.

(2) Where it appears to the relevant court, the registrar or the Director that—

- (a) another person is or has been substantially maintaining a represented individual or that individual's partner; or
- (b) any of the financial resources of another person have been made available to a represented individual or that individual's partner,

the relevant court, the registrar or the Director may assess or estimate the value of the maintenance or the financial resources made available and may treat such amounts as the financial resources of the individual.

### **Terms of an RDCO**

**15.**—(1) The relevant court must take the following financial resources of the represented individual into account when determining the amount payable in respect of a determination made under these Regulations—

- (a) capital exceeding £3,000;
- (b) equity in the individual's main dwelling exceeding £100,000; and
- (c) gross annual income exceeding £22,325,

unless the relevant court considers that there are exceptional circumstances that justify not taking such resources into account.

(2) For the purpose of paragraph (1), where an individual resides in more than one dwelling, the court must decide which dwelling is the main dwelling.

### **Provision of information**

**16.**—(1) A represented individual must provide such information and documentary evidence about their financial circumstances as the relevant court, the registrar or the Director may require.

(2) Where the relevant court requires further information or documentary evidence in order to decide—

- (a) whether to make a determination under these Regulations; or
- (b) the terms of any such determination,

it may adjourn consideration of the matter and order that any further information or documentary evidence be provided within such specified period of time as the court may require.

### **Failure to provide information**

**17.**—(1) Where a represented individual is required to provide information under regulation 16 and fails to provide such information within the time specified, the relevant court may make a determination that the represented individual is liable to pay—

- (a) the cost of the individual's representation in the proceedings before that court; or
- (b) such proportion of the cost of the individual's representation in the proceedings before that court as the court considers reasonable.

### **Estimate of costs**

**18.** The relevant court, the registrar or the Director may require a provider representing a represented individual to supply an estimate of the total cost of the individual's representation in the proceedings before the relevant court.

### **Overpayment**

**19.**—(1) A provider representing an individual who is the subject of a determination under these Regulations must inform the Lord Chancellor if it subsequently transpires that the total cost of the individual's representation in the proceedings to which the determination relates is less than the amount that the individual was ordered to pay in respect of that determination.

(2) Where an individual has paid more in respect of a determination under these Regulations than the cost of that individual's representation in the proceedings to which the determination relates the Lord Chancellor must repay to that individual the difference between the amount paid by the individual and the cost of their representation.

### **Enforcement of an RDCO**

**20.**—(1) The Lord Chancellor may recover any overdue amounts payable in respect of a determination made under these Regulations—

- (a) summarily as a civil debt; and
- (b) if the High Court or a county court so orders on the application of the Lord Chancellor, as if they were payable under an order of the court in question.

(2) Where the Lord Chancellor incurs costs in connection with the enforcement of an individual's obligation to make a payment in respect of a determination made under these Regulations, those costs may be added to the amount payable by the individual.

Signed by authority of the Lord Chancellor

6th March 2013

*McNally*  
Minister of State  
Ministry of Justice

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Criminal Legal Aid (Recovery of Defence Costs Orders) Regulations 2013 (“the Regulations”) provide that where an individual receives legal aid for representation under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) in relation to criminal proceedings before any court other than the magistrates’ court or the Crown Court, the court hearing the proceedings must, unless an exception applies, make a determination at the conclusion of the proceedings requiring the individual to pay some or all of the cost of their representation. Such determinations are to be recorded in a document known as a Recovery of Defence Costs Order (an “RDCO”).

Regulation 3 provides that the functions of the Director of Legal Aid Casework or the Lord Chancellor under the Regulations may be exercised by, or by an employee of, a person authorised for that purpose by the Director or the Lord Chancellor.

Regulation 5 makes provision for a court to make a determination that an individual must pay some or all of the cost of their representation, and provides that the court must record such a determination in an RDCO. Regulations 7 to 11 set out the circumstance in which a court may not make such a determination. Regulations 12 to 14 make provision for the assessment of financial resources and regulations 16 and 17 make provision in relation to the provision of information.

Regulation 20 makes provision for the enforcement of an RDCO by the Lord Chancellor.