

EXPLANATORY MEMORANDUM TO

THE CRIMINAL DEFENCE SERVICE (RECOVERY OF DEFENCE COSTS ORDERS) (AMENDMENT) REGULATIONS 2005

2005 No. 2783

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs 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. Where an individual receives representation in respect of criminal proceedings which is funded by the Legal Services Commission or the Lord Chancellor as part of the Criminal Defence Service, the court before which proceedings are heard, other than a magistrates' court, may make an order requiring him to pay some or all of the cost of any representation so funded for him. This is known as a Recovery of Defence Costs Order (RDCO). The purpose of RDCO's is to recover costs incurred in the publicly funded representation of any individual who appears in criminal proceedings before any court above the magistrates' court, in all proceedings other than committals for sentence, appeals against sentence and a defendant who has been acquitted, other than in exceptional circumstances. The intention here is to target those defendants who are likely to be able to pay some or all of the costs incurred for the representation they receive.

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 (Recovery of Defence Costs Orders) Regulations 2001 (S.I. 2001/856). They are made under section 17(3) the Access to Justice Act 1999, which enables regulations to provide for the circumstances in which RDCOs may be made, the principles to be applied and the amount to be paid. The power was conferred by the Act on the Lord Chancellor but is 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. Under the 2001 Regulations, where a person's financial resources are being considered, his gross annual income will not usually be taken into account, if it is under £25,000.

7.2 That figure is revised (normally at the beginning of each financial year) to reflect changes in the cost of living.

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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