

*Draft Regulations laid before Parliament under section 58(4)(i) of the Crime and Courts Act 2013,
for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

2015 No.

**PROCEEDS OF CRIME, ENGLAND AND WALES
LEGAL AID, ENGLAND AND WALES**

**The Restraint Orders (Legal Aid Exception and
Relevant Legal Aid Payments) Regulations 2015**

Made - - - - *****
Coming into force - - *1st June 2015*

The Secretary of State, in exercise of the powers conferred by section 41(5A) and (10) of the Proceeds of Crime Act 2002⁽¹⁾ and section 47 of the Crime and Courts Act 2013⁽²⁾, makes the following Regulations.

In accordance with section 58(4)(i) of the Crime and Courts Act 2013, a draft of this instrument has been laid before and approved by a resolution of each House of Parliament.

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Restraint Orders (Legal Aid Exception and Relevant Legal Aid Payments) Regulations 2015, and (subject to paragraphs (2) and (3)) they come into force on 1st June 2015.

(2) Regulation 5(3) and (4) comes into force on the day on which section 55 of the 2009 Act⁽³⁾, so far as it inserts sections 47B and 47C into the 2002 Act, comes into force.

(3) Regulation 5(7) comes into force on the day on which section 58 of the 2009 Act, so far as it inserts section 67D into the 2002 Act, comes into force.

(1) 2002 c. 29. Subsections (5A) and (10) were inserted by section 46 of the Crime and Courts Act 2013 (c. 22). Section 46 will come into force at the same time as these Regulations. 'Prescribed' for the purposes of subsection (5A) is defined in subsection (10) to mean prescribed by regulations made by the Secretary of State.
(2) 2013 c. 22. Section 47 will come into force shortly before these Regulations are made.
(3) 2009 c. 26.

(4) In these Regulations—

“the 2002 Act” means the Proceeds of Crime Act 2002;

“the 2009 Act” means the Policing and Crime Act 2009;

“confiscation order” means a confiscation order made under Part 2 of the 2002 Act (confiscation: England and Wales);

“legal aid exception” has the meaning given in section 41(2A) of the 2002 Act (restraint orders)(4);

“realisable property” has the meaning given in section 83 of the 2002 Act (realisable property);

“relevant legal aid payment” has the meaning given in section 41(2B) of the 2002 Act(5);

“restraint order” means a restraint order made under Part 2 of the 2002 Act.

PART 2

Legal aid exception

Prescribed restriction

2.—(1) A person specified in a restraint order may not deal with realisable property that is subject to the restraint order for the purpose of making a relevant legal aid payment unless—

- (a) a confiscation order has been made against the person in proceedings for an offence to which the relevant legal aid payment relates, and
- (b) the confiscation order has been discharged or satisfied.

(2) For the purposes of this regulation, a relevant legal aid payment relates to an offence if the person specified in the restraint order is obliged to make the payment in connection with services provided entirely or partly in relation to the offence.

PART 3

Relevant legal aid payments: continuation of restraint

Interpretation

3. In this Part “the relevant offence” and “the specified person” have the meaning given in regulation 4.

Application of modifications of the 2002 Act in relation to restraint orders and relevant legal aid payments

4.—(1) Regulation 5 (which modifies Part 2 of the 2002 Act) has effect in relation to cases where all of the following conditions are satisfied.

- (2) The first condition is that a restraint order has been made and contains a legal aid exception.
- (3) The second condition is that, after that restraint order was made but before its discharge—
 - (a) a confiscation order was made against the person specified in the restraint order (“the specified person”), and

(4) Sub-section (2A) was inserted by section 46 of the Crime and Courts Act 2013.

(5) Sub-section (2B) was inserted by section 46 of the Crime and Courts Act 2013.

- (b) that confiscation order has been discharged or satisfied.
- (4) The third condition is that the restraint order and the confiscation order were both made in proceedings that were entirely or partly for the same offence (“the relevant offence”).
- (5) The fourth condition is that, when the confiscation order was discharged or satisfied—
 - (a) the person specified in the restraint order was under an obligation to make a relevant legal aid payment in connection with services provided entirely or partly in relation to the relevant offence, and
 - (b) there was realisable property to which the restraint order applied.
- (6) In regulation 5, the references to an obligation to make a relevant legal aid payment in connection with services provided in relation to the relevant offence are to any such obligation, whether it arises before or after the confiscation order was discharged or satisfied.

Modifications of the 2002 Act in relation to restraint orders and relevant legal aid payments

5.—(1) In a case where this regulation has effect, Part 2 of the 2002 Act (confiscation: England and Wales) applies with the following modifications.

(2) Section 42(6) (application, discharge and variation)(**6**) applies as if for “on the conclusion of the proceedings or of the application (as the case may be)” there were substituted “if the specified person has satisfied his or her obligation to make a relevant legal aid payment in connection with services provided entirely or partly in relation to the relevant offence”.

(3) Section 47B (conditions for exercise of powers to seize property)(**7**) applies as if for subsection (5) there were substituted—

“(5) The fourth condition is that a restraint order made in connection with proceedings for an indictable offence in England and Wales is in force in respect of any realisable property.

(4) Section 47C(1)(a) (power to seize property)(**8**) applies as if for the words “for satisfying any confiscation order that has been or may be made against the defendant” there were substituted “for satisfying the obligation of the specified person to make a relevant legal aid payment in connection with services provided entirely or partly in relation to the relevant offence”.

(5) Section 54 (enforcement receivers)(**9**) applies as if—

(a) in subsection (2)(c), for “the confiscation order” there were substituted “the obligation of the specified person to make a relevant legal aid payment in connection with services provided entirely or partly in relation to the relevant offence”, and

(b) in subsection (3), for “the amount payable under the confiscation order has been fully paid” there were substituted “the obligation described in subsection (2)(c) has been satisfied”.

(6) Section 63(3)(a) (discharge and variation of orders relating to management receivers)(**10**) applies as if for “on the conclusion of the proceedings or of the application (as the case may be)” there were substituted “if the specified person has satisfied his or her obligation to make a relevant legal aid payment in connection with services provided entirely or partly in relation to the relevant offence”.

(7) Section 67D (proceeds of realisation)(**11**) applies as if—

(6) Section 42 has been amended by sections 74(2)(a) and 92 of, and paragraphs 1 and 23 of Schedule 8 and Schedule 14 to, the Serious Crime Act 2007 (c. 27).

(7) Section 47B is inserted by section 55 of the Policing and Crime Act 2009 (c. 26) on a date to be appointed.

(8) Section 47C is inserted by section 55 of the Policing and Crime Act 2009 (c. 26) on a date to be appointed.

(9) Section 54 has been amended by section 109(1) of, and paragraph 407 of Schedule 8 to, the Courts Act 2003 (c. 39).

(10) Section 63 has been amended by sections 74(2)(a) and 92 of, and paragraphs 1 and 30 of Schedule 8 and Schedule 14 to, the Serious Crime Act 2007.

(11) Section 67D is inserted by section 58 of the Policing and Crime Act 2009 (c. 26) on a date to be appointed.

- (a) in subsection (2)(c), for “the amount payable under the confiscation order” there were substituted “the obligation of the specified person to make a relevant legal aid payment in connection with services provided in relation to the relevant offence”, and
 - (b) in subsection (3), for “the amount payable under the confiscation order has been fully paid” there were substituted “the obligation described in subsection (2)(c) has been satisfied”.
- (8) In section 69(2) (powers of court and receiver)(**12**), each of paragraphs (a) and (c) applies as if for the words from “any confiscation order that has been or may be made against the defendant” there were substituted “any obligation of the specified person to make a relevant legal aid payment in connection with services provided entirely or partly in relation to the relevant offence”.

Date

Name
Parliamentary Under Secretary of State
Home Office

(12) Section 69 has been amended by sections 74(2)(a) and 92 of, and paragraphs 1 and 34 of Schedule 8 to, the Serious Crime Act 2007. It has also been amended by sections 55 and 112 of, and paragraphs 66 and 67 of Schedule 7 to, the Policing and Crime Act 2009. These amendments will be commenced on a date to be appointed.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Sections 46 and 47 of the Crime and Courts Act 2013 (c. 22) (“the 2013 Act”) make provision to enable property that is subject to a restraint order in accordance with Part 2 of the Proceeds of Crime Act 2002 (c. 29) (“the 2002 Act”) to be used to make a relevant legal aid payment. A relevant legal aid payment is a payment that a person is obliged to make under legal aid legislation in relation to legal services provided to that person in connection with an offence which falls within section 41(5) of the 2002 Act.

Section 46 of the 2013 Act amends section 41 of the 2002 Act to provide that every restraint order must be subject to an exception that enables relevant legal aid payments to be made out of assets restrained by the order. The Secretary of State may however by regulations restrict the circumstances in which such payments may be made. Part 2 of these Regulations prescribes such a restriction.

Regulation 2 provides that a relevant legal aid payment may only be made out of realisable property that is subject to a restraint order where proceedings for an offence to which the relevant legal aid payment relates have resulted in a confiscation order that has been subsequently discharged or satisfied.

Part 3 of these Regulations modifies the application of Part 2 of the 2002 Act in relation to restraint orders and relevant legal aid payments. Regulation 4 sets out the conditions that must be satisfied for the modifications in regulation 5 to apply. The effect of Part 3 of these Regulations is to enable a restraint order made under Part 2 of the 2002 Act to be maintained after the satisfaction or discharge of an associated confiscation order, so that relevant legal aid payments may be made out of assets that are still subject to the restraint order.

An impact assessment has not been produced for this instrument because no impact on the private or voluntary sectors is expected.