

**2001 No. 856**

**LEGAL SERVICES COMMISSION,  
ENGLAND AND WALES**

**The Criminal Defence Service (Recovery of Defence Costs  
Orders) Regulations 2001**

*Made - - - - - 8th March 2001*

*Laid before Parliament 12th March 2001*

*Coming into force - - 2nd April 2001*

The Lord Chancellor, in exercise of the powers conferred on him by section 17 of the Access to Justice Act 1999(a), makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Criminal Defence Service (Recovery of Defence Costs Orders) Regulations 2001 and shall come into force on 2nd April 2001.

**Interpretation**

2. In these Regulations:

“the Act” means the Access to Justice Act 1999;

“appropriate officer” means:

in the case of the Crown Court, the court manager; and

in the case of the Court of Appeal or the House of Lords, the registrar of criminal appeals

and, in either case, includes an officer designated by him to act on his behalf in that regard;

“the Commission” means the Legal Services Commission established under section 1 of the Act;

“the Criminal Defence Service” means the Criminal Defence Service established under section 12 of the Act;

“funded defendant” means an individual who has received representation in respect of criminal proceedings before any court which is funded by the Commission or the Lord Chancellor as part of the Criminal Defence Service; and

“representation order” means a document granting a right to representation, and includes any other representation order under which representation has been provided for the funded defendant in the same proceedings.

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(a) 1999 c. 22.

3.—(1) Where an individual receives representation in respect of criminal proceedings which is funded by the Commission or the Lord Chancellor as part of the Criminal Defence Service, the court before which the 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 in the circumstances set out in these Regulations.

(2) An order of the type mentioned in paragraph (1) shall be known as a Recovery of Defence Costs Order (an "RDCO").

4.—(1) The judge hearing the case may make an RDCO against a funded defendant except as provided in paragraph (2).

(2) An RDCO may not be made against a funded defendant who:

- (a) has appeared in the magistrates' court only;
- (b) is committed for sentence to the Crown Court;
- (c) is appealing against sentence to the Crown Court; or
- (d) has been acquitted, other than in exceptional circumstances.

5.—(1) An RDCO may be made up to a maximum amount of the full cost of the representation incurred in any court under the representation order.

(2) An RDCO may provide for payment to be made forthwith, or in specified instalments.

6. Except in the circumstances mentioned in regulation 4(2)(a), (b) or (c), such information and evidence as is required by the court or the Commission with regard to the financial resources of a funded defendant shall be provided.

7.—(1) Where a representation order has been made or is being considered, the court or the appropriate officer may refer the financial resources of the funded defendant to the Commission for a report, and the Commission shall produce such a report.

(2) In compiling a report under this regulation, the Commission may investigate the financial resources of the funded defendant and may subsequently require him to provide further information or evidence, and details of any change in his financial circumstances.

8.—(1) Without prejudice to regulation 9(1)(a), where it appears to the judge, the appropriate officer or the Commission that:

- (a) the funded defendant has directly or indirectly transferred any resources to another person;
- (b) another person is or has been maintaining him in any proceedings; or
- (c) any of the resources of another person are or have been made available to him

the judge, the appropriate officer or the Commission (as the case may be) may assess or estimate the value of the resources of that other person and may treat all or any of such resources as those of the funded defendant.

(2) In this regulation, "person" includes a company, partnership, body of trustees and any body of persons whether corporate or not corporate.

9.—(1) Except as provided in paragraph (2), for the purpose of calculating the financial resources of the funded defendant:

- (a) the amount or value of every source of income and every resource of a capital nature available to him may be taken into account; and
- (b) the financial resources of the funded defendant's partner shall be treated as the financial resources of the funded defendant.

(2) Other than in exceptional circumstances, the following assets of the funded defendant shall not be taken into account:

- (a) the first £3,000 of capital available to him;
- (b) the first £100,000 of equity in his principal residence; and
- (c) his income, where the court or the Commission are satisfied that his gross annual income does not exceed £24,000.

(3) In this regulation, “funded defendant’s partner” means a person with whom the funded defendant lives as a couple, and includes a person with whom the funded defendant is not currently living but from whom he is not living separate and apart.

**10.** Where he is requested to do so by the judge, the solicitor for the funded defendant shall provide an estimate of the total costs which are likely to be incurred under the representation order.

**11.** At the conclusion of the relevant proceedings, the judge shall consider whether it is reasonable to make an RDCO in all the circumstances of the case, including any other financial order or penalty.

**12.** Where the judge considers that it is, or may be, reasonable to make an RDCO, he may:

- (a) make the order; or
- (b) if further information is required in order to decide whether to make the order:
  - (i) adjourn the making of the order; and
  - (ii) order that any further information which is required should be provided.

**13.** Where information is required under regulation 6, 7(2) or 12(b)(ii) and such information fails to be provided, an RDCO shall, other than in exceptional circumstances, be made for the full cost of the representation incurred under the representation order.

**14.—(1)** The solicitor for the funded defendant shall inform the Commission if it subsequently transpires that the costs incurred under the representation order were lower than the amount ordered to be paid under an RDCO.

(2) In the circumstances mentioned in paragraph (1), where the funded defendant has paid the amount ordered to be paid under the RDCO, the balance shall be repaid to him.

**15.** The judge may make an order prohibiting an individual who is required to furnish information or evidence from dealing with property where:

- (a) information has failed to be provided in accordance with these Regulations;
- (b) he considers that there is a real risk that relevant property will be disposed of; or
- (c) at the conclusion of the case, the assessment of the costs incurred under the representation order or of the financial resources of the funded defendant has not yet been completed.

**16.** Any payment required to be made under an RDCO shall be made to the Commission in accordance with the order.

**17.** The Commission may enforce an RDCO in any manner which would be applicable to a civil debt between parties.

Dated 8th March 2001

*Irvine of Lairg, C.*

## EXPLANATORY NOTE

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

These Regulations provide for Recovery of Defence Costs Orders to be made against, primarily, funded defendants who have been convicted other than in the magistrates' court. The purpose of the Order is to recover such part of the costs of the representation provided as part of the Criminal Defence Service as is reasonable in all the circumstances of the case, including the financial resources of the defendant. The Regulations provide for the provision of information so that the judge may make the Order, and for the freezing of assets where such information is required.

£1.75

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Printed and published in the UK by The Stationery Office Limited  
under the authority and superintendence of Carol Tullo, Controller of  
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.  
E707 3/2001 604420 19585

ISBN 0-11-028994-3



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