

---

STATUTORY INSTRUMENTS

---

**2009 No. 3328**

**The Criminal Defence Service  
(Contribution Orders) Regulations 2009**

**PART 2**

**CROWN COURT TRIALS**

**Application of this Part**

- 4.** This Part applies to criminal proceedings—
- (a) in respect of an offence for which an individual may be, or has been, committed or sent by a magistrates' court for trial at the Crown Court;
  - (b) which may be, or have been, transferred from a magistrates' court for trial at the Crown Court;
  - (c) in respect of which a bill of indictment has been preferred by virtue of section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933<sup>(1)</sup>; or
  - (d) which are to be heard in the Crown Court following an order by the Court of Appeal for a retrial.

**Evidence of financial resources**

**5.—(1)** Where an individual applies for a representation order for proceedings to which this Part applies, the individual must provide the assessing authority with the information necessary to enable it to calculate the individual's income and capital in accordance with these Regulations for the purpose of determining the individual's liability to a contribution order.

- (2) The information is—
- (a) the individual's name, address, date of birth and National Insurance number;
  - (b) whether the individual has a partner and, if so, whether the partner has a contrary interest in the proceedings;
  - (c) whether the individual has children living in the individual's household and, if so, their ages;
  - (d) whether the individual is in receipt of a qualifying benefit and, if so, which one;
  - (e) the individual's gross annual income;
  - (f) details of any of the matters specified in regulation 8(5);
  - (g) whether the individual has capital, within the meaning of regulation 12(3), and if so, what capital;

---

(1) 1933 c. 36; section 2(2)(b) was amended by section 152(1) of and Schedule 5 to the Senior Courts Act 1981 (c. 54) and by section 31(6) of and Schedule 2 to the Prosecution of Offences Act 1985 (c. 23).

(h) details of the individual's preferred method of payment, should the individual be liable to make payments under a contribution order.

(3) The individual must, within 14 days of the later of the grant of the representation order and the committal or sending of the individual to the Crown Court, the transfer of the proceedings to the Crown Court or the preferring of the bill of indictment, provide the assessing authority with documentary evidence for the purpose of determining the individual's liability to a contribution order.

(4) The assessing authority may, where the individual fails to comply with paragraph (3), require the individual to provide the documentary evidence within 7 days of the date of the request.

(5) The assessing authority may at any time require the individual to provide further information or documentary evidence for the purpose of determining the individual's liability to a contribution order.

#### **Assessment by assessing authority**

6.—(1) Where an individual applies for a representation order, the assessing authority must assess whether the financial resources of the individual are such that the individual is liable to make payments under an income contribution order.

(2) Before making an income contribution order the assessing authority must, where practicable, notify the individual of the amount for which the individual is likely to be liable under such an order.

#### **Individuals not liable to contribution orders**

7.—(1) An individual is not liable to a contribution order where—

- (a) the individual is under the age of 18 at the date of the application for a representation order; or
- (b) the assessing authority is satisfied that the individual is, directly or indirectly, properly in receipt of a qualifying benefit.

(2) The assessing authority must notify an individual to whom this regulation applies that the individual is not liable to a contribution order.

#### **Calculation of income and liability to income contribution order**

8.—(1) Except where regulation 7(1) applies, the assessing authority must calculate the gross annual income of the individual and, where the individual has a partner or has children living in the individual's household, must divide the total according to the scale set out in Schedule 2.

(2) The individual is not liable to make payments under an income contribution order if the gross annual income, as adjusted under paragraph (1), is £12,475 or less.

(3) The assessing authority must notify an individual who is not liable to make payments under an income contribution order under paragraph (2) that the individual is not so liable but may be liable to make payments under a capital contribution order if regulation 19 applies.

(4) Where the gross annual income, as adjusted under paragraph (1), exceeds £12,475, the assessing authority must calculate the individual's annual disposable income in accordance with paragraph (5).

(5) There are to be deducted from the individual's gross annual income (without adjustment under paragraph (1))—

- (a) any income tax paid or payable in respect of the period of calculation;
- (b) any contributions estimated to have been paid under Part 1 of the Social Security Contributions and Benefits Act 1992, in respect of the period of calculation;

- (c) any council tax paid or payable in respect of the period of calculation;
  - (d) either—
    - (i) any annual rent or annual payment (whether of interest or capital) in respect of a mortgage debt or hereditary security, payable by the individual in respect of the individual's only or main dwelling, less any housing benefit paid under the Social Security Contributions and Benefits Act 1992; or
    - (ii) the annual cost of the individual's living accommodation;
  - (e) any child care costs paid or payable in respect of the period of calculation;
  - (f) if the individual is making payments for the maintenance of a former partner or of a child or a relative who is not (in such case) a member of the individual's household, the amount, where reasonable, of such payments paid or payable in respect of the period of calculation; and in this sub-paragraph "relative" means a parent, grandparent, grandchild, brother, sister, aunt, uncle, nephew, niece or first cousin, whether of the full blood or half blood or by marriage or civil partnership;
  - (g) an amount representing cost of living expenses in respect of the period of calculation, being either—
    - (i) £5,676; or
    - (ii) if the individual has a partner or has children living in the individual's household, an amount calculated in accordance with the scale set out in Schedule 2;
  - (h) any income with which the individual is restrained from dealing by order of the High Court or Crown Court;
  - (i) any amounts due under a contribution order in other proceedings.
- (6) The individual is not liable to make payments under an income contribution order if the annual disposable income is £3,398 or less.
- (7) The assessing authority must notify an individual who is not liable to make payments under an income contribution order under paragraph (6) that the individual is not so liable but may be liable to make payments under a capital contribution order if regulation 19 applies.
- (8) The assessing authority must make an order requiring the individual to make payments under an income contribution order if the individual's annual disposable income exceeds £3,398.
- (9) Where regulation 4(a), (b) or (c) applies, an order under paragraph (8) may not be made until the individual has been committed or sent to the Crown Court, the proceedings have been transferred to the Crown Court or the bill of indictment has been preferred, as the case may be.
- (10) Where—
- (a) the individual, without reasonable excuse, fails to comply with a request under regulation 5(4) in relation to income, and
  - (b) the assessing authority has reason to believe that the individual's disposable income exceeds £3,398,
- the assessing authority must make an order requiring the individual to make payments under an income contribution order.
- (11) The assessing authority must notify an individual who is liable to make payments under an income contribution order under paragraph (8) or (10) that the individual may also be liable to make payments under a capital contribution order if regulation 19 applies.

### **Amount payable under income contribution order**

**9.**—(1) Subject to paragraphs (2) to (7), the income contribution order is to be for six monthly payments of one twelfth of 90 per cent of the individual's annual disposable income as determined under regulation 8(4) and (5).

(2) Where the individual is liable under regulation 8(10), the order is to be for six monthly payments of—

- (a) the higher of £900 and one twelfth of the individual's annual disposable income, where the assessing authority is able to determine it under regulation 8(4) and (5); or
- (b) £900, where the assessing authority is unable so to determine it.

(3) Where—

- (a) paragraph (1) or (2) applies, and
- (b) the individual makes the first five required payments on or before the due date,

the individual is not liable to make the sixth payment under the income contribution order.

(4) The amount payable under an income contribution order is not to exceed the specified amount for the class within which the offence with which the individual was charged falls (regardless of the classification of the offences charged in the indictment).

(5) Where the individual is charged with offences falling within more than one class, the relevant class shall be that for which the specified amount is the higher or highest.

(6) The classes and offences which fall within them are those listed in the Table of Offences in Part 6 of Schedule 1 to the Criminal Defence Service (Funding) Order 2007(2).

(7) The specified amounts are—

- (a) Class A: homicide and related grave offences - £185,806;
- (b) Class B: offences involving serious violence or damage, and serious drugs offences - £29,453;
- (c) Class C: lesser offences involving violence or damage, and less serious drugs offences - £7,970;
- (d) Class D: sexual offences and offences against children - £13,776;
- (e) Class E: burglary etc. - £6,731;
- (f) Class F: other offences of dishonesty (specified offences and offences where the value is £30,000 or less) - £6,754;
- (g) Class G: other offences of dishonesty (specified offences and offences where the value involved exceeds £30,000 but does not exceed £100,000) - £117,368;
- (h) Class H: miscellaneous other offences - £7,427;
- (i) Class I: offences against public justice and similar offences - £28,023;
- (j) Class J: serious sexual offences - £17,892;
- (k) Class K: other offences of dishonesty (high value) (where the value involved exceeds £100,000) - £153,039.

### **Contents of income contribution order and payment**

**10.**—(1) An income contribution order must state—

- (a) the amount payable under the order;

---

(2) [S.I. 2007/1174](#); there are no relevant amendments.

- (b) the date of the first payment;
  - (c) the remedies available to the Commission as a creditor if a payment is not made by a due date;
  - (d) that if a payment is not made by the due date compound interest at the rate of 6% a year with half-yearly rests may be added to that payment from that date;
  - (e) the individual's duty under regulation 27 and right under regulation 29.
- (2) Payments under an income contribution order must be made to the Commission.

### **Assessment on conclusion of proceedings**

#### **11. Where—**

- (a) the individual is convicted of any offence by the Crown Court,
- (b) the trial judge considers that there are exceptional reasons why an individual who is acquitted by the Crown Court should be liable to make payments under a contribution order, or
- (c) the representation order is withdrawn,

the assessing authority shall determine the cost of representation of the individual in the proceedings in the Crown Court.

### **Assessment of capital**

#### **12.—(1) Where—**

- (a) the cost of representation as determined under regulation 11 exceeds the amount of any payments made by the individual under an income contribution order, or
- (b) no income contribution order has been made,

the assessing authority shall assess the individual's disposable capital.

(2) Regulations 13 to 18 apply where the assessing authority is making such an assessment.

(3) In this regulation and in regulations 13 to 19 "capital" means—

- (a) any interest in real property;
- (b) money in a bank or building society account;
- (c) money in a National Savings Bank account;
- (d) national savings certificates;
- (e) Premium Savings Bonds;
- (f) property in an account to which the Individual Savings Account Regulations 1998(3) apply;
- (g) property in a personal equity plan;
- (h) property in a unit trust scheme;
- (i) any other lump sum investment;
- (j) shares and stock.

**13.** The assessing authority shall include the amount or value of every resource of a capital nature belonging to the individual at the date of the application for a representation order, except where it would be impracticable or unreasonable to do so.

14. In so far as any resource of a capital nature does not consist of money, its value shall be taken to be—

- (a) the amount which that resource would realise if sold; or
- (b) the value assessed in such other manner as appears to the assessing authority to be equitable.

15. Where the individual owns an interest in a resource of a capital nature jointly or in common with any other person (other than the individual's partner), the assessing authority shall treat that resource as being owned in equal shares or, where there is evidence that the resource is not so owned, in such proportion as appears to it to be equitable in the light of that evidence.

16. The value of any interest in real property shall be taken to be the amount for which that interest could be sold less the amount of any debt secured by a mortgage or charge on the property.

17. Where the individual is restrained by order of the High Court or the Crown Court from dealing with a capital resource, the assessing authority shall disregard that resource.

18. The assessing authority, having assessed the individual's capital in accordance with regulations 13 to 17, shall deduct £30,000.

#### **Capital contribution order**

19.—(1) Subject to regulations 20 and 21, where the individual has disposable capital, the assessing authority must make a capital contribution order requiring the individual to pay—

- (a) the whole of the costs of the individual's representation in the proceedings in the Crown Court, where the amount of the disposable capital is the same as or exceeds the amount of such costs, or
- (b) a contribution, towards such costs, of the amount of the disposable capital, where that amount is less than the amount of the costs,

less any amounts already paid under an income contribution order.

(2) Where—

- (a) the individual, without reasonable excuse, fails to comply with a request under regulation 5(4) in relation to capital, and
- (b) the assessing authority has reason to believe that the individual has disposable capital of £30,000 or more,

the authority may decide not to make the deduction in regulation 18.

(3) The assessing authority must notify an individual who does not have disposable capital that the individual is not liable to a capital contribution order but remains liable for any outstanding amounts under an income contribution order.

20.—(1) Where—

- (a) the amount of the individual's disposable capital is less than the amount of the costs, and
- (b) the assessing authority is aware that the individual has capital of a kind not falling within regulation 12(3),

the authority must make a contribution order for the amount of the shortfall or the value of the latter capital, whichever is the lesser.

(2) The value of the capital resource referred to in paragraph (1)(b) shall be taken to be—

- (a) the amount which it would realise if sold; or

- (b) the value assessed in such other manner as appears to the assessing authority to be equitable.

### **Application to judge**

**21.**—(1) This regulation applies where the individual is convicted in criminal proceedings of one or more, but not all, offences.

(2) The individual may apply in writing to the judge for an order that the individual pay a proportion of the costs of the individual's representation in the Crown Court on the ground that it would be manifestly unreasonable to pay the whole amount.

(3) An application under paragraph (2) must be made within 21 days of the date on which the individual is dealt with for the offence.

(4) The judge may make an order specifying the proportion of costs which the individual must pay or refuse the application.

(5) An order under paragraph (4) shall not require any other defendant to pay any of the costs of the individual's representation.

(6) In this regulation "judge" means the trial judge or a judge nominated for the purpose by the resident judge.

### **Contents of capital contribution order and payment**

**22.**—(1) A capital contribution order must state—

- (a) the amount payable under the order;
- (b) that the amount must be paid within 28 days of the order or within such other period as may be agreed by the Commission and the individual;
- (c) the remedies available to the Commission as a creditor if payment is not made by the due date;
- (d) that if a payment is not made by the due date compound interest at the rate of 6% a year with half-yearly rests may be added to that payment from that date;
- (e) the individual's right under regulation 29.

(2) Payments under a capital contribution order must be made to the Commission.

### **Repayment**

**23.**—(1) Subject to paragraph (2), where an individual has made payments—

- (a) under an income contribution order and, except where regulation 11(b) applies—
  - (i) the proceedings against the individual are discontinued; or
  - (ii) the individual is acquitted of the offence or all the offences by the Crown Court, or
- (b) under a contribution order and the Court of Appeal allows an appeal against conviction by the individual,

the Commission must repay to the individual the amount of each payment made together with compound interest thereon, from the date of the payment, at the rate of 2% a year with yearly rests.

(2) Where the individual—

- (a) is the subject of an outstanding contribution order in other proceedings, or

- (b) has been granted a representation order in other criminal proceedings in the Crown Court (other than proceedings in which the individual is committed to the Crown Court for sentence),

the Commission may treat the amount to be repaid as satisfying any equivalent amount due under any other contribution order.

**24. Where—**

- (a) an individual has made payments under an income contribution order, and
- (b) the amount of the payments so made exceeds the cost as determined under regulation 11 or the proportion of the cost as ordered under regulation 21(4),

the Commission must repay to the individual the amount of the excess together with compound interest thereon, from the date of the excess payment, at the rate of 2% a year with yearly rests.

**Resources of other persons**

**25.—(1)** In calculating the income or capital of an individual who has a partner, the assessing authority must treat the resources of the partner as the individual's resources, unless the partner has a contrary interest in the proceedings.

**(2)** Where it appears to the assessing authority that—

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

the assessing authority may assess or estimate the value of the maintenance or the resources made available and may treat the amount as the resources of the individual.

**Deprivation etc. of resources**

**26.** If it appears to the assessing authority that the individual or the individual's partner has, with intent to reduce the amount of the individual's resources, whether for the purpose of making the individual not liable to a contribution order or of reducing the amount of such an order—

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

the resources or expectations of which the individual or the individual's partner has so deprived themselves, or which the individual or the individual's partner has transferred or converted, are to be treated as part of the individual's resources.

**Duty to report change in financial circumstances**

**27.—(1)** An individual who has been granted a representation order in proceedings to which this Part applies must immediately inform the assessing authority of any change in financial circumstances of which the individual is aware, which has occurred since the application for a representation order and which might affect the individual's liability to a contribution order or the amount of such an order.

**(2)** Where, as a result of any such change—



- (a) the individual becomes liable to make payments under an income contribution order, the assessing authority must make an order and send a copy of it to the individual;
- (b) the individual is no longer liable to make payments under an income contribution order, the assessing authority must withdraw that order and notify the individual that it has done so;
- (c) the amount of the individual's liability under an income contribution order is increased or reduced, the assessing authority must vary the order accordingly and sent a copy of it to the individual.

### **Re-calculation of income or capital following error or new information**

**28.**—(1) Where—

- (a) it appears to the assessing authority that there has been a miscalculation of the individual's income or capital or an administrative error; or
- (b) new information which is relevant to liability to a contribution order has come to light (whether under regulation 27 or otherwise),

the assessing authority must re-calculate the income or capital, as the case may be, and, if the individual becomes liable or is no longer liable to make payments under a contribution order or is liable to make increased or reduced payment, must make, revoke or vary the order as the case may be.

(2) Where the assessing authority—

- (a) revokes a contribution order and the individual has already made a payment under the order, or
- (b) varies a contribution order so as to require a lower payment, and the individual has already made a payment above the amount as varied,

the Commission must repay to the individual the amount of such payment together with compound interest thereon, from the date of the payment, at the rate of 2% a year with yearly rests.

### **Review of order etc.**

**29.**—(1) An individual in respect of whom the assessing authority has made a contribution order may apply to the Commission for a review of the order, on the grounds that—

- (a) there has been—
    - (i) a miscalculation of the individual's income or capital or the cost determined under regulation 11, or
    - (ii) an administrative error; or
  - (b) the individual is suffering or would suffer financial hardship as a result of making the payments required under the contribution order.
- (2) An application under paragraph (1)(a) must be made within 28 days of the making of the order.
- (3) The Commission may determine a review without a hearing.
- (4) On a review the Commission may confirm, revoke or vary the contribution order.
- (5) Where the Commission—
- (a) revokes a contribution order, and the individual has already made a payment under the order, or
  - (b) varies a contribution order so as to require a lower payment, and the individual has already made a payment above the amount as varied,

---

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

---

the Commission must repay to the individual the amount of such payment together with compound interest thereon, from the date of the payment, at the rate of 2% a year with yearly rests.

**Recovery of defence costs orders**

**30.** The assessing authority must not make a contribution order for the costs of the individual's representation in the Crown Court to the extent that those costs are already the subject of an order under section 17(2) of the Act.