

**EXPLANATORY MEMORANDUM TO  
THE CRIMINAL DEFENCE SERVICE (RECOVERY OF DEFENCE COSTS  
ORDERS) (AMENDMENT) REGULATIONS 2009**

**2009 No. 3352**

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This instrument is about legal aid in criminal proceedings. It amends the Criminal Defence Service (Recovery of Defence Costs Orders) Regulations 2001, in light of the introduction of a new contributory scheme for criminal legal aid in the Crown Court.

- 2.2 A separate explanatory memorandum has already been prepared in relation to the six sets of regulations implementing the new Crown Court contributory scheme (SI. 2009/2875, 2009/2876, 2009/2878, 2009/3328, 2009/3329 and 2009/3331).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None

4. **Legislative Context**

- 4.1 These regulations are made under powers conferred by sections 17(3) and 26 of the Access to Justice Act 1999.

5. **Territorial Extent and Application**

- 5.1 This instrument applies to England and Wales.

6. **European Convention on Human Rights**

- 6.1 As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. **Policy background**

- 7.1 Recovery of Defence Costs Orders (RDCOs), which were introduced in 2001, allow for the recovery of costs incurred in the publicly funded representation of an individual who appears in criminal proceedings before any court other than the magistrates' court. They are made at the end of the case.

7.2 Section 17A of the Access to Justice Act 1999 provides for a scheme for contribution orders. The regulations referred to in paragraph 2 introduce such a scheme in the Crown Court and provide that liability to a contribution order is to be assessed at the beginning of the case. Section 17, on RDCOs, provides that an RDCO may not be made where the individual has already been ordered to pay the costs under a contribution order.

7.3 This amendment will avoid unfairness by ensuring that an individual who is subject to an income contribution order in relation to a Crown Court trial cannot also be made subject to an RDCO.

7.4 The instrument could not be made until after the Criminal Defence Service (Contribution Orders) Regulations 2009 had been made, because it refers to those Regulations.

## **8. Consultation outcome**

8.1 The draft regulation to amend RDCOs was published for consultation on 14 July 2009 alongside the other draft regulations introducing the Crown Court contributory scheme. The consultation closed on 5 October 2009 and the Government published its response on 28 October 2009.

8.2 A wider consultation exercise on Crown Court means testing had previously run for a 12 week period from 6 November 2008 to 29 January 2009. The Government's response to that consultation was published on 8 June 2009. All consultation documents and responses can be found at [www.justice.gsi.gov.uk/](http://www.justice.gsi.gov.uk/).

8.3 No responses were made specifically about this instrument.

## **9. Guidance**

9.1 Guidance will be available to practitioners on the LSC website, and to HMCS staff.

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible.

10.3 Impact Assessments have been prepared to accompany the policy consultation and the consultation on the draft regulations, and can be found at: [www.justice.gov.uk/](http://www.justice.gov.uk/)

## **11. Regulating small business**

11.1 There is no impact on small businesses.

## **12. Monitoring & review**

12.1 There will be an evaluation of operational processes for administering the new scheme as part of a detailed post-implementation review after the first year of national roll out of the Crown Court contributory scheme.

**13. Contact**

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[Helen.magill@justice.gsi.gov.uk](mailto:Helen.magill@justice.gsi.gov.uk) can answer any queries regarding the instrument.