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STATUTORY INSTRUMENTS

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**2013 No. 2791**

**The Criminal Legal Aid (Financial Resources) (Amendment) Regulations 2013**

**PART 1**

**GENERAL AND AMENDMENTS**

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the Criminal Legal Aid (Financial Resources) (Amendment) Regulations 2013.

(2) Except as provided by paragraph (3), these Regulations come into force on 2nd December 2013.

(3) Regulations 4, 7 to 9 and 13 to 15 come into force on 27th January 2014.

**Interpretation**

**2.** In these Regulations—

“the Act” means the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

“the 2013 Regulations” means the Criminal Legal Aid (Financial Resources) Regulations 2013(1); and

“provider” means a person with whom the Lord Chancellor has made an arrangement under section 2(1) of the Act (arrangements) for the provision of criminal legal aid.

**Amendments to the 2013 Regulations**

**3.** The 2013 Regulations are amended as follows.

**4.** In regulation 2—

(a) omit the definition of “the 2002 Act”;

(b) at the appropriate place insert each of the following definitions—

“contribution order” means a document which records a determination by the Director under the Criminal Legal Aid (Contribution Orders) Regulations 2013(2);

“Crown Court proceedings” means any criminal proceedings—

(a) in respect of an offence for which an individual may be, or has been, sent by a magistrates’ court to the Crown Court for trial;

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(1) [S.I. 2013/471](#).

(2) [S.I. 2013/483](#), as amended by [S.I. 2013/2792](#)

- (b) relating to an offence 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>(3)</sup>; or
- (c) which are to be heard in the Crown Court following an order by the Court of Appeal or the Supreme Court for a retrial;

“child care costs” means the costs of care, other than excluded costs, provided by one or more of the following—

- (a) a school on school premises, out of school hours;
- (b) a local authority, out of school hours—
  - (i) for a child who is not disabled, in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their 15th birthday; or
  - (ii) for a child who is disabled, in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their 16th birthday;
- (c) a child care provider approved in accordance with the Tax Credit (New Category of Child Care Provider) Regulations 1999<sup>(4)</sup>;
- (d) persons registered under Part 3 of the Childcare Act 2006<sup>(5)</sup> or Part 2 of the Children and Families (Wales) Measure 2010<sup>(6)</sup>;
- (e) persons referred to in article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010<sup>(7)</sup>, working in schools or establishments referred to in those articles; and
- (f) persons prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act 2002<sup>(8)</sup>;

“excluded costs” means costs paid—

- (a) in respect of the child’s compulsory education;
- (b) by an individual to that individual’s partner (or vice versa), in respect of any child for which either (or both) of them is responsible in accordance with regulation 20 of the Housing Benefit Regulations 2006<sup>(9)</sup>; or
- (c) in respect of care provided by a relative of the child wholly or mainly in the child’s home;

“the General Regulations” means the Criminal Legal Aid (General) Regulations 2013<sup>(10)</sup>;

“magistrates’ court proceedings” means any criminal proceedings—

- (a) referred to in section 14(a) to (g) of the Act or in regulation 9(a) to (q) or (s) to (v) of the General Regulations, to the extent that such proceedings take place in the magistrates’ court; or

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<sup>(3)</sup> 1933 c. 36. Section 2(2)(b) was amended by section 5 and Schedule 2 of the Criminal Appeal Act 1964 c. 43, section 152(1) and Schedule 5 of the Senior Court Act 1981 c. 54 and section 31(6) and Schedule 2 of the Prosecution of Offences Act 1985 (c. 23).

<sup>(4)</sup> S.I. 1999/3110.

<sup>(5)</sup> 2006 c. 21.

<sup>(6)</sup> 2010 nawm 1.

<sup>(7)</sup> S.I. 2010/2839 (W.233).

<sup>(8)</sup> 2002 c. 21.

<sup>(9)</sup> S.I. 2006/213.

<sup>(10)</sup> S.I. 2013/9 as amended by S.I. 2013/2790

- (b) in which an individual is committed to the Crown Court for sentence, but only where that individual did not apply for, or was not granted, representation under section 16 of the Act (representation for criminal proceedings) for the proceedings that took place in the magistrates' court;"
  - (c) in paragraph (b) of the definition of "period of calculation", for "Part 3" substitute "Parts 3 and 4";
  - (d) in paragraph (c) of the definition of "qualifying benefit", for "the 2002 Act" substitute "the State Pension Credit Act 2002(11)"; and
  - (e) in the definition of "relative", omit paragraph (a).
5. For regulation 7(1)(a) (advocacy assistance for individuals in prison), substitute—
    - "(a) in relation to the individual's discipline in a prison or young offender institution; or".
  6. In regulation 14(3)(b)(i) and (ii), for "2002 Act" substitute "Tax Credits Act 2002(12)".
  7. In the heading to Part 3, at the end insert ": magistrates' court proceedings".
  8. Regulation 16 is revoked.
  9. For regulation 17 substitute—

#### **"Representation in magistrates' court proceedings**

17. This Part makes provision about the making and withdrawal of determinations by the Director under section 16 of the Act in relation to magistrates' court proceedings."

10. In regulation 20—
  - (a) in paragraph (1), for "23 and 24" substitute "22 and 23"; and
  - (b) in paragraph (2)(d)(ii), after "(Northern Ireland) Act", omit "1992".
11. In regulation 21(3)(d)(i) insert, after "dwelling"—

"less any housing benefit paid under section 130 of the Social Security Contributions and Benefits Act 1992 or section 129 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992".
12. In regulation 21—
  - (a) in paragraph (1), for "(2) and (3)" substitute "(2) to (3A)";
  - (b) in paragraph (2), for "paragraph (3)", substitute "paragraphs (3) and (3A)"; and
  - (c) after paragraph (3), insert—

"3A. The Director must deduct from the individual's gross annual income any income with which the individual is restrained from dealing by order of the High Court or Crown Court."
13. After regulation 29 insert—

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(11) 2002 c. 16.

(12) 2002 c. 21.

## “PART 4

### Representation: Crown Court proceedings

#### **Representation in Crown Court proceedings**

**30.**—(1) This Part makes provision about the making and withdrawal of determinations by the Director under section 16 of the Act in relation to Crown Court proceedings.

(2) The Director may only make a determination under this Part if—

- (a) the Director has made a determination under Part 3 (which has not been withdrawn) that an individual is eligible in accordance with section 21(1) of the Act for representation under section 16 of the Act in relation to criminal proceedings in the magistrates’ court or any of the conditions in sub-paragraph (b) are met.
- (b) The conditions are that-
  - (i) the individual has been sent to the Crown Court;
  - (ii) a bill of indictment has been preferred; or
  - (iii) the order for a retrial has been made by the Court of Appeal or the Supreme Court.

#### **Financial eligibility for representation**

**31.**—(1) The Director must make a determination that an individual’s financial resources are such that the individual is eligible in accordance with section 21(1) of the Act for representation under section 16 of the Act where—

- (a) that individual’s gross annual income does not exceed £12,475;
- (b) that individual’s—
  - (i) gross annual income is greater than £12,475; and
  - (ii) disposable annual income is less than £37,500;
- (c) that individual is a child; or
- (d) the Director is satisfied that individual is, directly or indirectly, properly in receipt of a qualifying benefit.

(2) The Director must make a determination that an individual’s financial resources are such that the individual is not eligible in accordance with section 21(1) of the Act under section 16 of the Act where that individual’s disposable annual income is £37,500 or greater.

#### **Resources to be treated as the individual’s resources**

**32.**—(1) Where an individual has a partner (unless the partner has a contrary interest in the proceedings)—

- (a) in calculating the financial resources of the individual, the Director must treat the financial resources of the partner as the individual’s financial resources; and
- (b) any reference in this Part to the financial resources, financial circumstances or income of the individual includes a reference to the financial resources, financial circumstances or income of the individual’s partner.

(2) Where it appears to the Director that—

- (a) another person is or has been substantially maintaining the individual or the individual’s partner; or

(b) any of the financial resources of another person have been made available to the individual or the individual's partner,  
the Director may assess or estimate the value of the maintenance or the financial resources made available and may treat such amounts as the financial resources of the individual.

**Assessment of resources: gross annual income**

**33.**—(1) The gross annual income of an individual under this Part is that individual's total income from all sources during the period of calculation after the Director has deducted any amount in accordance with paragraph (2).

(2) The Director must deduct the following amounts if they are paid to the individual during the period of calculation—

- (a) any financial support paid under an agreement for the care of a foster child;
- (b) any payments paid out of—
  - (i) the Independent Living Fund(**13**);
  - (ii) the Independent Living (Extension) Fund(**14**);
  - (iii) the Independent Living (1993) Fund(**15**); or
  - (iv) the Independent Living Fund (2006)(**16**);
- (c) any exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983(**17**);
- (d) any of the following payments—
  - (i) attendance allowance paid under section 64 of the 1992 Act(**18**) or section 64 of the 1992 (Northern Ireland) Act(**19**);
  - (ii) severe disablement allowance paid under section 68 of the 1992 Act(**20**) or section 68 of the 1992 (Northern Ireland) Act(**21**);
  - (iii) carer's allowance paid under section 70 of the 1992 Act(**22**) or section 70 of the 1992 (Northern Ireland) Act(**23**);

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- (13) The Independent Living Fund is a discretionary trust established by deed and funded by grants made by the Secretary of State, whose trustees have power to make payments to assist certain severely disabled people to live independently.
  - (14) The Independent Living (Extension) Fund is a Trust established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part.
  - (15) The Independent Living (1993) Fund is a Trust established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part.
  - (16) The Independent Living Fund (2006) is a Trust established by a deed dated 10th April 2006 and made between the Secretary of State for Work and Pensions of the one part and Margaret Rosemary Cooper, Michael Beresford Boyall and Marie Theresa Martin of the other part.
  - (17) *S.I. 1983/686*. Article 15 of the Scheme, under which exceptionally severe disablement allowance is payable, was amended by paragraph 4 of Schedule 1 to the Personal Injuries (Civilians) Amendment Scheme 2001 (*S.I. 2001/420*). Paragraph 4 of Schedule 3 to the Scheme, which sets out the rate at which exceptionally severe disablement allowance is payable was substituted by paragraph 1 of Schedule 1 to the Personal Injuries (Civilians) Scheme (Amendment) Order 2010 (*S.I. 2010/283*).
  - (18) 1992 c. 4.
  - (19) 1992 c. 7.
  - (20) Section 68 was repealed by section 65 of, and Part IV of Schedule 13 to, the Welfare Reform and Pensions Act 1999 (c.30), but is subject to the savings provision specified in article 4 of the Welfare Reform and Pensions Act 1999 (Commencement No. 9, and Transitional and Savings Provisions) Order 2000 (*S.I. 2000/2958*).
  - (21) Section 68 was repealed by article 62 of, and Schedule 10 to, the Welfare Reform and Pensions (Northern Ireland) Order 1999 (*S.I. 1999/3147 (N.I. 11)*), but is subject to the savings provision specified in article 4 of the Welfare Reform and Pensions (1999 Order)(Commencement No. 6 and Transitional and Savings Provisions) Order (Northern Ireland) 2000 (*S.I. 2000/332 (C. 14)*).
  - (22) Section 70 was amended to provide for carer's allowance by articles 2 and 3 of, and paragraphs 1 and 2 of the Schedule to, the Regulatory Reform (Carer's Allowance) Order 2002 (*S.I. 2002/1457*).
  - (23) Section 70 was amended to provide for carer's allowance by article 3 of the Deregulation (Carer's Allowance) Order (Northern Ireland) 2002 *S.R. (N.I.) 2002 No 321*.

- (iv) disability living allowance paid under section 71 of the 1992 Act<sup>(24)</sup> or section 71 of the 1992 (Northern Ireland) Act;
- (v) constant attendance allowance paid as an increase to a disablement pension under section 104 of the 1992 Act or under section 104 of the 1992 (Northern Ireland) Act;
- (vi) housing benefit paid under section 130 of the 1992 Act<sup>(25)</sup> or section 129 of the 1992 (Northern Ireland) Act;
- (vii) council tax benefit paid under section 131 of the 1992 Act<sup>(26)</sup>;
- (viii) any payment made out of the social fund under the 1992 Act or the 1992 (Northern Ireland) Act;
- (e) any direct payments made under regulations made under section 57(1) of the 2001 Act<sup>(27)</sup>, section 17A of the 1989 Act<sup>(28)</sup> or section 8(1) of the 2002 (Northern Ireland) Direct Payments Act<sup>(29)</sup>;
- (f) any reasonable living expenses provided for as an exception to a restraint order under section 41 of the Proceeds of Crime Act 2002<sup>(30)</sup>;
- (g) any pensions paid under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006<sup>(31)</sup>;
- (h) any armed forces independence payment paid under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011<sup>(32)</sup>; and
- (i) any personal independence payment paid under Part 4 of the 2012 Act<sup>(33)</sup>.

(3) When an individual who makes an application for a determination by the Director under section 16 of the Act, has a partner, or a child of that individual, living as a member of their household, paragraph 2A of the Schedule to these Regulations has effect.

#### **Assessment of resources: disposable annual income**

**34.**—(1) Where an individual's gross annual income, calculated in accordance with regulation 33, exceeds £12,475, the Director must calculate the individual's disposable annual income in accordance with paragraphs (3) and (4).

(2) For the purpose of paragraphs (3) and (4), the Director must calculate the gross annual income of an individual as if regulation 33(3) did not apply.

(3) The Director must deduct the following amounts from the individual's gross annual income—

- (a) any income with which the individual is restrained from dealing by order of the High Court or Crown Court;

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<sup>(24)</sup> Section 71 is to be repealed by section 90 of the Welfare Reform Act 2012 at a date to be appointed.

<sup>(25)</sup> Section 130 is to be repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 (c. 5) at a date to be appointed.

<sup>(26)</sup> Section 131 is to be repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 at a date to be appointed.

<sup>(27)</sup> 2001 c. 15. Section 57 was amended by section 146(1) to (7) of the Health and Social Care Act 2008 (c. 14) and in relation to Wales, by section 16 of the Social Care Charges (Wales) Measure 2010.

<sup>(28)</sup> 1989 c. 41. Section 17A was substituted by section 58 of the Health and Social Care Act 2001 (c. 15); amended by section 39 of, and paragraph 1 and 3 of Schedule 3 to, the Children and Young Persons Act 2008 (c. 23); section 160 of, and paragraph 1 of Schedule 14 to, the Health and Social Care Act 2008 (c. 14); section 60 of, and Schedule 6 to, the Tax Credits Act 2002 (c. 21); section 47 of, and paragraphs 15 and 17 of Schedule 3 to, the Tax Credits Act 2002; and section 28(1) of, and paragraph 6(1) and (3) of Schedule 3 to, the Welfare Reform Act 2007 (c. 5).

<sup>(29)</sup> 2002 c. 6.

<sup>(30)</sup> 2002 c. 29.

<sup>(31)</sup> S.I. 2006/606, to which there are amendments not relevant to these Regulations.

<sup>(32)</sup> S.I. 2011/517, amended by S.I. 2013/436 to make provision in relation to armed forces independence payments.

<sup>(33)</sup> 2012 c. 5.

- (b) any amounts due under a contribution order in other criminal proceedings in respect of that individual; and
  - (c) the amounts listed in paragraph (4), if such amounts are paid or payable by that individual during the period of calculation.
- (4) The Director must deduct—
- (a) any income tax;
  - (b) any estimated contributions under Part 1 of the 1992 Act or the 1992 (Northern Ireland) Act;
  - (c) any council tax;
  - (d) either—
    - (i) any annual rent or annual payment (whether of interest or capital) in respect of a mortgage debt or hereditament in respect of the individual's only or main dwelling, less any housing benefit paid under section 130 of the 1992 Act or section 129 of the 1992 (Northern Ireland) Act; or
    - (ii) the annual cost of the individual's living accommodation;
  - (e) any child care costs;
  - (f) the amount, where reasonable, of any maintenance payments; and
  - (g) an amount representing cost of living expenses, being either—
    - (i) £5,676; or
    - (ii) where the individual has a partner or a child living in the individual's household, the amount calculated in accordance with paragraph 3A of the Schedule to these Regulations.
- (5) For the purpose of paragraph (4)(d), where an individual resides in more than one dwelling, the Director must decide which dwelling is the main dwelling.

### **Documentary evidence of financial resources**

**35.** The Director may at any time require an individual to provide information and documentary evidence in relation to a determination under section 16 of the Act.

### **Renewal of application**

**36.** Where the Director makes a determination in accordance with section 21(1) of the Act that an individual's financial resources are such that the individual is not eligible for representation under section 16 of the Act, that individual may only renew the application if—

- (a) there is a change in the individual's financial circumstances which might affect whether that individual is eligible in accordance with section 21(1) of the Act for representation under section 16 of the Act; or
- (b) the determination that the individual's financial resources are such that the individual is not eligible in accordance with section 21(1) of the Act for representation under section 16 of the Act has been withdrawn in accordance with regulation 37.

### **Review of decision**

**37.—(1)** Where the Director makes a determination in accordance with section 21(1) of the Act that an individual's financial resources are such that the individual is not eligible

for representation under section 16 of the Act, that individual may apply to the Director for a review of the decision on the grounds that—

- (a) there has been a miscalculation of the individual's financial resources or an administrative error; or
  - (b) the individual does not have sufficient financial resources to pay for the cost of legal representation, notwithstanding the Director's determination in accordance with section 21(1) of the Act that the individual is not eligible for representation under section 16 of the Act.
- (2) An application for a review must be made in a form specified by the Lord Chancellor and must include any written representations supporting the application.
- (3) Where the grounds of the application are those mentioned in paragraph (1)(b)—
- (a) the individual must supply—
    - (i) full particulars of the individual's income and expenditure; and
    - (ii) a certificate from a provider as to the likely costs of the proceedings to the individual; and
  - (b) the individual must make the application within—
    - (i) 21 days of the date on which the Director makes the determination referred to in paragraph (1); or
    - (ii) such other period as may be agreed by the Director and the individual.
- (4) The individual must provide such further information and documents as the Director may request in relation to the review within fourteen days after the date of the request.
- (5) A review may be conducted without a hearing unless the Director directs otherwise.
- (6) The Director must consider the application and any written representations and may—
- (a) confirm or amend the determination which is the subject of the review;
  - (b) withdraw the determination which is the subject of the review; or
  - (c) substitute a new determination.
- (7) Notwithstanding regulation 31(2), in relation to an application for a review under paragraph (1)(b), the Director may substitute a new determination that the individual's financial resources are such that the individual is eligible in accordance with section 21(1) of the Act for representation under section 16 of the Act.

### **Withdrawal of a determination**

**38.** Where the Director withdraws a determination in accordance with this Part, the Director must provide written notification of the withdrawal to—

- (a) the individual in whose favour the original determination was made;
- (b) any provider named in the representation order which records the determination; and
- (c) any advocate instructed in proceedings.



## PART 5

### Representation: other proceedings

#### **Representation in other criminal proceedings**

**39.** In any criminal proceedings other than—

- (a) magistrates' court proceedings; and
- (b) Crown Court proceedings;

the relevant authority must make a determination that the individual's financial resources are such that the individual is eligible in accordance with section 21(1) of the Act for representation under section 16 of the Act.”

**14.** In the Schedule—

(a) after paragraph 2 insert—

“**2A.** For the purpose of regulation 33(3), the Director must calculate an individual's gross annual income by dividing the amount calculated in regulation 33(1) by the relevant sum.”

(b) after paragraph 3 insert—

“**3A.** For the purpose of regulation 34(4)(g)(ii), the Director must calculate an individual's cost of living expenses by multiplying £5,676 by the relevant sum.”

(c) after paragraph 3A insert “4.”.