

EXPLANATORY MEMORANDUM TO
THE CIVIL LEGAL AID (STATUTORY CHARGE) REGULATIONS 2013
2013 No. 503

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

2. Purpose of the instrument

2.1 The Civil Legal Aid (Statutory Charge) Regulations 2013 (“the Regulations”) make provision about the statutory charge which ensures that someone who has recovered or preserved money or property with the help of legal aid or recovered costs from the other party to the proceedings to repay some or all of their legal aid costs out of that money, property or costs. The statutory charge arises under section 25(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the Act”). The Regulations make exceptions to the charge and further provision in relation to it.

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

3.1 None

4. Legislative Context

4.1 This is one of a number of statutory instruments which implement Part 1 of the Act. These instruments will be laid in time for the Act to come into force on 1 April 2013.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Act gives effect to the Government’s policy position on legal aid. The Government believes that legal aid has expanded far beyond its original intentions and is available for a wide range of issues, many of which need not be resolved through the courts. Irrespective of the current economic situation, a wide

ranging programme of reform is required to ensure that legal aid is targeted to those who need it most, for the most serious cases in which legal advice and representation is justified.

7.2 Where someone gains or keeps money (including costs) or property with the help of legal aid in a civil case, they may have to repay all or some of their legal costs out of that money or property. This is called the statutory charge. These regulations substantially replicate existing provisions in Part 3 of the Community Legal Service (Costs) Regulations 2000 (SI 2000/441, as amended) and Part 3 of the Civil Legal Service (Financial) Regulations (SI 2000/516, as amended).

7.3 If a property which is going to be used as a home is recovered with the benefit of legal aid and it would be unreasonable for the legally aided party to repay the relevant amount, instead of asking the legally aided party to pay back the costs of their case straight away, enforcement of the charge can be postponed (provided it is possible to register a charge against their property) - thereby postponing repayment until the property is sold.

7.4 Part 2 of the Regulations makes provision about the operation of the statutory charge and its calculation. Part 2 provides that the statutory charge does not, other than in relatively limited circumstances, include the cost to the Lord Chancellor of providing lower forms of civil legal services. Part 2 provides that the charge will not apply to certain types of property recovered or preserved, including maintenance payments and certain pension payments. It also makes provision for when the charge is in favour of the Lord Chancellor or a service provider and where in certain instances, the charge may be waived.

7.5 Part 3 makes provision about enforcement of the charge as well as setting out how the Lord Chancellor and providers must deal with the money received for the purpose of realising the statutory charge including how the money should be transferred, held, and when remaining funds are paid to the legally aided party.

7.6 Regulation 17, which replaces Regulation 22 of the Community Legal Service (Costs) Regulations 2000 explicitly makes clear that legal aid only costs do not form part of the charge on costs recovered from another party to proceedings. It also makes provision about where a solicitor has acted on behalf of a legally aided party in proceedings before the legally aided party receives legal aid, or has a lien on documents.

7.7 Part 3 also allows the Lord Chancellor to postpone payment of the statutory charge where it attaches to a home. This will only happen where certain conditions are met including where the property is to be used by the legally aided party's dependants and where it would be unreasonable for the legally aided party to repay the amount of the charge at the conclusion of the proceedings.

7.8 When enforcement of the statutory charge attaches to a property, and is postponed, interest accrues on the charge and is payable at the rate of 8% a year. The rate of 8% interest is designed to encourage those who can raise private funds to repay their statutory charge, either through extending their mortgage or lending from a reputable bank to do so. Money recovered helps to keep legal aid on a sustainable footing.

8. Consultation outcome

8.1 The consultation ‘Proposals for the reform of legal aid in England and Wales’<http://www.justice.gov.uk/downloads/consultations/legal-aid-reform-consultation.pdf> was published on 15 November 2010 and closed on 14 February 2011. Over 5,000 responses were received from representative bodies, practitioner and other organisations, individual members of the judiciary, members of the House of Commons and Lords, individual solicitors and barristers and members of the public.

8.2 The majority of responses did not support the Government’s proposals for reform, although there was some support for particular measures. Some of the original proposals were modified in light of the comments received from consultees. No specific question was asked about the statutory charge.

8.3 A detailed Government response to the consultation exercise is available on the MoJ Website. <http://www.justice.gov.uk/downloads/consultations/legal-aid-reform-government-response.pdf>

8.4 We have not consulted on the Civil Legal Aid (Statutory Charge) Regulations 2013.

9. Guidance

9.1 Guidance is not being prepared specifically on this instrument. A programme of training and guidance is being prepared by the Legal Services Commission to support the transition to the new arrangements. This will be made available to legal aid providers ahead of the commencement of the Act on 1 April 2013.

10. Impact

10.1 The impacts of the Government’s programme of legal aid reform are set out in an Impact Assessment, which was updated following the Act receiving Royal Assent. This is available at <http://www.justice.gov.uk/legislation/bills-and-acts/acts/legal-aid-and-sentencing-act/laspo-background-information>. An Impact Assessment has not been prepared specifically for this instrument.

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

10.3 There is no impact on the public sector arising from this instrument beyond those accounted for in the Royal Assent Impact Assessment in respect of the Act.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Ministry of Justice will conduct a post-implementation review of the Act between three to five years after implementation. This review will also consider the operation of the secondary legislation.

13. Contact

Michael Tyler at the Ministry of Justice Tel: 020 3334 2443 or email Michael.Tyler@justice.gsi.gov.uk can answer any queries regarding the instrument.