

**EXPLANATORY MEMORANDUM TO
THE CRIMINAL LEGAL AID (RECOVERY OF DEFENCE COSTS ORDERS)
REGULATIONS 2013**

2013 No. 511

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 These Regulations provide that where an individual receives legal aid for representation in criminal proceedings before any court other than the magistrates' court or the Crown Court, the court hearing the proceedings must, unless an exception applies, make an order (known as an RDCO) requiring the individual to pay some or all of the cost their representation. Their general effect is to replicate, in the new context created by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, the effect of the Criminal Defence Service (Recovery of Defence Costs Orders) Regulations 2001 (S.I.2001/856). There is no change in the underlying policy.

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 LASPO Act 2012. These instruments will be laid in time for Part 1 of 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 considers that those who are accused of criminal offences should be able to benefit from publicly funded legal advice, assistance or representation when they cannot afford to pay for their own advice, assistance or representation, if the interests of justice require it. These Regulations

substantially replicate the effect of the secondary legislation made under the Access to Justice Act 1999

7.2 These Regulations make provision in relation to RDCOs, which are the mechanism by which individuals are assessed and ordered to pay some or all of the costs of their publicly funded representation before any court other than the magistrates' court or Crown Court. At the conclusion of any criminal proceedings to which these Regulations apply, the court hearing the proceedings must make an RDCO unless one of the exceptions provided for in the Regulations applies. These exceptions include where the subject of the proceedings is under 18, has successfully appealed a criminal conviction, is in receipt of certain benefits, has limited financial resources, or where the court considers that making an RDCO would be unreasonable or cause undue hardship.

7.3 These Regulations make provision for the assessment of an individual's financial resources for the purpose of determining whether an RDCO can be made, and if so, for what amount. There are provisions for aggregating the resources of an individual with the individual's partner, and for treating resources of which individuals have deprived themselves as the individual's resources. The Regulations also provide that individuals may be required to furnish documentary evidence about their financial circumstances and that the court may refer information and documentary evidence about the financial resources of an individual to the Director of Legal Aid Casework for a report about the individual's financial resources.

8. Consultation outcome

8.1 The consultation 'Proposals for the reform of legal aid in England and Wales' was published on 15 November 2010 and closed on 14 February 2011. The Government concluded that: "those who are accused of criminal offences should be able to benefit from publicly funded legal assistance when they cannot afford to pay for their own representation, if the interests of justice require it. We do not therefore consider that it is appropriate to restrict further legal aid in criminal cases."

8.2 The proposals consulted on as part of this exercise were therefore largely aimed at reforming civil legal aid. The only reform proposals in respect of criminal legal aid were changes to remuneration, which were implemented in October 2011. A detailed Government response to this consultation exercise is available on the MoJ Website at www.justice.gov.uk/consultations/legal-aid-reform.

8.3 We have not consulted on the Criminal Legal Aid (Recovery of Defence Costs Orders) Regulations 2013.

9. Guidance

9.1 Guidance already exists for courts and the judiciary on how to make an RDCO. Additional guidance will be made available to explain the role of the Director in determining the financial resources of an individual and the making of RDCOs.

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.

11. Regulating small business

11.1 This regulation does not apply to small business.

12. Monitoring & review

12.1 The Ministry of Justice will conduct a post-implementation review of the LASPO Act 2012 between three to five years after implementation.

13. Contact

Samantha Toyn at the Ministry of Justice (tel: 020 3334 4285 or email: Samantha.Toyn@justice.gsi.gov.uk) can answer any queries regarding the instrument.