# EXPLANATORY MEMORANDUM TO

# THE CRIMINAL LEGAL AID (CONTRIBUTION ORDERS) REGULATIONS 2013

## 2013 No. 483

**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 Criminal Legal Aid (Contribution Orders) Regulations 2013 provide for a means testing regime for criminal legal aid in the Crown Court, under the legal aid scheme established by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the Act"). The Regulations provide the detailed administrative framework for the calculation, collection and enforcement regime for income and capital contributions towards the cost of criminal legal aid in the Crown Court.

## 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.

4.2 These Regulations should be read alongside the Criminal Legal Aid (General) Regulations 2013 and the Criminal Legal Aid (Financial Resources) Regulations 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.

7.2 All defendants who are accused of a criminal offence in the Crown Court and who complete an application for legal aid will qualify for legal aid. However, where an individual can afford to pay a contribution (of up to 100%) towards their defence costs, either from income or capital assets, they should do so. An individual's income and capital are assessed to determine whether the individual can afford to make contributions and if so, of how much.

7.3 While proceedings are ongoing, an individual may be liable to make contributions from income under an income contribution order (ICO). If an individual is acquitted, these contributions will be repaid to the individual. Once proceedings have concluded, if an individual is convicted, then the individual may be liable make a contribution from their capital assets up to the full amount of the individual's defence costs, under a capital contribution order (CCO). If an individual fails to pay a contribution as required, then enforcement action may be taken and the costs of enforcement may be added to the amount payable by the individual.

7.4 The Regulations provide for the calculation, collection and enforcement of contributions to the cost of criminal legal aid.

7.5 Part 2 of the Regulations establishes the procedure for calculating disposable income and capital; calculation and any reassessment of whether a contribution is required and the levels of contributions required; exemptions which apply to contributions; sanctions against non disclosure of information or documentary evidence about income or capital; sanctions against dispersal of financial resources; and a review mechanism.

7.6 Part 3 applies a modified version of the contribution scheme to appeals to the Crown Court from the magistrates' court in criminal proceedings against conviction, sentence or an order.

7.7 Part 4 makes provision for the enforcement of unpaid contributions and the recovery of any overdue sums.

7.8 These Regulations broadly replicate the effect of the current Criminal Defence Service (Contribution Orders) Regulations 2009 (S.I. 2009/3328), subject to the changes highlighted below:

- greater flexibility in applying deadlines for the provision of information or documentary evidence so that these may be extended where it is appropriate to do so;

- reassessment of a defendant's liability to an ICO can take place after the sentencing hearing and up until the date when the final defence costs in the case have been assessed. If the re-assessment shows that the defendant should have been asked to pay a higher amount under the ICO, the defendant will be liable to pay the difference. In

addition, if the defendant was not subject to an ICO but the re-assessment shows that one should have correctly been imposed, it will be possible to recoup the relevant amount from the defendant. If liability to an additional payment following re-assessment stemmed from an administrative error, the defendant will still be entitled to an exemption on the 6th monthly payment if they qualified for it;

- the defendant will be liable to payments from income up until the date of the defendant's sentencing hearing (the defendant remains liable to all outstanding payments under an ICO after the date of the sentencing hearing);

- the introduction of a capital evidence sanction so that if the defendant fails to comply with a request for further information or evidence in relation to their capital assets, and there is a reasonable belief that the defendant has sufficient capital assets, the defendant will be liable to pay all outstanding defence costs from those assets; and

- if a defendant is liable to a CCO, the defendant will have 28 days from the date that the CCO is issued to report a change in their financial circumstances, unless the defendant has a reasonable excuse for not being able to meet this deadline.

## 8. Consultation outcome

8.1 The consultation paper 'Crown Court means testing: the design of the scheme on implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012' was published on 30 October 2012. The Government published its response to this exercise on 5 March 2013.

8.2 A total of 21 responses to the consultation paper were received. Of these, 6 came from professional groups or bodies representing the legal profession with a further 2 responses from individual solicitors. Additional responses were received from members or representatives of the magistracy as well as other groups with a direct interest in the operation of criminal justice system.

8.3 In general, very few respondents expressed fundamental objections to the principle of means testing defendants at the Crown Court. However, the great majority of respondents did provide detailed comments and analysis of how both the efficacy of, as well as fairness under the Crown Courts Means Testing scheme could be improved.

8.4 In light of the consultation exercise, a number of substantive changes have been made to the scheme, as set out in 7.8 above. The Government's response to this consultation can be found at: consult.justice.gov.uk/digital-communications/crown-court-means-testing.

## 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 overall 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 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. However, an impact assessment was prepared in relation to the Crown Courts Means Testing consultation exercise and this was updated to take account of evidence provided by stakeholders during the consultation period. This is available at: consult.justice.gov.uk/digital-communications/crown-court-means-testing.

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

10.3 The impact on the public sector arising from this instrument is beneficial. However, it is not possible at this stage to estimate precisely the net impact of the proposed policy changes on the level of income raised by the scheme. This is due to the complex nature of the variable factors that have a potential impact on the performance of the scheme. Our current assessment is that the resource costs associated with implementation of the proposals is negligible and likely to be outweighed by the financial benefits.

## 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

Stephen Gascoigne at the Ministry of Justice (tel: 020 3334 4232 email: Stephen.Gascoigne@justice.gsi.gov.uk) can answer any queries regarding the instrument.