EXPLANATORY MEMORANDUM TO

THE CRIMINAL LEGAL AID (MOTOR VEHICLE ORDERS) REGULATIONS 2013

2013 No. 1686

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

2. Purpose of the instrument

2.1 The Criminal Legal Aid (Motor Vehicle Orders) Regulations 2013 ("the Regulations") provide for a mechanism of enforcement in relation to unpaid contributions towards the cost of criminal legal aid in the Crown Court imposed under the Criminal Legal Aid (Contribution Orders) Regulations 2013 (483/2013) ("the Contribution Orders Regulations"). The Regulations authorise a court to order the clamping and sale (through motor vehicle orders) of an individual's vehicle, where an amount required to be paid by the individual under the Contribution Orders Regulations is overdue.

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

3.1 None.

4. Legislative Context

4.1 Part 1 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (c. 10) ("the Act") makes provision in respect of criminal legal aid. Schedule 2 to the Act permits regulations to authorise a court to make motor vehicle orders, as a means of enabling certain sums required under section 23 of the Act to be paid by an individual in connection with the provision of criminal legal aid to be recovered, where those sums are overdue.

4.2 These Regulations should be read alongside the Contribution Orders Regulations. The Contribution Orders Regulations provide for a scheme of calculation, collection and enforcement of contributions from income or capital towards the cost of criminal legal aid in the Crown Court.

4.3 These Regulations should also be read alongside the Legal Aid (Information about Financial Resources) (Amendment) Regulations 2013 which were laid in draft before Parliament on 17 May 2013, which will allow for verification through the Driver and Vehicle Licensing Agency as to whether an individual is the registered keeper of a specific motor vehicle.

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 the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Currently, all defendants who are accused of a criminal offence in the Crown Court and who complete an application will qualify for criminal legal aid. However, the Crown Court means testing (CCMT) scheme, provided for in the Contribution Orders Regulations, exists to ensure that 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, therefore, assessed to determine whether the individual can afford to make contributions and if so, of how much.

7.2 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 to make a contribution from their capital assets up to the full amount of the individual's defence costs, under a capital contribution order (CCO).

7.3 If an individual fails to pay a contribution as required, enforcement action may be taken and the costs of enforcement may be added to the amount payable by the individual. These Regulations form part of the wider enforcement powers available to the Legal Aid Agency. It is also anticipated that these Regulations will act as a deterrent to non-payment of contribution orders, thereby reducing the need for enforcement action.

7.4 These Regulations authorise a magistrates' court to make motor vehicle orders (a clamping order or vehicle sale order) in respect of an individual for the purpose of enabling certain sums required to be paid under the Contribution Order Regulations to be recovered from the individual, where those sums are overdue. These Regulations set out details of the application to the court for a motor vehicle order as well as arrangements for the making and execution of the order.

7.5 Part 2 of the Regulations concerns clamping orders. It makes provision in relation to applications to the court for a clamping order and the written representations and documentary evidence that may be submitted to the court by an individual or any other party with an interest in the motor vehicle. It also makes provision about the making of a clamping order and the matters to be included in a clamping order. Finally Part 2 makes provision about the clamping of a motor vehicle and subsequent removal and storage of the vehicle; and the circumstances in which the motor vehicle may be released.

7.6 Part 3 of the Regulations concerns vehicle sale orders. It makes provision in relation to applications to the court for a vehicle sale order (VSO) and the written representations and documentary evidence that may be submitted to the court by an individual or any other party with an interest in the motor vehicle. It also makes provision about the making of a VSO, the matters to be included in the VSO, the sale of the vehicle pursuant to a VSO, and how the proceeds of sale should be dealt with. Part 3 also makes provision about the circumstances in which the vehicle may be released prior to, or following, a VSO.

7.7 Part 4 of the Regulations makes provision for the imposition of charges under the MVO scheme, including circumstances when charges are not payable. Part 4 also makes provision about the recovery of charges imposed.

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', which contained the proposal to implement the Regulations, 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 its response to the consultation exercise, published on 5 March 2013, the MoJ stated that it wished to give further thought to the final shape of the MVO scheme. Details of the new scheme were subsequently published on 5 July 2013 in an addendum to the consultation response, alongside an updated Impact Assessment. Both documents are available at: https://consult.justice.gov.uk/digital-communications/crown-court-means-testing

8.4 Respondents to the consultation exercise voiced particular concerns about the need to guard against unduly harsh or adverse impacts from implementation of the MVO scheme on the individual or dependent family members. As regards safeguards, regulations 7 and 21 provide that the court may only make an order if it considers it is appropriate in all the circumstances, taking into account whether the individual or any other person would be likely to be unduly prejudiced by the making of the order and the practicability of alternative means of transport. In addition the individual and any other person who the Lord Chancellor is aware has an interest in the motor vehicle may make written representations to the court in accordance with regulations 6 and 20. Finally, regulation 10 sets out the circumstances in which a motor vehicle must not be clamped, including if the vehicle displays a

current disabled person's badge or recognised badge, or if there are reasonable grounds for believing that it is used for the carriage of a disabled person.

9. Guidance

9.1 Guidance is not being prepared specifically on this instrument. Practical guidance is being prepared to support staff at the Legal Aid Agency and Her Majesty's Courts and Tribunals Service and individuals who are subject to an application for a motor vehicle order. The guidance will be made available when the Regulations come into force.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 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 implementation of the regulations on the level of income collected under the CCMT 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 Regulations is negligible and likely to be outweighed by the financial benefits.

10.3 The impacts of the new Regulations have been incorporated in an updated Impact Assessment which was published alongside the addendum to the earlier consultation response. This is available at: https://consult.justice.gov.uk/digital-communications/crown-court-means-testing

11. Regulating small business

11.1 These regulations do not apply to small business.

12. Monitoring & review

12.1 The MoJ will conduct a post–implementation review of the Act between three to five years after implementation.

13. Contact

Stephen Gascoigne at the MoJ (tel: 020 3334 4232 or email: stephen.gascoigne@justice.gsi.gov.uk) can answer any queries regarding the instrument.