`Draft Regulations laid before Parliament under section 25(9A) of the Access to Justice Act 1999, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No. 0000

LEGAL SERVICES COMMISSION, ENGLAND AND WALES

The Criminal Defence Service (Contribution Orders) Regulations 2009

Made - - - - ***

Coming into force in accordance with regulation 1

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by sections 17A, 25(8) and 26 of the Access to Justice Act 1999(**a**).

A draft of this instrument has been laid before and approved by a resolution of each House of Parliament in accordance with section 25(9A) of that Act.

PART 1

INTRODUCTION

Citation, commencement and application

1.—(1) These Regulations may be cited as the Criminal Defence Service (Contribution Orders) Regulations 2009 and come into force—

(a) in relation to any magistrates' court in any of the local justice areas listed in the first part of the table in Schedule 1 to these Regulations, on 11th January 2010; and

(b) in relation to any other magistrates' court in any of the courts board areas listed—

(i) in the second part of that table, on 12th April 2010;

(ii) in the third part of that table, on 26th April 2010;

(iii) in the fourth part of that table, on 10th May 2010;

(iv) in the fifth part of that table, on 17th May 2010;

(v) in the sixth part of that table, on 24th May 2010;

(vi) in the seventh part of that table, on 14th June 2010;

(**a**) 1999 c. 22. Section 17A was inserted by section 3(3) of the Criminal Defence Service Act 2006 (c. 9). Section 26 defines 'regulations' as regulations made by the Lord Chancellor. The reference to the Lord Chancellor in section 26 was changed to the Secretary of State by S.I. 2003/1887 and changed back to the Lord Chancellor by S.I. 2005/3429. Section 26 was amended by section 2(6) of the Criminal Defence Service Act 2006, which inserted a definition of 'relevant authority'.

(vii) in the eighth part of that table, on 28th June 2010.

(2) These Regulations apply only to an application for a representation order or a notice of appeal which is received by a magistrates' court on or after the date on which these Regulations come into force in relation to that court.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Access to Justice Act 1999;

"capital contribution order" means a contribution order based on an individual's capital;

"child care costs" means the costs of care which is provided by one or more of the following care providers—

(a) a school on school premises, out of school hours;

(b) a local authority, out of school hours—

(i) for children who are 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;

(ii) for children who are 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(**a**);

(d) persons registered under Part 3 of the Childcare Act 2006(**b**) or Part XA of the Children Act 1989(**c**);

(e) persons referred to in paragraph 1 or 2 of Schedule 9A to the Children Act 1989, in schools or establishments referred to in those paragraphs;

(f) persons prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act 2002(**d**);

other than costs paid in respect of the child's compulsory education or by the individual to his partner (or vice versa) in respect of—

(i) any child for whom either or both of them is or are responsible in accordance with regulation 10 of the Council Tax Benefit Regulations 2006(**e**), or

(ii) care provided by a relative of the child wholly or mainly in the child's home;

and in this definition "relative" means a grandparent, brother, sister, aunt, uncle or first cousin, whether of the full blood or half blood or by marriage or civil partnership;

"the Commission" means the Legal Services Commission established under section 1 of the Act;

"disposable capital" means the capital of the individual, calculated in accordance with regulations 13 to 18;

"gross annual income" means total annual income, as at the date of the application for a representation order, from all sources, other than the receipt of any of the following—

(a) any of the following payments made under the Social Security Contributions and Benefits Act 1992(**f**)—

(i) attendance allowance paid under section 64;

(**a**) S.I. 1999/3110; the Regulations were partially revoked by S.I. 2007/2480.
(**b**) 2006 c. 21.
(**c**) 1989 c. 41. Part XA and Schedule 9A were inserted by section 79 of the Care Standards Act 2000 (c. 14). Part XA was repealed in part by section 103 of, paragraph 5 of Schedule 2 to and Part 2 of Schedule 3 to, the Childcare Act 2006. .
(**d**) 2002 c. 21.
(**e**) S.I. 2006/215.
(**f**) 1992 c. 4.

(ii) severe disablement allowance;

(iii) carer's allowance;

(iv) disability living allowance;

(v) constant attendance allowance paid under section 104 or paragraph 4 or 7(2) of Schedule 8 as an increase to a disablement pension;

(vi) housing benefit;

(vii) council tax benefit;

(viii) any payment made out of the social fund;

(b) any direct payments made under the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2003(**a**) or the Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2004(**b**);

(c) any exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983(**c**);

(d) any pensions paid under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(**d**);

(e) any Independent Living Funds payments;

(f) any financial support paid under an agreement for the care of a foster child;

(g) any reasonable living expenses provided for as an exception to a restraint order under section 41 of the Proceeds of Crime Act 2002(**e**);

"income contribution order" means a contribution order based on an individual's income;

"the Independent Living Fund" means the charitable trust established out of funds provided by the Secretary of State for the purpose of providing financial assistance to those persons incapacitated by or otherwise suffering from very severe disablement who are in need of such assistance to enable them to live independently;

"the Independent Living Funds" means the Independent Living Fund, the Independent Living (Extension) Fund, the Independent Living (1993) Fund and the Independent Living Fund (2006);

"the Independent Living (Extension) Fund" means the Trust of that name 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;

"the Independent Living Fund (2006)" means the Trust of that name 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;

"the Independent Living (1993) Fund" means the Trust of that name 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;

"partner" means a person with whom the individual lives as a couple, and includes a person with whom the individual is not currently living but from whom the individual is not living separate and apart;

"period of calculation" means the period of one year ending on the date on which an application for a representation order is made;

"qualifying benefit" means—

(a) income support;

(**a**) S.I. 2003/762.
(**b**) S.I. 2004/1748 (W.185).
(**c**) S.I. 1983/686.
(**d**) S.I. 2006/606.
(**e**) 2002 c. 29.

(b) income-based jobseeker's allowance;

(c) guarantee credit under section 1(3)(a) of the State Pension Credit Act 2002(**a**);

(d) income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007(**b**).

"representation order" means a document granting a right to representation under section 14 of the Act.

(2) In these Regulations "assessing authority" means the Commission or a court officer or other person to whom the Commission, in accordance with section 3(4) of the Act, has delegated its functions under section 17A of the Act, and there may be a different assessing authority for different functions.

(3) Subject to the proviso in regulation 25(1), in these Regulations a reference to the financial resources, income or financial circumstances of the individual includes a reference to the financial resources, income or financial circumstances of the individual's partner.

Relevant authority

3. The relevant authority for the purposes of section 17A of the Act is the assessing authority.

PART 2

CROWN COURT TRIALS

Application of this Part

4. This Part applies to criminal proceedings—

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

(b) which may be, or have been, transferred from a magistrates' court for trial at the Crown Court;

(c) 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(**c**); or

(d) which are to be heard in the Crown Court following an order by the Court of Appeal for a retrial.

Evidence of financial resources

5.—(1) Where an individual applies for a representation order for proceedings to which this Part applies, the individual must provide the assessing authority with the information necessary to enable it to calculate the individual's income and capital in accordance with these Regulations for the purpose of determining the individual's liability to a contribution order.

(2) The information is—

(a) the individual's name, address, date of birth and National Insurance number;

(b) whether the individual has a partner and, if so, whether the partner has a contrary interest in the proceedings;

(c) whether the individual has children living in the individual's household and, if so, their ages;

(d) whether the individual is in receipt of a qualifying benefit and, if so, which one;

(**a**) 2002 c. 16.
(**b**) 2007 c. 5.
(**c**) 1933 c. 36; section 2(2)(b) was amended by section 152(1) of and Schedule 5 to the Senior Courts Act 1981 (c. 54) and by section 31(6) of and Schedule 2 to the Prosecution of Offences Act 1985 (c. 23).

(e) the individual's gross annual income;

(f) details of any of the matters specified in regulation 8(5);

(g) whether the individual has capital, within the meaning of regulation 12(3), and if so, what capital;

(h) details of the individual's preferred method of payment, should the individual be liable to make payments under a contribution order.

(3) The individual must, within 14 days of the later of the grant of the representation order and the committal or sending of the individual to the Crown Court, the transfer of the proceedings to the Crown Court or the preferring of the bill of indictment, provide the assessing authority with documentary evidence for the purpose of determining the individual's liability to a contribution order.

(4) The assessing authority may, where the individual fails to comply with paragraph (3), require the individual to provide the documentary evidence within 7 days of the date of the request.

(5) The assessing authority may at any time require the individual to provide further information or documentary evidence for the purpose of determining the individual's liability to a contribution order.

Assessment by assessing authority

6.—(1) Where an individual applies for a representation order, the assessing authority must assess whether the financial resources of the individual are such that the individual is liable to make payments under an income contribution order.

(2) Before making an income contribution order the assessing authority must, where practicable, notify the individual of the amount for which the individual is likely to be liable under such an order.

Individuals not liable to contribution orders

7.—(1) An individual is not liable to a contribution order where—

(a) the individual is under the age of 18 at the date of the application for a representation order; or

(b) the assessing authority is satisfied that the individual is, directly or indirectly, properly in receipt of a qualifying benefit.

(2) The assessing authority must notify an individual to whom this regulation applies that the individual is not liable to a contribution order.

Calculation of income and liability to income contribution order

8.—(1) Except where regulation 7(1) applies, the assessing authority must calculate the gross annual income of the individual and, where the individual has a partner or has children living in the individual's household, must divide the total according to the scale set out in Schedule 2.

(2) The individual is not liable to make payments under an income contribution order if the gross annual income, as adjusted under paragraph (1), is £12,475 or less.

(3) The assessing authority must notify an individual who is not liable to make payments under an income contribution order under paragraph (2) that the individual is not so liable but may be liable to make payments under a capital contribution order if regulation 19 applies.

(4) Where the gross annual income, as adjusted under paragraph (1), exceeds £12,475, the assessing authority must calculate the individual's annual disposable income in accordance with paragraph (5).

(5) There are to be deducted from the individual's gross annual income (without adjustment under paragraph (1))—

(a) any income tax paid or payable in respect of the period of calculation;

(b) any contributions estimated to have been paid under Part 1 of the Social Security Contributions and Benefits Act 1992, in respect of the period of calculation;

(c) any council tax paid or payable in respect of the period of calculation;

(d) either—

(i) any annual rent or annual payment (whether of interest or capital) in respect of a mortgage debt or hereditable security, payable by the individual in respect of the individual's only or main dwelling, less any housing benefit paid under the Social Security Contributions and Benefits Act 1992; or

(ii) the annual cost of the individual's living accommodation;

(e) any child care costs paid or payable in respect of the period of calculation;

(f) if the individual is making payments for the maintenance of a former partner or of a child or a relative who is not (in such case) a member of the individual's household, the amount, where reasonable, of such payments paid or payable in respect of the period of calculation; and in this sub-paragraph "relative" means a parent, grandparent, grandchild, brother, sister, aunt, uncle, nephew, niece or first cousin, whether of the full blood or half blood or by marriage or civil partnership;

(g) an amount representing cost of living expenses in respect of the period of calculation, being either—

(i) £5,676; or

(ii) if the individual has a partner or has children living in the individual's household, an amount calculated in accordance with the scale set out in Schedule 2;

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

(i) any amounts due under a contribution order in other proceedings.

(6) The individual is not liable to make payments under an income contribution order if the annual disposable income is £3,398 or less.

(7) The assessing authority must notify an individual who is not liable to make payments under an income contribution order under paragraph (6) that the individual is not so liable but may be liable to make payments under a capital contribution order if regulation 19 applies.

(8) The assessing authority must make an order requiring the individual to make payments under an income contribution order if the individual's annual disposable income exceeds £3,398.

(9) Where regulation 4(a), (b) or (c) applies, an order under paragraph (8) may not be made until the individual has been committed or sent to the Crown Court, the proceedings have been transferred to the Crown Court or the bill of indictment has been preferred, as the case may be.

(10) Where—

(a) the individual, without reasonable excuse, fails to comply with a request under regulation 5(4) in relation to income, and

(b) the assessing authority has reason to believe that the individual's disposable income exceeds £3,398,

the assessing authority must make an order requiring the individual to make payments under an income contribution order.

(11) The assessing authority must notify an individual who is liable to make payments under an income contribution order under paragraph (8) or (10) that the individual may also be liable to make payments under a capital contribution order if regulation 19 applies.

Amount payable under income contribution order

9.—(1) Subject to paragraphs (2) to (7), the income contribution order is to be for six monthly payments of one twelfth of 90 per cent of the individual's annual disposable income as determined under regulation 8(4) and (5).

(2) Where the individual is liable under regulation 8(10), the order is to be for six monthly payments of—

(a) the higher of £900 and one twelfth of the individual's annual disposable income, where the assessing authority is able to determine it under regulation 8(4) and (5); or

(b) £900, where the assessing authority is unable so to determine it.

(3) Where—

(a) paragraph (1) or (2) applies, and

(b) the individual makes the first five required payments on or before the due date,

the individual is not liable to make the sixth payment under the income contribution order.

(4) The amount payable under an income contribution order is not to exceed the specified amount for the class within which the offence with which the individual was charged falls (regardless of the classification of the offences charged in the indictment).

(5) Where the individual is charged with offences falling within more than one class, the relevant class shall be that for which the specified amount is the higher or highest.

(6) The classes and offences which fall within them are those listed in the Table of Offences in Part 6 of Schedule 1 to the Criminal Defence Service (Funding) Order 2007(**a**).

(7) The specified amounts are—

(a) Class A: homicide and related grave offences - £185,806;

(b) Class B: offences involving serious violence or damage, and serious drugs offences - £29,453;

(c) Class C: lesser offences involving violence or damage, and less serious drugs offences - £7,970;

(d) Class D: sexual offences and offences against children - £13,776;

(e) Class E: burglary etc. - £6,731;

(f) Class F: other offences of dishonesty (specified offences and offences where the value is £30,000 or less) - £6,754;

(g) Class G: other offences of dishonesty (specified offences and offences where the value involved exceeds £30,000 but does not exceed £100,000) - £117,368;

(h) Class H: miscellaneous other offences - £7,427;

(i) Class I: offences against public justice and similar offences - £28,023;

(j) Class J: serious sexual offences - £17,892;

(k) Class K: other offences of dishonesty (high value) (where the value involved exceeds £100,000) - £153,039.

Contents of income contribution order and payment

10.—(1) An income contribution order must state—

(a) the amount payable under the order;

(b) the date of the first payment;

(c) the remedies available to the Commission as a creditor if a payment is not made by a due date;

(**a**) S.I. 2007/1174; there are no relevant amendments.

(d) that if a payment is not made by the due date compound interest at the rate of 6% a year with half-yearly rests may be added to that payment from that date;

(e) the individual's duty under regulation 27 and right under regulation 29.

(2) Payments under an income contribution order must be made to the Commission.

Assessment on conclusion of proceedings

11. Where—

(a) the individual is convicted of any offence by the Crown Court,

(b) the trial judge considers that there are exceptional reasons why an individual who is acquitted by the Crown Court should be liable to make payments under a contribution order, or

(c) the representation order is withdrawn,

the assessing authority shall determine the cost of representation of the individual in the proceedings in the Crown Court.

Assessment of capital

12.—(1) Where—

(a) the cost of representation as determined under regulation 11 exceeds the amount of any payments made by the individual under an income contribution order, or

(b) no income contribution order has been made,

the assessing authority shall assess the individual's disposable capital.

(2) Regulations 13 to 18 apply where the assessing authority is making such an assessment.

(3) In this regulation and in regulations 13 to 19 "capital" means—

(a) any interest in real property;

(b) money in a bank or building society account;

(c) money in a National Savings Bank account;

(d) national savings certificates;

(e) Premium Savings Bonds;

(f) property in an account to which the Individual Savings Account Regulations 1998(**a**) apply;

(g) property in a personal equity plan;

(h) property in a unit trust scheme;

(i) any other lump sum investment;

(j) shares and stock.

13. The assessing authority shall include the amount or value of every resource of a capital nature belonging to the individual at the date of the application for a representation order, except where it would be impracticable or unreasonable to do so.

14. In so far as any resource of a capital nature does not consist of money, its value shall be taken to be—

(a) the amount which that resource would realise if sold; or

(b) the value assessed in such other manner as appears to the assessing authority to be equitable.

15. Where the individual owns an interest in a resource of a capital nature jointly or in common with any other person (other than the individual's partner), the assessing authority shall treat that

(**a**) S.I. 1998/1870.

resource as being owned in equal shares or, where there is evidence that the resource is not so owned, in such proportion as appears to it to be equitable in the light of that evidence.

16. The value of any interest in real property shall be taken to be the amount for which that interest could be sold less the amount of any debt secured by a mortgage or charge on the property.

17. Where the individual is restrained by order of the High Court or the Crown Court from dealing with a capital resource, the assessing authority shall disregard that resource.

18. The assessing authority, having assessed the individual's capital in accordance with regulations 13 to 17, shall deduct £30,000.

Capital contribution order

19.—(1) Subject to regulations 20 and 21, where the individual has disposable capital, the assessing authority must make a capital contribution order requiring the individual to pay—

(a) the whole of the costs of the individual's representation in the proceedings in the Crown Court, where the amount of the disposable capital is the same as or exceeds the amount of such costs, or

(b) a contribution, towards such costs, of the amount of the disposable capital, where that amount is less than the amount of the costs,

less any amounts already paid under an income contribution order.

(2) Where—

(a) the individual, without reasonable excuse, fails to comply with a request under regulation 5(4) in relation to capital, and

(b) the assessing authority has reason to believe that the individual has disposable capital of £30,000 or more,

the authority may decide not to make the deduction in regulation 18.

(3) The assessing authority must notify an individual who does not have disposable capital that the individual is not liable to a capital contribution order but remains liable for any outstanding amounts under an income contribution order.

20.—(1) Where—

(a) the amount of the individual's disposable capital is less than the amount of the costs, and

(b) the assessing authority is aware that the individual has capital of a kind not falling within regulation 12(3),

the authority must make a contribution order for the amount of the shortfall or the value of the latter capital, whichever is the lesser.

(2) The value of the capital resource referred to in paragraph (1)(b) shall be taken to be—

(a) the amount which it would realise if sold; or

(b) the value assessed in such other manner as appears to the assessing authority to be equitable.

Application to judge

21.—(1) This regulation applies where the individual is convicted in criminal proceedings of one or more, but not all, offences.

(2) The individual may apply in writing to the judge for an order that the individual pay a proportion of the costs of the individual's representation in the Crown Court on the ground that it would be manifestly unreasonable to pay the whole amount.

(3) An application under paragraph (2) must be made within 21 days of the date on which the individual is dealt with for the offence.

(4) The judge may make an order specifying the proportion of costs which the individual must pay or refuse the application.

(5) An order under paragraph (4) shall not require any other defendant to pay any of the costs of the individual's representation.

(6) In this regulation "judge" means the trial judge or a judge nominated for the purpose by the resident judge.

Contents of capital contribution order and payment

22.—(1) A capital contribution order must state—

(a) the amount payable under the order;

(b) that the amount must be paid within 28 days of the order or within such other period as may be agreed by the Commission and the individual;

(c) the remedies available to the Commission as a creditor if payment is not made by the due date;

(d) that if a payment is not made by the due date compound interest at the rate of 6% a year with half-yearly rests may be added to that payment from that date;

(e) the individual's right under regulation 29.

(2) Payments under a capital contribution order must be made to the Commission.

Repayment

23.—(1) Subject to paragraph (2), where an individual has made payments—

(a) under an income contribution order and, except where regulation 11(b) applies—

(i) the proceedings against the individual are discontinued; or

(ii) the individual is acquitted of the offence or all the offences by the Crown Court, or

(b) under a contribution order and the Court of Appeal allows an appeal against conviction by the individual,

the Commission must repay to the individual the amount of each payment made together with compound interest thereon, from the date of the payment, at the rate of 2% a year with yearly rests.

(2) Where the individual—

(a) is the subject of an outstanding contribution order in other proceedings, or

(b) has been granted a representation order in other criminal proceedings in the Crown Court (other than proceedings in which the individual is committed to the Crown Court for sentence),

the Commission may treat the amount to be repaid as satisfying any equivalent amount due under any other contribution order.

24. Where—

(a) an individual has made payments under an income contribution order, and

(b) the amount of the payments so made exceeds the cost as determined under regulation 11 or the proportion of the cost as ordered under regulation 21(4),

the Commission must repay to the individual the amount of the excess together with compound interest thereon, from the date of the excess payment, at the rate of 2% a year with yearly rests.

Resources of other persons

25.—(1) In calculating the income or capital of an individual who has a partner, the assessing authority must treat the resources of the partner as the individual's resources, unless the partner has a contrary interest in the proceedings.

(2) Where it appears to the assessing authority that—

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

(b) any of the resources of another person have been made available to the individual or the individual's partner,

the assessing authority may assess or estimate the value of the maintenance or the resources made available and may treat the amount as the resources of the individual.

Deprivation etc. of resources

26. If it appears to the assessing authority that the individual or the individual's partner has, with intent to reduce the amount of the individual's resources, whether for the purpose of making the individual not liable to a contribution order or of reducing the amount of such an order—

(a) directly or indirectly deprived themselves of any resources or expectations;

(b) transferred any resources to another person; or

(c) converted any resources into resources which under these Regulations are to be wholly or partly disregarded,

the resources or expectations of which the individual or the individual's partner has so deprived themselves, or which the individual or the individual's partner has transferred or converted, are to be treated as part of the individual's resources.

Duty to report change in financial circumstances

27.—(1) An individual who has been granted a representation order in proceedings to which this Part applies must immediately inform the assessing authority of any change in financial circumstances of which the individual is aware, which has occurred since the application for a representation order and which might affect the individual's liability to a contribution order or the amount of such an order.

(2) Where, as a result of any such change—

(a) the individual becomes liable to make payments under an income contribution order, the assessing authority must make an order and send a copy of it to the individual;

(b) the individual is no longer liable to make payments under an income contribution order, the assessing authority must withdraw that order and notify the individual that it has done so;

(c) the amount of the individual's liability under an income contribution order is increased or reduced, the assessing authority must vary the order accordingly and sent a copy of it to the individual.

Re-calculation of income or capital following error or new information

28.—(1) Where—

(a) it appears to the assessing authority that there has been a miscalculation of the individual's income or capital or an administrative error; or

(b) new information which is relevant to liability to a contribution order has come to light (whether under regulation 27 or otherwise),

the assessing authority must re-calculate the income or capital, as the case may be, and, if the individual becomes liable or is no longer liable to make payments under a contribution order or is liable to make increased or reduced payment, must make, revoke or vary the order as the case may be.

(2) Where the assessing authority—

(a) revokes a contribution order and the individual has already made a payment under the order, or

(b) varies a contribution order so as to require a lower payment, and the individual has already made a payment above the amount as varied,

the Commission must repay to the individual the amount of such payment together with compound interest thereon, from the date of the payment, at the rate of 2% a year with yearly rests.

Review of order etc.

29.—(1) An individual in respect of whom the assessing authority has made a contribution order may apply to the Commission for a review of the order, on the grounds that—

(a) there has been—

(i) a miscalculation of the individual's income or capital or the cost determined under regulation 11, or

(ii) an administrative error; or

(b) the individual is suffering or would suffer financial hardship as a result of making the payments required under the contribution order.

(2) An application under paragraph (1)(a) must be made within 28 days of the making of the order.

(3) The Commission may determine a review without a hearing.

(4) On a review the Commission may confirm, revoke or vary the contribution order.

(5) Where the Commission—

(a) revokes a contribution order, and the individual has already made a payment under the order, or

(b) varies a contribution order so as to require a lower payment, and the individual has already made a payment above the amount as varied,

the Commission must repay to the individual the amount of such payment together with compound interest thereon, from the date of the payment, at the rate of 2% a year with yearly rests.

Recovery of defence costs orders

30. The assessing authority must not make a contribution order for the costs of the individual's representation in the Crown Court to the extent that those costs are already the subject of an order under section 17(2) of the Act.

PART 3

APPEALS TO THE CROWN COURT

Application of Part 3

31.—(1) This Part applies to appeals to the Crown Court in criminal proceedings against—

(a) conviction;

(b) sentence or an order; or

(c) conviction and sentence.

(2) In this Part "order", without more, means an order made in proceedings referred to in regulation 3(2) of the Criminal Defence Service (General) (No.2) Regulations 2001(**a**).

Application of provisions in Part 2

32. The following regulations apply to appeals as they apply to proceedings to which Part 2 applies—

(a) regulation 5, except where the individual had been granted a representation order for the proceedings in the magistrates' court;

(b) regulation 6, but so that "an income contribution order" is to be read as "a contribution order";

(c) regulation 7;

(d) regulation 8(1), (2) and (4) to (6), but—

(i) so that "an income contribution order" is to be read as "a contribution order";

(ii) as if there were inserted after paragraph (5)(i) —

"(j) £500, representing the costs of an appeal.";

(iii) as if there were inserted after paragraph (11)—

"(12) The individual must notify an individual whose annual disposable income exceeds £3,398 that the individual will be liable to make a payment under a contribution order if regulation 33(b) applies.".

(e) regulations 25, 26, 27(1), 28, 29 and 30.

Contribution order

33. The assessing authority must make a contribution order in respect of the appeal where—

(a) the individual's annual disposable income exceeds £3,398 and—

(b) the appeal is made against—

(i) conviction, or against conviction and sentence, and is abandoned or dismissed;

(ii) sentence or an order, and is abandoned or dismissed; or

(iii) conviction and sentence, and the appeal against conviction is abandoned or dismissed but the appeal against sentence is allowed.

Amount of contribution order

34. The amount payable under a contribution order made—

(a) under regulation 33(a) is £500;

(b) under regulation 33(b) or (c) is £250.

Contents of contribution order and payment

35.—(1) A contribution order must state—

(a) that the amount must be paid within 28 days of the determination or abandonment of the appeal or within such other period as may be agreed by the Commission and the individual;

(b) that if a payment is not made by the due date compound interest at the rate of 6% a year with half-yearly rests may be added to that payment from that date;

(**a**) S.I. 2001/1437, amended by S.I. 2002/712, 2004/2784, 2005/2784, 2008/725, 2009/2167 and 2009/2777.

(c) the remedies available to the Commission as a creditor if the payment is not made by the due date;

(d) the individual's right under regulation 29.

(2) Payments under a contribution order must be made to the Commission.

Signed by authority of the Lord Chancellor

Name
Parliamentary Under Secretary of State
Ministry of Justice

Date

SCHEDULE 1

Regulation 1

Commencement of Regulations

Part 1 – Commencement on 11th January 2010

Local Justice Areas

Camden and Islington; Bradford; Calderdale; Huddersfield; Keighley; Skipton; Blackburn, Darwen and Ribble Valley; Furness and District; Fylde Coast; Lancaster; Preston; Great Yarmouth; Norwich; West Norfolk; Ceredigion; Llanelli; Neath Port Talbot; Pembrokeshire; Swansea County

Part 2 – Commencement on 12th April 2010

Courts Board Areas

Avon and Somerset; Devon and Cornwall; Dorset, Gloucestershire and Wiltshire; Hampshire and Isle of Wight

Part 3 – Commencement on 26th April 2010

Courts Board Areas

Birmingham, Coventry, Solihull and Warwickshire; Black Country, Staffordshire and West Mercia; Derbyshire and Nottingham; Lincolnshire, Leicestershire, and Rutland and Northamptonshire

Part 4 – Commencement on 10th May 2010

Courts Board Areas

Cheshire and Merseyside, Cumbria and Lancashire; Greater Manchester

Part 5 – Commencement on 17th May 2010

Courts Board Areas

Cleveland, Durham and Northumbria; Humber and South Yorkshire; North and West Yorkshire

Part 6 – Commencement on 24th May 2010

Courts Board Areas

Mid and West Wales; North Wales; South East Wales

Part 7 – Commencement on 14th June 2010

Courts Board Areas

Bedfordshire, Essex and Hertfordshire; Cambridgeshire, Norfolk and Suffolk; Kent; Surrey and Sussex; Thames Valley

Part 8 – Commencement on 28th June 2010

Courts Board Area

London

SCHEDULE 2

Regulation 8

Scale for the purposes of regulation 8(1) and (5)(g)

For the purposes of regulation 8(1), add the relevant figure below to 1.00 and divide the individual's gross annual income by the total.

For the purpose of regulation 8(5)(g), add the relevant figure below to 1.00 and multiply £5,676 by the total.

A partner	0.64
Each child of the individual in the individual's household, aged 1 on their next birthday	0.15
Each child, as above, aged 1-3	0.30
Each child, as above, aged 4-6	0.34
Each child, as above, aged 7-9	0.38
Each child, as above, aged 10-11	0.41
Each child, as above, aged 12-14	0.44
Each child, as above, aged 15-17	0.59

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for contribution orders for the cost of publicly funded representation in criminal trials in and appeals to the Crown Court. They—

prescribe the relevant authority for the purposes of assessing liability to contribution orders and making such orders (regulation 3);

require defendants who are applying for publicly funded representation to provide details of their income and capital (regulation 5);

except certain defendants from liability to contribution orders (regulation 7);

set out how liability to a contribution order, based on the defendant's income and payable before the conclusion of the proceedings, is to be calculated and what such an order must contain (regulations 8 to 10, 25 and 26);

require the authority to determine the costs of the defendant's representation after the individual has been convicted (or, in exceptional circumstances, acquitted) (regulation 11);

set out how liability to a contribution order based on the defendant's capital is to be calculated and what such an order must contain (regulations 12 to 20, 22, 25 and 26);

enable a defendant to apply to the court in certain circumstances for an order to pay only a proportion of the costs of representation (regulation 21);

require the authority to repay to acquitted defendants amounts already paid under a contribution order (regulations 23 and 24);

require the defendant to notify the authority of a change in financial circumstances (regulation 27) and enable the authority to make, revoke or vary contribution orders in cases of such a change or of a miscalculation (regulations 27 and 28);

enable the defendant to apply for a review of a contribution order on the grounds of miscalculation or financial hardship (regulation 29);

require individuals whose appeals to the Crown Court are unsuccessful or partially successful to pay a contribution towards the cost of their publicly funded representation (regulations 31 to 35).

An impact assessment relating to the introduction of means testing in the Crown Court is available from Criminal Legal Aid Strategy Division, Ministry of Justice, 102 Petty France, London SW1H 9AG or at www.justice.gov.uk.

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