`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(**1**).

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;

(**1**) 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'.

(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;

(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(**2**);

(d) persons registered under Part 3 of the Childcare Act 2006(**3**) or Part XA of the Children Act 1989(**4**);

(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(**5**);

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(**6**), 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;

(**2**) S.I. 1999/3110; the Regulations were partially revoked by S.I. 2007/2480.
(**3**) 2006 c. 21.
(**4**) 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. .
(**5**) 2002 c. 21.
(**6**) S.I. 2006/215.

"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(**7**)—

(i) attendance allowance paid under section 64;

(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(**8**) or the Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2004(**9**);

(c) any exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983(**10**);

(d) any pensions paid under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(**11**);

(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(**12**);

"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

(**7**) 1992 c. 4.
(**8**) S.I. 2003/762.
(**9**) S.I. 2004/1748 (W.185).
(**10**) S.I. 1983/686.
(**11**) S.I. 2006/606.
(**12**) 2002 c. 29.

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;

(b) income-based jobseeker's allowance;

(c) guarantee credit under section 1(3)(a) of the State Pension Credit Act 2002(**13**);

(d) income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007(**14**).

"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(**15**); or

(**13**) 2002 c. 16.
(**14**) 2007 c. 5.
(**15**) 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).

(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;

(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.