

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 1: Legal Aid

Contributions and costs

Section 23: Payment for services

175. *Section 23* concerns payments for services by legally aided individuals. The section largely reflects powers in sections 10, 17 and 17A of the Access to Justice Act 1999 and brings together provisions on payments for services into a single provision applicable (for the most part) to both civil and criminal legal aid.
176. *Subsection (1)* sets out the basic rule that an individual who receives legal aid can only be required to make a payment in connection with the provision of the services where regulations require them to do so. Any regulations made under *subsection (1)* must provide for repayment to the individual of any amount paid by the individual that exceeds the amount required to be paid by regulations under this section and section 24 (see *subsection (11)*).
177. *Subsection (2)* is a non-exhaustive list of ways in which regulations made under this section can require payments from individuals. Regulations can, in prescribed circumstances, require payment of the cost of the services, a contribution in respect of those costs or an amount in respect of administration costs.
178. *Subsection (3)* permits regulations to provide that, in civil disputes only, legally aided individuals may be required to make a payment of an amount which exceeds the costs of the services provided. This allows for a so-called ‘Supplementary Legal Aid Scheme’ whereby a percentage of certain damages obtained by a successful legally-aided claimant may be required to be paid to a prescribed person, such as the Lord Chancellor. The response to the consultation paper *Proposals for the Reform of Legal Aid in England and Wales* confirmed the Government’s intention to create such a scheme. There is an equivalent provision at section 10(2)(c) of the Access to Justice 1999.
179. *Subsection (4)* permits regulations made under this section to include provision about how the costs of services made available to a legally-aided individual are to be determined. This reproduces provisions currently found in sections 10(6)(b), 17(3)(c) and 17A(2)(b) of the Access to Justice Act 1999.
180. *Subsections (5), (8) and (9)* make further provisions about the contents of regulations that may be made under this section. Regulations may, for example, provide for liability to pay to arise on a determination by a prescribed person (as is currently the case for criminal contributions and orders to pay costs) and for the variation or withdrawal of a determination about liability to make a payment. Regulations may also make provision

for payment by periodical payments or lump sums out of income or capital and for procedural matters, such as when payment is to be made and to whom.

181. *Subsections (6) and (7)* make provision in identical terms to section 21(3) and (4), explained at paragraph 168 above.
182. *Subsection (10)* permits regulations to provide that a legally-aided individual can be required to pay interest on loans, payments required to be made after the provision of the relevant services and overdue payments. Similar provision is currently made in section 10(4) and section 17(2)(d) of the Access to Justice Act 1999.

Section 24: Enforcement

183. *Section 24* permits regulations to provide for the enforcement of a requirement to make a payment imposed by regulations under section 23. The regulations can include provision for the recovery of the costs of enforcement from the individual (*subsection (2)*) and can require documents and information to be provided (*subsection (4)*).
184. Under *subsection (3)* regulations will be able to provide that overdue sums are recoverable summarily as a civil debt, that is to say through magistrates' courts in accordance with the Magistrates' Courts Act 1980. The regulations will also be able to provide that overdue sums are recoverable, if the county court or High Court so orders, as if they were payable under an order of the High Court or county court in accordance with rule 70.5 of the Civil Procedure Rules, thereby making it unnecessary to begin fresh proceedings in respect of the debt. These provisions are similar to the regulation-making powers relating to criminal legal aid in sections 17(4) and 17A(2A) of the Access to Justice Act 1999 (as inserted by the Coroners and Justice Act 2009).
185. *Subsection (5)* introduces Schedule 2.

Schedule 2: Criminal legal aid: motor vehicle orders

186. *Schedule 2* enables regulations to be made to authorise a court to make motor vehicle orders as a form of enforcement action in relation to criminal legal aid. "Motor vehicle orders" consist of clamping orders and vehicle sale orders. A clamping order is an order that a motor vehicle be fitted with an immobilisation device. Under a vehicle sale order, a motor vehicle which has been fitted with an immobilization device in accordance with enforcement regulations may be sold and the proceeds of sale may be applied in paying the overdue sum. Schedule 2 includes further detailed provision regarding the content of regulations about motor vehicle orders, including procedural matters and requirements that must be met before a court may make an order. Schedule 2 is based on provisions in section 17(2A) to (2E) of, and Schedule 3A to, the Access to Justice Act 1999 (as inserted by the Coroners and Justice Act 2009).

Section 25: Charges on property in connection with civil legal services

187. *Subsection (1)* provides for a statutory charge to arise on any property recovered or preserved by an individual in receipt of civil legal aid, including costs payable to the individual, whether the property or costs are recovered, preserved or payable following legal proceedings or as part of a compromise or settlement of a dispute. Such a charge currently arises under section 10(7) of the Access to Justice Act 1999.
188. *Subsection (2)* describes the amounts of money to which the statutory charge relates. These are the amounts spent by the Lord Chancellor in securing the provision of the civil legal services and any other amounts payable by the individual by virtue of sections 23 and 24. As under the Access to Justice Act 1999, regulations may make provision about the statutory charge. Such regulations can provide for circumstances in which the charge does not apply, provide for the charge to be in favour of the Lord Chancellor or the service provider, modify the charge for the purposes of its application in prescribed

cases or circumstances, and provide for the enforcement of the charge (*subsections (3) and (4)*).

189. *Subsection (5)* permits regulations made for the purpose of enforcing the statutory charge to require amounts of money awarded or payable to the legally-aided individual to be paid to the Lord Chancellor or the service provider and to make provision about matters such as the timing and manner of payment, about how such monies are to be dealt with and about the enforcement of the requirement to pay.

Section 26: Costs in civil proceedings

190. **Section 26** relates to costs in civil proceedings where a party is legally-aided and substantially reproduces provisions currently found in section 11 of the Access to Justice Act 1999.
191. *Subsection (1)* limits the costs that can be awarded against an individual receiving civil legal aid to the amount (if any) that is reasonable given the financial resources of both parties and their conduct during the case.
192. *Subsection (3)* provides that this protection may be disapplied by regulations.
193. Subject to the restriction in *subsection (1)*, regulations may be made under this section about costs in proceedings where an individual is in receipt of civil legal aid. Such regulations may, among other things, specify the principles that are to be applied in determining the amount of any costs awarded for or against a party receiving civil legal aid, limit the circumstances in which a costs order may be enforced against the individual receiving civil legal aid and make provision about when a court can require the Lord Chancellor to pay any costs incurred by the opponent of the legally-aided party (*subsections (5) and (6)*). *Subsections (7) and (8)* make provision in identical terms to section 21(3) and (4), explained at paragraph 168 above.