



Ministry of Justice

Crown Court means testing: the design of the scheme on implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012

Addendum to Response to Consultation CP(R) 7/2013

Design of the Motor Vehicle Order scheme

Published on 5 July 2013

Introduction:

1. In the consultation response published on 5 March 2013, the Ministry of Justice (MoJ) confirmed its intention to introduce Motor Vehicle Order (MVO) Regulations to reinforce the enforcement powers available to the Legal Aid Agency (LAA) for the purpose of encouraging and supporting compliance under the Crown Court means testing (CCMT) scheme.

2. As MoJ wished to give further thought to the final shape of the MVO scheme, we decided to delay introduction of the MVO Regulations until July 2013. Having considered the points raised by respondents to the consultation exercise, and following further reflection, this addendum sets out details of the final design of the MVO scheme. The addendum is supported by a Final Impact Assessment.

Background:

3. The CCMT consultation paper (*'CCMT: the design of the scheme on implementation of Legal Aid, Sentencing and Punishment of Offenders Act 2012'*) ran for 6 weeks between 30 October and 11 December 2012 and included proposals for the introduction of MVO Regulations (the relevant paragraphs are re-produced at Annex A). These would allow the LAA to apply to the court for a clamping order if a defendant defaults on payments under a contribution order imposed in accordance with the Criminal Legal Aid (Contribution Orders) Regulations 2013 (either an Income Contribution Order (ICO) or a Capital Contribution Order (CCO)) and, subsequently, to apply for an order for sale of the vehicle if the defendant is convicted and has still not settled their liability under a contribution order.

Responses to specific questions:

4. The consultation paper set out two specific questions regarding the MVO scheme:

Q. 11 – Do you agree with our proposed approach to the operation of the MVO scheme?

Q.12 – In what situations should we consider safeguards for dependent family members and how could this be evidenced?

5. From a total of 21 respondents to the consultation exercise:

- 21 respondents commented on both Q.11 and Q.12.
- 13/21 respondents expressed explicit or broad support for the proposals, subject to appropriate safeguards.

- 8/21 respondents disagreed with or expressed concerns about the proposed scheme.

6. From those respondents in favour:

- Bar Council of England and Wales (BC)/Criminal Bar Association (CBA) welcomed the MoJ's approach to the proposed scheme. There was a high standard to be met before an order could be made and safeguards to ensure that vulnerable defendants and their dependents were not adversely affected. They said that they would like further information about what would be done with any funds recovered in excess of the amount owed; they should not be retained by the MoJ.
- BC/CBA said that a MVO would rarely (if ever) be proportionate and appropriate where a vehicle was used by dependent family members for transport. A letter from dependants could be acceptable evidence of such use.
- The Law Society (TLS) supported the proposals subject to implementation of the appropriate safeguards. In particular, their concerns focused on the potential adverse impact on innocent family members if the only vehicle at their disposal was removed:
 - where there are elderly, very young or disabled family members; it is not always practical to use public transport in such cases and as a result the mobility of such a family member could be severely restricted by loss of the family car. A car may be needed to take such family members to medical appointments or care centres which may not be easily accessible by public transport, or to visit such family members if they are not living with the client.
 - if there are family members with permanent medical conditions that require frequent hospital visits, or where there may be emergency medical situations.
 - if the client is the only breadwinner; in such cases requiring the family to use public transport could be very costly.
 - if the car is used by the client's partner to get to work and public transport is not available, or the partner works shift patterns and may need to get home very late at night.
- TLS said that evidential requirements relating to the above should take into account the cost involved in obtaining the evidence. This may be prohibitive if the client is the only breadwinner; eg a doctor's letter would involve a cost so other forms of evidence should be considered. There was also a question as to who would obtain the evidence, since the provider would no longer be involved and the client might be in prison.
- Council of HM District Judges (Magistrates' Courts) acknowledged that the loss of a motor vehicle was likely to be a far greater incentive for prompt payment than the other legislative sanctions. The proposed safeguards and exceptions were reasonable and fair. Regarding safeguards, it proposed the following situations: if a family member's employment was dependent on the vehicle; if dependent children were reliant on the vehicle for school attendance; and if a dependent relative had care needs which necessitated use of the vehicle. Evidence should comprise documentary evidence of employment/school/hospital appointments etc., coupled with evidence to

- Police Federation (PF) highlighted that the use of MVOs should be monitored to ensure applications are only made in the circumstances set out and not as a matter of routine. Regarding safeguards, PF highlighted situations where one or more dependent family members is disabled; where another dependent family member uses the vehicle as part of their employment and its removal could result in the loss of that employment; where dependent family members live in an area where they do not have access to suitable or affordable public transport. The evidence required would depend on the justification argued.
- Bedfordshire Criminal Justice Board (BCJB) broadly agreed with the proposals as long as there were robust guidelines equally applied. They felt that one month after conviction was possibly too short for sale of the vehicle and agreed that if leave to appeal was sought disposal should be postponed. They agreed that a MVO should not be made where it could be proved that the vehicle was used by someone with any form of disability, or who worked for the emergency services.
- BCJB suggested that evidence from insurance companies regarding named drivers would be the most straightforward way to evidence other users' access to the vehicle. Alternatively, records such as business/employment mileage claims or even automatic number plate recognition or road traffic camera records could be used. Neighbours could also provide evidence about use of the vehicle by family members.
- Criminal Law Solicitors' Association accepted in principle that wilful default might lead to vehicle clamping. However, there should be safeguards for family members, in particular where a family member was ill or relied on the vehicle for hospital appointments, school or work appointments. The defendant should be able simply to assert that. A requirement for evidence was understandable but it was not always clear how evidence might be obtained – for example, where there was no adequate bus service to take children to school it would be unfair, and a breach of the defendant's right to private life, to insist on confirmation from the school, since that would lead to the defendant having to reveal the conviction to the school.
- Justices' Clerks' Society agreed with the proposed approach to the operation of the new MVO scheme but highlighted that where the defendant was a carer it would be necessary to consider carefully the impact on the family; evidence from the medical/social care professions would be necessary.
- Rossendales (Rs) thought the MVO scheme better than nothing but considered, in general, that the use of clamping orders for specific vehicles was not as effective as the issue of a general distress warrant (a distress warrant would allow for any vehicle suspected of belonging to the defendant to be seized and sold once ownership is confirmed). An order under the MVO scheme limits enforcement to a vehicle that has been disclosed by the defendant many months before the event and is reliant on correct data being provided by DVLA.

- Rs made the point that when assessing the validity of a claim by a third party (particularly a family member) that a vehicle should not be seized, caution should be exercised as they could be acting on the defendant's behalf and not on their own. Documentary proof of either ownership of the vehicle or disabled use should be the only factors. Issues of transportation to school, work etc. could be made by any person having their car seized and it is, after all, the inconvenience factor that will make the defendant pay.

7. From those respondents against:

- Thompsons Solicitors disagreed on the ground that extensive methods of enforcement already existed so it was unnecessary to employ still more draconian methods.
- London Criminal Courts Solicitors' Association (LCCSA) said that a motor vehicle was essential for many people and seizing it might prevent the defendant from earning a living. Regarding safeguards, LCCSA referred to the impact on elderly relatives, young children and spouses. Often children attended school some distance from home and a spouse might use the vehicle to commute to work. Public transport might not be available in rural areas. LCCSA advocated a pragmatic approach to evidence gathering. Medical reports would be charged for and, as the case and representation order would have concluded, there was a serious issue as to who would assist in obtaining the evidence.
- Equality 2025 said that the Motor Vehicle Order Scheme could have a negative impact on the lives of disabled dependants who made use of a defendant's car. It recommended safeguards for anyone with disabled dependants.
- False Allegations Support Organisation highlighted the need for a flexible payment scheme. It said that a motor vehicle order should not be made where a dependent family member used the vehicle for work purposes.
- Liverpool Law Society (LLS) did not agree with this proposal and regretted MoJ's decision to consider a form of enforcement that had been subject to adverse criticism and had required further regulation. Even though the court would be involved, it was still a course of action that could have considerable impact on the defendant and family members. LLS observed that the list of exclusions in paragraph 49 was, with the exception of disabled drivers, without logical basis. Such a list should include any person whose contract of employment required them to have a vehicle. In deciding to grant an order the court should not require proof of adverse impact in every case; in some cases the impact would be obvious.

MoJ conclusions:

8. The most contentious issue arising from respondents' comments about the MVO scheme concerned the range of safeguards required to ensure appropriate protection against any unduly harsh or adverse impacts on either the defendant or dependent family members, in particular the elderly, very young and disabled dependents. Our

conclusions on this issue are set out at paragraphs 11 to 13 below.

9. We also set out details regarding how the defendant may make representations to the court if they wish to challenge either an application for a clamping order or an order for sale. For this purpose, we have decided against an oral hearing as we believe that the court can reach a decision on the basis of written representations, supported by relevant documentary evidence.

10. We have also elaborated on details regarding the timings of the application for an order for sale and confirmed the categories of charges to be applied under the MVO scheme.

(1) MVO scheme - safeguards:

11. The primary legislation - principally, Schedule 2 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (see Annex B) already provides for statutory safeguards which must be included in the MVO scheme:

- The court may only make a clamping order if it is satisfied that the defendant's failure to pay the amount sought in the clamping order was due to wilful refusal or culpable neglect on their part, and that the value of the vehicle (or vehicles), if sold, would be likely to reach a certain amount;
- The clamping order must not be made unless the defendant has an interest in the vehicle. Relevant to the question of a defendant's interest would be if the defendant has acknowledged ownership of a vehicle on the legal aid application form¹ and whether the defendant is registered with DVLA as the registered keeper of the vehicle;²
- A clamp may not be fitted to a vehicle which displays a current disabled person's badge or current recognised badge, or where there are reasonable grounds for believing the vehicle is used for the carriage of a disabled person.

12. In addition to the statutory safeguards, we are proposing that it will be possible for an individual to make written representations to the court as to why a clamping order or an order for sale should not be made, accompanied by any relevant information and evidence. We do not intend to provide for an oral hearing in relation to either application. The court will consider the application and any written representations by the individual supported by evidence, and will only grant an order if it is appropriate in all the circumstances to do so. In making its decision, the court will take into account any matters it considers relevant but, in particular, whether the individual or any other person would be likely to be unduly prejudiced by the making of the MVO and the practicability of alternative means of transport.

13. We consider that an MVO scheme which takes into account the factors identified below will strike a fair balance between protection where that is both fair and

¹ (Question 33 of Form CRM 15 – Financial Statement for Legal Aid in Criminal Proceedings – asks whether the applicant or anyone else owns a vehicle ('Yes/No' format); in the affirmative, the applicant is asked to give the registration number of the vehicle).

² Verification with DVLA is being supported by the introduction of an information gateway through the *Legal Aid (Information about Financial Resources)(Amendment) Regulations 2013* which were laid in draft before the Houses of Parliament on 17 May.

appropriate, whilst also ensuring that the MVO scheme is operationally effective. We stress that this is an indicative and not exhaustive list as it will be for the court to decide whether it is appropriate in all the circumstances to grant the application.

- Defendant or their partner requires the vehicle for employment/work:
From a policy perspective, we believe it is counter-intuitive to clamp a vehicle if the defendant or their partner relies on it for work (if the defendant cannot earn, they will be unable to pay the contribution owed). However, we would want the defendant to provide information and evidence as to why an order should not be made and the practicability of public transport alternatives (for example, the nature of the defendant's work could make public transport impractical if the defendant is a tradesman who needs to take heavy power tools to their workplace).
- Defendant has responsibility for a dependent child or parent with a medical condition requiring regular hospital appointments:
We would not wish to clamp a vehicle in circumstances where it may prejudice the ability of a dependent child or parent to access medical treatment. However, we would want the defendant to provide information and evidence as to why an order should not be made and the practicability of public transport alternatives, for example, the patient transport service.³
- Defendant requires the vehicle to take dependent children to school:
We would not wish to clamp a vehicle if this is likely to penalise children to the extent that their attendance at school may suffer. However, we would want the defendant to provide information and evidence as to why an order should not be made and the practicability of public transport alternatives or school travel arrangements provided by a local authority.
- Individual (other than the defendant) with a share in the vehicle:
Where an individual other than the defendant has an interest in the car, this would be a relevant consideration for the court and if a vehicle sale order were made the individual would be paid from the proceeds of sale an amount proportionate to their interest identified by the court in the vehicle sale order.

In addition, in the following cases a vehicle cannot be clamped:

- Emergency services:
We will not clamp any vehicle used by the emergency services (police, fire or ambulance) or by a doctor on call with a British Medical Association badge or other health emergency badge.
- The defendant has a dependent family member who is disabled: See the above paragraph 11 in relation to statutory safeguards.

³ Non-emergency patient transport services, known as the Patient Transport Service, are typified by the non-urgent, planned, transportation of patients with a medical need for transport to and from premises providing NHS healthcare and between NHS healthcare providers.

(2) Preparing written representations to the court:

(a) Requirement to provide evidence

14. In making written representations to the court, we do not believe that the nature of the representations, as well as information and evidence required, would be unduly technical and we consider that it ought to be readily available. This should mean that no added expense is incurred by the defendant, an issue which had been flagged as one potential concern under the new scheme.⁴ Therefore, for example:

- If the defendant argues that the vehicle is required for work, evidence of this could be provided through details of their employment/job title/work address (eg; from a payslip, letter of appointment) as well as details of public transport options (eg; available from the relevant travel website);
- If the vehicle is required to transport a family member for regular hospital appointments, a hospital appointment letter would provide details of the family member and condition. We also believe that it is reasonable for the defendant to provide an explanation of why public transport would be impractical (eg; available from the relevant travel website) or whether patient transport services are available; and
- If the defendant alleges that the vehicle is required for transporting children to school, this could be supported by details of the distance of the school from the child's home address and details of available public transport options or school travel arrangements provided by a local authority (all available from the relevant websites).

15. We will not require the defendant to commission additional evidence from, for example, their employer or their children's school. This should, therefore, avoid a defendant being placed in a difficult position.⁵

16. We have reflected carefully about practical difficulties that some individuals may face in accessing the relevant evidence; for example, if the individual is in custody and cannot personally secure documents from their home address.

In such cases, we do not view it as unreasonable to expect the defendant to ask for the assistance of a family member or friend in doing so.

17. To support this, we have decided that an individual should be given 14 days from the date of notification of the application to provide to the court written representations, supported by documentary evidence. If it is anticipated that this may prove particularly problematic, we are allowing for the individual to make a written request to the court for an extension of the 14 day deadline.

(b) Assistance from a solicitor

18. In preparing written representations to the court, and in collating the relevant

⁴ This concern was raised by both The Law Society and the London Criminal Courts Solicitors' Association.

⁵ This was a concern highlighted by the Criminal Law Solicitors' Association.

documentary evidence, we have concluded that the individual should not require the specialist services of a solicitor. We reach this conclusion for the following reasons:

- The non-technical nature of the evidence required to support written representations (see paragraph 14 above) means that additional legal support should not be necessary. We distinguish this from the assistance provided by the solicitor in preparing the defendant's legal aid application for proceedings at the Crown Court as this is a more detailed and technical process which more reasonably justifies legal support; and
- Our commitment to publish practical guidance to help defendants, including help on how to prepare written representations supported by the appropriate documentary evidence.

(3) Exercising the power to sell a motor vehicle

19. As we indicated in the consultation paper, we are providing for the court to make a clamping order for a motor vehicle both pre and post conviction and in relation to both ICOs and CCOs.

20. However, we maintain our policy position that the court should not make an order for sale of the vehicle until the defendant has been convicted.

21. In the consultation paper, we also stated that if following their conviction the individual seeks leave to appeal against the conviction, any application to the court for an order for sale would be postponed until a decision on leave to appeal had been taken. Furthermore, if leave to appeal was subsequently granted, we stated that an application for an order for sale would be delayed until the outcome of the appeal was known.

22. Having undertaken further consideration, we have decided to revise this position. This change from our earlier policy position reflects our decision to impose charges in relation to storage of a clamped vehicle (see paragraph 30) and our concern that if a motor vehicle is clamped before the defendant has been convicted, and if a defendant does not secure the release of the vehicle, storage charges would accumulate throughout the period leading up to the outcome of the appeal (the hearing may not be listed until a number of months following the individual's conviction). We have, therefore, concluded that it would be unfair for a defendant to be liable for the potentially significant charges which could accumulate over this period.

23. Instead, in our final design of the scheme, we have decided that a vehicle sale order can be made once 28 days have elapsed from the date of the defendant's conviction or once 28 days have elapsed from the date of the clamping order, whichever is the later. We consider that the 28 day period is appropriate, bearing in mind that the defendant may be in custody at the relevant time.

24. Although 28 days must elapse before a vehicle sale order can be made, there is nothing to prevent the LAA (or the relevant debt recovery contractor) from submitting the application as soon as the defendant has been convicted.

25. Whilst recognising that this new approach marks a deviation from the proposal set out in the consultation paper, we consider this is a fair and proportionate

approach: importantly, the vehicle sale order must be made by the court (it is not an application that will be determined on an administrative basis) and the court may only make an order if it is appropriate in all the circumstances to do so. In considering the latter, it is possible that the court may choose not to grant the order if, for example, a decision on an application for leave to appeal is pending, or leave to appeal has been granted even if the substantive appeal hearing has not yet taken place.

26. If a vehicle sale order is made by the court, the net proceeds from its subsequent sale will first be used to meet any charges imposed to cover the cost of the action under the MVO Regulations (see paragraph 30 below), then any other enforcement costs owed in accordance with the Criminal Legal Aid (Contribution Orders) Regulations 2013, before being put towards payment of the balance of the amount sought. In response to comments made by respondents,⁶ we wish to make clear that any monies outstanding from the proceeds of sale once payment has been made will be returned to the individual.

27. In cases where the vehicle sale order identifies another person who has an interest in the vehicle, any proceeds from the sale of the vehicle must first be used to reimburse that individual before dealing with the remaining proceeds of sale in accordance with the paragraph above.

28. We recognise that in some cases, subsequent to the sale of a vehicle following the grant of an order for sale, the defendant may have their conviction overturned by the Court of Appeal. If this arises, the net proceeds of sale will be returned to the individual less the charges imposed and any enforcement costs (and any amount paid to another person in accordance with paragraph 27 above). However, we would add that as there are fewer than 200 successful appeals against conviction heard by the Court of Appeal each year, the statistical risk of such cases occurring is small.⁷

29. Equally, if the defendant's conviction is overturned after a vehicle sale order has been made but before the vehicle is sold, the vehicle will be returned to the individual.

(4) Charges to be applied under the MVO scheme

30. The MVO Regulations will set out the charges that may be imposed in order to recover the costs of action taken under the Regulations. Charges will be imposed in relation to: the fitting of immobilisation devices; the removal of a vehicle; the storage of a vehicle (per day); and the release of a vehicle from clamping or from storage.

31. As enforcement action under the MVO scheme will only be considered once the defendant has had the opportunity to pay voluntarily and after the LAA has already made attempts to encourage compliance, we consider that it is fair for the defendant to be made liable for the charges imposed following the issue of the clamping order. Given that the enforcement action is effectively triggered by the defendant's non-compliance, it would be unreasonable for the cost of the enforcement action to fall to the LAA.

CCMT Consultation Responses: Existing power to seize motor vehicles

32. One of the respondents to the CCMT consultation exercise pointed out that the existing laws of distress already provide for the seizure of motor vehicles as a tool to enforce an unpaid debt.

⁶ This issue was raised by the Bar Council of England and Wales and the Criminal Bar Association.

⁷ See MOJ statistic bulletin: Judicial and Court Statistics 2011.

33. We consider that there is a particular deterrent effect in having a stand alone MVO scheme which clearly sets out the consequences of non-compliance with a contribution order and which would not operate in the same way as the existing laws of distress.

Equality considerations

34. In the consultation response published on 5 March 2013, the MoJ committed to review any potential equalities impacts linked to the introduction of the MVO scheme and to publish details of these in this addendum.⁸

35. The Equality Impact Assessment included with the consultation paper set out our initial views on the equality impacts of the proposals. We have carefully reconsidered that in the light of the consultation responses and have taken those responses into account when developing the refinements to the original proposal described in this addendum.

36. In light of concerns raised, where the MVO scheme impacts on defendants, we have taken steps to mitigate the impact of any burden through:

- Our commitment to provide practical guidance to help defendants, including help on how to prepare written representations regarding an application to the court in respect of a clamping order or an order for sale. It will be possible to make a request for the guidance in an alternative format.
- Ensuring that relevant documentary evidence can generally be sourced from existing documentation readily available to the defendant, or from documentation that can be readily found on the internet (for example, details of alternative transport options);
- Allowing the defendant to make a written request to the court extending the 14 day deadline for submitting written representations.

37. Under the MVO scheme, there are specific safeguards to protect the disabled. The MVO Regulations will provide that where a vehicle displays a current disabled person's badge or a current recognised badge, or where there are reasonable grounds to believe that the vehicle is used for the carriage of a disabled person, that vehicle may not be clamped.

38. As regards potential impacts on a defendant's dependants, notably children, the elderly and the disabled, there are safeguards in place to guard against any disproportionate impact on dependants:

- The defendant can make written representations to the court about the impact on their dependants; for example, the impact on a dependant who is elderly or very young and requires the vehicle for transport; and
- The court will only make an order where it is appropriate to do so taking all circumstances into account. In addition, the court must take into account whether the individual or any other person would be likely to be unduly prejudiced by the making of the order.

⁸ See paragraph 15.7 of the Response to Consultation CP(R) 7/2013.

39. We will continue to comply with our duty to have due regard⁹ to the equality impact arising from implementation of the MVO scheme and during its operation. If any unanticipated equalities impacts become evident, we will review the scheme in light of them.

Next Steps

40. We intend to introduce MVO Regulations in July 2013. As stated in the consultation response,¹⁰ we will not be conducting a separate consultation exercise on the draft MVO Regulations.

41. When implemented, the MVO Regulations will apply to all new cases in respect of which a determination that the individual qualifies for legally-aided representation is made on or after the date on which the MVO Regulations come into effect.

⁹ Under section 149 of the Equality Act 2010, MoJ has a legal duty to have 'due regard' to the need to: eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010; advance equality of opportunity between different groups (those who share a protected characteristic and those who do not); and foster good relations between different groups. Having 'due regard' needs to be considered against the nine 'protected characteristics' under the Equality Act 2010 – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

¹⁰ See paragraph 12.5 of the Response to Consultation CP(R) 7/2013.

Crown Court means testing

Motor vehicle order regulations (MVO regulations)

The relevant paragraphs from the CCMT consultation paper covering MVO Regulations are attached below:

47. The MoJ has consistently maintained that MVO regulations should form a part of the wider enforcement powers available to the LSC.¹¹

48. Section 24 of, and Schedule 2 to Part 1 of LASPO provide the power to make MVO regulations. We propose to use this power to make MVO regulations under the new CCMT scheme. The main purpose of the regulations will be to act as an incentive for prompt payment and so promote collection from those defendants who have rightfully been asked to contribute towards their defence costs under CCMT and have continually failed to pay.

49. The main features of the proposed MVO scheme are as follows:

- The LSC will only consider making an application for a clamping order once the defendant has had the opportunity to pay voluntarily and the LSC has already made repeated attempts to encourage compliance through written correspondence and contact by telephone or e-mail.
- The court may only make an order if it is satisfied that the defendant's failure to pay the relevant amount was due to wilful refusal or culpable neglect on their part and that the value of the vehicle (or vehicles), if sold, would amount to over half of the estimated recoverable amount;¹²
- The court may not make an order in relation to a vehicle used by a disabled driver;¹³ a vehicle used for police, fire or ambulance purposes; or a vehicle used by a doctor on call with a British Medical Association badge or other health emergency badge;
- The court may make an order both pre and post conviction and in relation to both ICOs and CCOs;

¹¹ In consulting on the appropriate collection and enforcement mechanisms to be adopted under the CCMT scheme, the Department repeatedly emphasised that clamping orders were to be included among the suite of available options: see paragraphs 41 and 69 of the Consultation Paper/CP27/08)/paragraph 41; page 54 of the Initial Impact Assessment (annexed to the Consultation Paper); paragraph 155 of the CCMT Consultation Response; paragraph 16.2 of the Interim Impact Assessment and Q&A (page 12) published alongside that Response.

¹² As provided for in paragraph 5 of Schedule 2 to LASPO.

¹³ As provided for in paragraph 7 of Schedule 2 to LASPO.

- The court may not make an order for sale of the vehicle until the defendant has been convicted and a specified period of no less than one month has elapsed following seizure of the vehicle;
- If having been convicted, the defendant seeks leave to appeal against the conviction, the LSC will postpone an application for an order for sale until the application has been determined; if leave to appeal is subsequently granted, the LSC will postpone an application for an order for sale until the outcome of the appeal is known;¹⁴
- The defendant would have the opportunity to make representations to the court as to the adverse impact an order may have. If the defendant asserts that the order would have an adverse impact on them or a family member, they will need to support that assertion with evidence;
- The court may only make an order if it is satisfied that the order is both proportionate and appropriate in the circumstances;
- Payment for the release of the vehicle will reflect the outstanding amount owed under the contribution order along with an administrative charge to cover the costs incurred in connection with the enforcement action;
- Provision will be made for the urgent release of a vehicle clamped in error.

¹⁴ Pending the outcome of an application for leave to appeal or of an appeal hearing itself, the LSC may still continue to enforce unpaid contributions under an ICO which fell due before conviction.

Legal Aid, Sentencing and Punishment of Offenders Act 2012

Schedule 2 – Criminal Legal Aid: Motor Vehicle Orders

Amounts payable in connection with criminal legal aid

1(1) This Schedule makes provision about the recovery of—

(a) an amount payable in connection with the provision of criminal legal aid which is unpaid after the time when it is required to be paid under section 23,

(b) interest in respect of such an amount which is required to be paid under that section, and

(c) an amount required to be paid under section 24 in respect of costs incurred in connection with the enforcement of an obligation to pay an amount or interest described in paragraph (a) or (b).

(2) Such amounts and interest are referred to in this Schedule as “relevant overdue amounts”.

(3) In this Schedule “criminal legal aid” means—

(a) advice and assistance required to be made available under section 13 or 15, and

(b) representation required to be made available made under section 16.

Recovery by means of motor vehicle orders

2(1) Regulations under section 24 may authorise a court to make motor vehicle orders in respect of an individual for the purpose of enabling a relevant overdue amount required to be paid by the individual to be recovered by the person to whom the amount is due.

(2) Regulations that make such provision are referred to in this Schedule as “MVO regulations”.

(3) In this Schedule “court” means the High Court, a county court or a magistrates’ court.

Motor vehicle orders

3(1) In this Schedule “motor vehicle order” means—

(a) a clamping order;

(b) a vehicle sale order.

(2) A clamping order is an order—

- (a) that a motor vehicle be fitted with an immobilisation device (“clamped”), and
- (b) which complies with any requirements that are imposed by MVO regulations with respect to the making of clamping orders.

(3) A vehicle sale order is an order that—

- (a) a motor vehicle which is the subject of a clamping order is to be sold or otherwise disposed of in accordance with provision made by MVO regulations, and
- (b) any proceeds are to be applied, in accordance with MVO regulations, in discharging the individual’s liability in respect of the relevant overdue amount.

(4) MVO regulations may make provision in connection with—

- (a) the procedure for making motor vehicle orders,
- (b) the matters which must be included in such orders,
- (c) the fitting of immobilisation devices,
- (d) the fixing of notices to motor vehicles to which immobilisation devices have been fitted and the content of such notices,
- (e) the removal and storage of motor vehicles,
- (f) the release of motor vehicles from immobilisation devices or from storage, including the conditions to be met before a motor vehicle is released,
- (g) the sale or other disposal of motor vehicles not released,
- (h) the imposition of charges in connection with the fitting of immobilisation devices,
- (i) the imposition of charges in connection with the removal, storage, release (whether from immobilisation devices or from storage), sale or disposal of motor vehicles, and
- (j) the recovery of charges described in paragraphs (h) and (i), including provision for them to be recovered from the proceeds of sale of motor vehicles.

(5) In this Schedule—

- “immobilisation device” has the same meaning as in section 104(9) of the Road Traffic Regulation Act 1984 (immobilisation of vehicles illegally parked);
- “motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads, except that section 189 of the Road Traffic Act 1988 (exceptions for certain vehicles) applies for the

purposes of this Schedule as it applies for the purposes of the Road Traffic Acts.

Applications

4. MVO regulations must provide that a motor vehicle order may be made in relation to a relevant overdue amount only on the application of the person to whom the amount is due.

Matters of which court to be satisfied

5(1) MVO regulations must provide that, before a court makes a clamping order in respect of an individual, it must be satisfied—

(a) that the failure to pay the relevant overdue amount is attributable to the individual's wilful refusal or culpable neglect, and

(b) that the value of the motor vehicle or vehicles to be clamped, if sold, would be likely to be an amount which exceeds half of the estimated recoverable amount.

(2) In this paragraph "the estimated recoverable amount" means the aggregate of—

(a) the relevant overdue amount, and

(b) the amount of the likely charges due under MVO regulations in relation to the motor vehicle or vehicles.

Ownership of motor vehicles

6(1) MVO regulations must provide that a clamping order must not be made except in relation to a motor vehicle which is owned by the individual liable to pay the relevant overdue amount.

(2) For this purpose a motor vehicle is owned by an individual if the individual has an interest in the motor vehicle.

Motor vehicles used by disabled persons

7(1) MVO regulations must provide that an immobilisation device may not be fitted to a motor vehicle—

(a) which displays a current disabled person's badge or a current recognised badge, or

(b) in relation to which there are reasonable grounds for believing that it is used for the carriage of a disabled person.

(2) In this paragraph—

- “disabled person’s badge” means a badge issued, or having effect as if issued, under regulations under section 21 of the Chronically Sick and Disabled Persons Act 1970 (badges for display on motor vehicles used by disabled persons);
- “recognised badge” has the meaning given by section 21A of the Chronically Sick and Disabled Persons Act 1970 (recognition of badges issued outside Great Britain).

Restrictions on making vehicle sale orders

8. MVO regulations must provide that, where a motor vehicle has been clamped under a clamping order, no vehicle sale order may be made in respect of the motor vehicle before the end of a prescribed period.