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STATUTORY INSTRUMENTS

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**2015 No. 868**

**The Restraint Orders (Legal Aid Exception and Relevant Legal Aid Payments) Regulations 2015**

**PART 3**

**Relevant legal aid payments: continuation of restraint**

**Interpretation**

**3.** In this Part “the relevant offence” and “the specified person” have the meaning given in regulation 4.

**Application of modifications of the 2002 Act in relation to restraint orders and relevant legal aid payments**

**4.—(1)** Regulation 5 (which modifies Part 2 of the 2002 Act) has effect in relation to cases where all of the following conditions are satisfied.

(2) The first condition is that a restraint order has been made and contains a legal aid exception.

(3) The second condition is that, after that restraint order was made but before its discharge—

(a) a confiscation order was made against the person specified in the restraint order (“the specified person”), and

(b) that confiscation order has been discharged or satisfied.

(4) The third condition is that the restraint order and the confiscation order were both made in proceedings that were entirely or partly for the same offence (“the relevant offence”).

(5) The fourth condition is that, when the confiscation order was discharged or satisfied—

(a) the person specified in the restraint order was under an obligation to make a relevant legal aid payment in connection with services provided entirely or partly in relation to the relevant offence, and

(b) there was realisable property to which the restraint order applied.

(6) In regulation 5, the references to an obligation to make a relevant legal aid payment in connection with services provided in relation to the relevant offence are to any such obligation, whether it arises before or after the confiscation order was discharged or satisfied.

**Modifications of the 2002 Act in relation to restraint orders and relevant legal aid payments**

**5.—(1)** In a case where this regulation has effect, Part 2 of the 2002 Act (confiscation: England and Wales) applies with the following modifications.

(2) Section 42(6) (application, discharge and variation)(1) applies as if for “on the conclusion of the proceedings or of the application (as the case may be)” there were substituted “if the specified person has satisfied his or her obligation to make a relevant legal aid payment in connection with services provided entirely or partly in relation to the relevant offence”.

(3) Section 47B (conditions for exercise of powers to seize property)(2) applies as if for subsection (5) there were substituted—

“(5) The fourth condition is that a restraint order made in connection with proceedings for an indictable offence in England and Wales is in force in respect of any realisable property.

(4) Section 47C(1)(a) (power to seize property)(3) applies as if for the words “for satisfying any confiscation order that has been or may be made against the defendant” there were substituted “for satisfying the obligation of the specified person to make a relevant legal aid payment in connection with services provided entirely or partly in relation to the relevant offence”.

(5) Section 54 (enforcement receivers)(4) applies as if—

(a) in subsection (2)(c), for “the confiscation order” there were substituted “the obligation of the specified person to make a relevant legal aid payment in connection with services provided entirely or partly in relation to the relevant offence”, and

(b) in subsection (3), for “the amount payable under the confiscation order has been fully paid” there were substituted “the obligation described in subsection (2)(c) has been satisfied”.

(6) Section 63(3)(a) (discharge and variation of orders relating to management receivers)(5) applies as if for “on the conclusion of the proceedings or of the application (as the case may be)” there were substituted “if the specified person has satisfied his or her obligation to make a relevant legal aid payment in connection with services provided entirely or partly in relation to the relevant offence”.

(7) Section 67D (proceeds of realisation)(6) applies as if—

(a) in subsection (2)(c), for “the amount payable under the confiscation order” there were substituted “the obligation of the specified person to make a relevant legal aid payment in connection with services provided in relation to the relevant offence”, and

(b) in subsection (3), for “the amount payable under the confiscation order has been fully paid” there were substituted “the obligation described in subsection (2)(c) has been satisfied”.

(8) In section 69(2) (powers of court and receiver)(7), each of paragraphs (a) and (c) apply as if for the words from “any confiscation order that has been or may be made against the defendant” there were substituted “any obligation of the specified person to make a relevant legal aid payment in connection with services provided entirely or partly in relation to the relevant offence”.

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(1) Section 42 has been amended by sections 74(2)(a) and 92 of, and paragraphs 1 and 23 of Schedule 8 and Schedule 14 to, the Serious Crime Act 2007 (c. 27).

(2) Section 47B is inserted by section 55 of the Policing and Crime Act 2009 (c. 26) on a date to be appointed.

(3) Section 47C is inserted by section 55 of the Policing and Crime Act 2009 (c. 26) on a date to be appointed.

(4) Section 54 has been amended by section 109(1) of, and paragraph 407 of Schedule 8 to, the Courts Act 2003 (c. 39).

(5) Section 63 has been amended by sections 74(2)(a) and 92 of, and paragraphs 1 and 30 of Schedule 8 and Schedule 14 to, the Serious Crime Act 2007.

(6) Section 67D is inserted by section 58 of the Policing and Crime Act 2009 (c. 26) on a date to be appointed.

(7) Section 69 has been amended by sections 74(2)(a) and 92 of, and paragraphs 1 and 34 of Schedule 8 to, the Serious Crime Act 2007. It has also been amended by sections 55 and 112 of, and paragraphs 66 and 67 of Schedule 7 to, the Policing and Crime Act 2009. These amendments will be commenced on a date to be appointed.