



Criminal Justice and Immigration Act 2008

2008 CHAPTER 4

PART 4

OTHER CRIMINAL JUSTICE PROVISIONS

Criminal legal aid

56 Provisional grant of right to representation

- (1) Part 1 of the Access to Justice Act 1999 (c. 22) is amended as follows.
- (2) In section 14(1) (representation)—
 - (a) after “criminal proceedings” insert “and about the provisional grant of a right to representation in prescribed circumstances”;
 - (b) after “granted” insert “, or provisionally granted,”.
- (3) In section 15(1) (selection of representative) after “granted” insert “, or provisionally granted,”.
- (4) In section 25(9) (orders, regulations and directions subject to affirmative resolution procedure) for “paragraph 2A” substitute “paragraph 1A, 2A,”.
- (5) In section 26 (interpretation) after the definition of “representation” insert—

“and, for the purposes of the definition of “representation”, “proceedings” includes, in the context of a provisional grant of a right to representation, proceedings that may result from the investigation concerned.”
- (6) After paragraph 1 of Schedule 3 (individuals to whom right may be granted) insert—

Status: This is the original version (as it was originally enacted).

“Individuals to whom right may be provisionally granted

- 1A (1) Regulations may provide that, in prescribed circumstances, and subject to any prescribed conditions, a right to representation may be provisionally granted to an individual where—
- (a) the individual is involved in an investigation which may result in criminal proceedings, and
 - (b) the right is so granted for the purposes of criminal proceedings that may result from the investigation.
- (2) Regulations under sub-paragraph (1) may, in particular, make provision about—
- (a) the stage in an investigation at which a right to representation may be provisionally granted;
 - (b) the circumstances in which a right which has been so granted—
 - (i) is to become, or be treated as if it were, a right to representation under paragraph 1, or
 - (ii) is to be, or may be, withdrawn.”
- (7) In paragraph 2A of Schedule 3 (grant of right by Commission) at the end of sub-paragraph (1)(b) insert—
- “(c) provide that any provisional grant of a right to representation, or any withdrawal of a right so granted, in accordance with regulations under paragraph 1A is to be made by the Commission.”
- (8) In paragraph 3A(1) of Schedule 3 (form of the grant of a right to representation) after “grant” insert “, or provisional grant,”.
- (9) In paragraph 3B of Schedule 3 (financial eligibility)—
- (a) in sub-paragraph (1)—
 - (i) after “grant” insert “, or provisionally grant,”;
 - (ii) after “granted” insert “, or provisionally granted,”;
 - (b) in sub-paragraph (2)(a), after “granted” insert “, or provisionally granted,”.
- (10) In paragraph 4 of Schedule 3 (appeals) at the end insert—
- “This paragraph does not apply in relation to any right to representation granted in accordance with paragraph 1A.”
- (11) In paragraph 5 of Schedule 3 (criteria for grant of right)—
- (a) in sub-paragraph (1), after “grant” insert “, or provisionally grant,”;
 - (b) after sub-paragraph (2) insert—

“(2A) For the purposes of sub-paragraph (2), “proceedings” includes, in the context of a provisional grant of a right to representation, proceedings that may result from the investigation in which the individual is involved.”;
 - (c) in sub-paragraph (4), after “grant” insert “, or provisional grant,”.

57 Disclosure of information to enable assessment of financial eligibility

- (1) The Access to Justice Act 1999 (c. 22) is amended as follows.

- (2) In section 25(9) (orders, regulations and directions subject to affirmative resolution procedure), for “or 4” substitute “4 or 6”.
- (3) In Schedule 3 (criminal defence service: right to representation), after paragraph 5 insert—

“Information requests

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- (1) The relevant authority may make an information request to—
 - (a) the Secretary of State, or
 - (b) the Commissioners,for the purpose of facilitating the making of a decision by the authority about the application of paragraph 3B(1) or (2), or regulations under paragraph 3B(3), in relation to an individual.
 - (2) An information request made to the Secretary of State is a request for the disclosure of some or all of the following information—
 - (a) the individual’s full name;
 - (b) the individual’s address;
 - (c) the individual’s date of birth;
 - (d) the individual’s national insurance number;
 - (e) the individual’s benefit status;
 - (f) information of any description specified in regulations.
 - (3) An information request made to the Commissioners is a request for the disclosure of some or all of the following information—
 - (a) whether or not the individual is employed;
 - (b) the name and address of the employer (if the individual is employed);
 - (c) the individual’s national insurance number;
 - (d) information of any description specified in regulations made with the agreement of the Commissioners.
 - (4) The information that may be specified under subsection (3)(d) includes, in particular, information relating to the individual’s income (as defined in the regulations) for a period so specified.
 - (5) On receiving an information request, the Secretary of State or (as the case may be) the Commissioners may disclose the information requested to the relevant authority.

Restrictions on disclosure

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- (1) A person to whom information is disclosed under paragraph 6(5), or this sub-paragraph, may disclose the information to any person to whom its disclosure is necessary or expedient in connection with facilitating the making of a decision by the relevant authority about the application of paragraph 3B(1) or (2), or regulations under paragraph 3B(3), in relation to an individual.
 - (2) A person to whom such information is disclosed commits an offence if the person—

Status: This is the original version (as it was originally enacted).

- (a) discloses or uses the information, and
 - (b) the disclosure is not authorised by sub-paragraph (1) or (as the case may be) the use is not for the purpose of facilitating the making of such a decision as is mentioned in that sub-paragraph.
- (3) But it is not an offence under sub-paragraph (2)—
- (a) to disclose any information in accordance with any enactment or order of a court or for the purposes of any proceedings before a court; or
 - (b) to disclose any information which has previously been lawfully disclosed to the public.
- (4) It is a defence for a person charged with an offence under sub-paragraph (2) to prove that the person reasonably believed that the disclosure or use was lawful.
- (5) A person guilty of an offence under sub-paragraph (2) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both.
- (6) In sub-paragraph (5)(b) the reference to 12 months is to be read as a reference to 6 months in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003.
- (7) Nothing in section 20 applies in relation to the disclosure of information to which sub-paragraph (1) applies.

Paragraphs 6 and 7: supplementary

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- (1) This paragraph applies for the purposes of paragraphs 6 and 7.
 - (2) “Benefit status”, in relation to an individual, means whether or not the individual is in direct or indirect receipt of any prescribed benefit or benefits and, if so (in the case of each benefit)—
 - (a) which benefit the individual is so receiving, and
 - (b) (in prescribed cases) the amount the individual is so receiving by way of the benefit.
 - (3) “The Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs.
 - (4) “Information” means information held in any form.
 - (5) Nothing in paragraph 6 or 7 authorises the making of a disclosure which contravenes the Data Protection Act 1998.”

58 Pilot schemes

- (1) The Access to Justice Act 1999 (c. 22) is amended as follows.
- (2) In section 17A (contribution orders) omit subsection (5) (piloting of regulations).

(3) After section 18 insert—

“18A Pilot schemes

- (1) This section applies to the following instruments—
 - (a) any order under section 14 or paragraph 5 of Schedule 3,
 - (b) any regulations under section 12, 13, 15, 17 or 17A or any of paragraphs 1A to 5 of Schedule 3, and
 - (c) any regulations under section 22(5) having effect in relation to the Criminal Defence Service.
- (2) Any instrument to which this section applies may be made so as to have effect for a specified period not exceeding 12 months.
- (3) But if the Lord Chancellor thinks that it is necessary or expedient for either of the purposes in subsection (4), the period specified in the instrument—
 - (a) may in the first instance be a period not exceeding 18 months;
 - (b) may be varied so as to become a period not exceeding 18 months.
- (4) The purposes are—
 - (a) ensuring the effective operation of the instrument;
 - (b) co-ordinating the operation of the instrument with the operation of any other provision made under an enactment relating to any aspect of the criminal justice system.
- (5) The period for the time being specified in an instrument to which this section applies may also be varied so that the instrument has effect for such further period as the Lord Chancellor thinks necessary for the purpose of securing that it remains in operation until the coming into force of any order or regulations made under the same provision of this Act that will have effect—
 - (a) generally, or
 - (b) for purposes wider than those for which the instrument has effect.
- (6) In the following provisions of this section “pilot scheme” means any instrument which, in accordance with subsections (2) to (5), is to have effect for a limited period.
- (7) A pilot scheme may provide that its provisions are to apply only in relation to—
 - (a) one or more specified areas or localities;
 - (b) one or more specified descriptions of court;
 - (c) one or more specified offences or descriptions of offence;
 - (d) one or more specified classes of person;
 - (e) persons selected—
 - (i) by reference to specified criteria; or
 - (ii) on a sampling basis.
- (8) A pilot scheme may make consequential or transitional provision with respect to the cessation of the scheme on the expiry of the specified period (or that period as varied under subsection (3)(b) or (5)).

Status: This is the original version (as it was originally enacted).

(9) A pilot scheme may be replaced by a further pilot scheme making the same or similar provision.”

(4) In section 25 (regulations, orders and directions) after subsection (9A) insert—

“(9B) No order or regulations which, by virtue of section 18A, is or are to have effect for a limited period shall be made unless a draft of the order or regulations has been laid before, and approved by a resolution of, each House of Parliament.”