

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

SUMMARY

Part 1: Legal Aid

17. **Part 1** of the Act abolishes the LSC and places a duty on the Lord Chancellor, subject to the provisions of Part 1, to secure the availability of civil and criminal legal aid. The intention is that an executive agency within the Ministry of Justice will administer the delivery of legal aid services in England and Wales. However, in relation to decision-making in individual cases, the Act requires the Lord Chancellor to designate a civil servant to be the Director of Legal Aid Casework (“the Director”). The Director will have statutory responsibility for taking decisions on legal aid in individual cases. The Act prevents the Lord Chancellor from giving directions or guidance to the Director in relation to individual cases.
18. Provisions in Part 1 ensure that, together with the powers the Lord Chancellor has as a Minister of the Crown, the Lord Chancellor has power to enter into appropriate arrangements with others for them to provide legal aid. The Lord Chancellor will have power to set quality standards for those providing legal aid services and to make arrangements for accreditation and monitoring of such providers. (the LSC currently have accreditation schemes such as the Specialist Quality Mark, responsibility for which will fall to the Lord Chancellor once the LSC is abolished). The Lord Chancellor will have power to make provision in regulations about the payment of remuneration to those providing legal aid services.

Civil legal aid

19. **Part 1** of the Act defines civil legal services as encompassing advice, assistance and representation by legal professionals and also the services of non-legal professionals, including for example mediation and other forms of dispute resolution.
20. Part 1 of Schedule 1 describes the civil legal services that can generally be made available under the arrangements for civil legal aid.
21. The Act also provides the Director with the power to require civil legal services not mentioned in Schedule 1 to be made available, *either* where the Director considers that it is necessary to make the services available because the failure to provide legal services to an individual would be a breach of the individual’s Convention rights (within the meaning of the Human Rights Act 1998), or any rights of the individual to the provision of legal services that are enforceable EU rights, *or* where the Director considers that it is appropriate to make services available, in the particular circumstances of the case, having regard to any risk that failure to do so would result in a breach of such rights.
22. The Act requires the Director to determine whether an individual qualifies for civil legal services by reference to their financial resources and the criteria set out in regulations prepared by the Lord Chancellor. The Act lists the factors which the Lord Chancellor

must consider in setting those criteria. They are similar to the factors that the LSC is currently required to consider when setting the Funding Code criteria (see section 8(2) of the Access to Justice Act 1999).

23. The Act also provides the Lord Chancellor with a power to make regulations about the making and withdrawal of determinations by the Director about civil legal aid, including regulations about the means by which an application for legal aid must be made. The regulations must make provision about the review of determinations and may make provision about appeals against determinations.

Criminal legal aid

24. **Part 1** of the Act makes provision for individuals in custody at a police station or facing criminal investigation to be able to secure the provision of advice and assistance, including advocacy (usually by a duty solicitor). Determinations about whether individuals qualify for such services must be made having regard, in particular, to the interests of justice.
25. The Act also provides for individuals to be provided with representation for criminal proceedings. Whether such services should be provided is to be determined having regard to the interests of justice and, where provided for in regulations, following an assessment of the individual's financial resources. Determinations about whether an individual qualifies for criminal legal aid will be made by the Director or by a court. Provisional determinations may be made in favour of individuals involved in a criminal investigation. Such a determination may be made, for example, where plea negotiations are initiated by a prosecutor under the guidelines issued by the Attorney General.

Contributions and costs

26. **Part 1** of the Act makes provision about determining the financial eligibility of individuals for civil and criminal legal aid. It also makes provision about when individuals can be required to make payments in connection with the provision of civil or criminal legal aid and about the enforcement of such requirements. The Act provides for a statutory charge over property that a legally aided person recovers or preserves, or over costs payable to them, in civil proceedings and the settlement of civil disputes. It also makes provision about costs in civil proceedings, including limiting the costs that can be awarded against a person 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.

Providers of services

27. **Part 1** of the Act enables the Lord Chancellor to restrict the choice of provider in certain conditions, for example to providers who hold a contract with the Lord Chancellor to provide such services. In publicly funded cases the professional relationship between provider and client is unaffected. The Act restricts payments to providers of legal aid from other sources and enables regulations to provide that, where legal aid is withdrawn, the provider is still to be paid for work undertaken.
28. The Act provides for a code of conduct for any civil servants, or employees of a body established by the Lord Chancellor, who provide legal aid services. The code is to be published and laid before Parliament.