

# LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part 1: Legal Aid**

#### **Supplementary**

#### *Schedule 3: Legal aid for legal persons*

212. *Schedule 3* provides for the possibility that civil and criminal legal aid may be made available to a legal person, that is a legal entity other than an individual, for example a body corporate. All determinations in relation to legal aid for legal persons will be made by the Director.
213. *Paragraph 2* defines an exceptional case determination for the purposes of this Schedule. This is the same as an exceptional case determination under section 10(3).
214. *Paragraph 3(1)* makes provision about when civil legal services are to be made available to a legal person. First, the Director must have made (and not have withdrawn) an exceptional case determination in relation to the person and the services. Second, the Director must have determined that the person qualifies for the services in accordance with Part 1 of the Act (and not withdrawn that determination). *Paragraph 3(2)* requires the Director to make such a determination in accordance with the means testing provisions (section 21) and the criteria in regulations made under section 11(1)(b). It also requires a determination that a legal person qualifies for civil legal services to specify the type of service and the matters in relation to which the services are to be available. *Paragraph 3(3)* applies the powers in section 12(2) to (6) to make provision about procedures for the making and withdrawal of determinations.
215. *Paragraph 4(1) and (2)* enables the Lord Chancellor to make regulations enabling prescribed advice and assistance for criminal proceedings to be made available to legal persons who are involved in investigations which may lead to criminal proceedings and to legal persons who are before a court, tribunal or other person in criminal proceedings. In order for such prescribed advice and assistance to be made available, prescribed conditions must be met, the Director must have made (and not withdrawn) an exceptional case determination in relation to the legal person and the proceedings, and the Director must have determined that the legal person qualifies for such advice and assistance in accordance with the regulations (and not withdrawn that determination).
216. The effect of *paragraph 4(3)* is that, when making the regulations, the Lord Chancellor must have regard in particular to the interests of justice and the regulations must require the Director to make determinations having regard in particular to the interests of justice and may require the Director to do so in accordance with the means testing provisions (section 21) and in accordance with criteria set out in the regulations. Paragraph 4(3)

also applies provisions in section 15(6) to (9) about procedures for the making and withdrawal of determinations.

217. *Paragraph 5* makes provision about representation for the purposes of criminal proceedings for legal persons. In order for such representation to be made available, the legal person must be a description of legal person specified in relation to those proceedings or the proceedings must involve resisting an appeal to the Crown Court in a private prosecution case. The conditions for representation for criminal proceedings being made available are: *first (paragraph 5(2)(a))*, that the Director has made (and not withdrawn) an exceptional case determination, and *second (paragraph 5(2)(b))*, that the Director has determined (provisionally or otherwise) that the legal person qualifies for representation in accordance with Part 1 of the Act (and has not withdrawn the determination). *Paragraph 5(5)* requires the Director to make an exceptional case determination in accordance with the interests of justice. *Paragraph 5(6)* requires the Director to make the determination that a legal person qualifies for representation in accordance with the means testing provisions (section 21) and in accordance with the interests of justice. *Paragraph 5(12)* provides that the Lord Chancellor may by regulations prescribe the circumstances in which making representation available to a legal person for the purpose of criminal proceedings is to be taken as being in the interests of justice.
218. *Paragraph 5(3)* provides that where a legal person qualifies for representation, that representation will cover any preliminary or incidental proceedings and the effect of *sub-paragraph (4)* is that regulations made by the Lord Chancellor under section 16(4) and (5) about whether proceedings are or are not to be regarded as preliminary or incidental apply in relation to legal persons unless those regulations provide otherwise.
219. *Paragraph 5(7)* applies the provisions in section 18(2) to (7) about procedures for the making and withdrawal of determinations made by the Direction under paragraph 5(2).
220. *Paragraph 5(8)* provides that the Director may not make a provisional determination under *paragraph 5(2)(b)* that the legal person qualifies for representation in accordance with Part 1 of the Act unless regulations made under *paragraph 5(9)* provide for this.
221. *Paragraph 5(9)* enables the Lord Chancellor to make regulations authorising the Director to make a provisional determination that a legal person qualifies for representation for the purposes of criminal proceedings in the circumstances described in *sub-paragraph (9)(a) to (c)*. *Paragraph 5(10)* applies *subsections (2) and (3)* of section 20 to regulations made under *paragraph 5(9)*.
222. *Paragraphs 6, 7 and 8* ensure that the means testing provisions (section 21) and provisions about contributions and costs (section 23, 24, 25 and 26 and Schedule 2) apply for the purposes of determinations about whether a legal person qualifies for legal aid. *Paragraph 9* ensures that section 27 (choice of provider of services etc), section 28 (position of providers of services), section 29 (code of conduct) and section 30 (position of other parties, courts and tribunals) apply in relation to services that are provided to a legal person under Part 1 of the Act. *Paragraph 10* ensures that sections 34 (restriction on disclosure of other information), section 35 (exceptions from restrictions under section 34) and section 41 (orders, regulations and directions) apply in the context of legal aid for legal persons as if references to an individual included a legal person.