

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 1: Legal Aid

Criminal legal aid

Section 16: Representation for criminal proceedings

141. *Section 16* identifies the circumstances and conditions under which representation for the purposes of criminal proceedings is to be made available.
142. *Subsection (1)* provides that representation is to be available if the individual is a specified individual in relation to the proceedings (see *subsection (6)*) and the Director or, as the case may be, a court has determined, provisionally or otherwise, that the individual qualifies for representation.
143. *Subsection (2)* requires representation for the purposes of criminal proceedings to be made available on appeal to the Crown Court to private prosecutors whom the Director or court has determined, provisionally or otherwise, qualify for such representation.
144. *Subsection (3)* provides that where an individual qualifies for representation for the purposes of criminal proceedings, representation is also to be made available for the purposes of any related bail proceedings as well as any preliminary or incidental proceedings. *Subsection (4)* enables the Lord Chancellor in secondary legislation to specify whether proceedings are or are not preliminary or incidental for this purpose and also to make exceptions to *subsection (3)*. Under the current regulations made under the Access to Justice Act 1999, for example, proceedings dealing with an individual for non-compliance with a Crown Court order are not to be regarded as incidental.
145. *Subsection (5)* provides that regulations under *subsection (4)(b)* making exceptions from *subsection (3)* may make provision by reference to proceedings that take place more than a specific period of time before or after the main proceedings. This would allow, for example, a period of time to be specified after which the original determination on representation would not cover advice on an appeal or after which a new determination would be needed for the purposes of applying to vary or appeal against an order made at the conclusion of the proceedings.