

SCHEDULES

SCHEDULE 3

Section 31

LEGAL AID FOR LEGAL PERSONS

Legal persons

- 1 In this Schedule “legal person” means a person other than an individual.

Exceptional case determinations

- 2 (1) For the purposes of this Schedule, in relation to a legal person and civil legal services, advice, assistance or representation for the purposes of criminal proceedings, an exceptional case determination is a determination that sub-paragraph (2) or (3) is satisfied.
- (2) This sub-paragraph is satisfied if it is necessary to make the services available to the legal person under this Part because failure to do so would be a breach of—
- (a) the person’s Convention rights (within the meaning of the Human Rights Act 1998), or
 - (b) any rights of the person to the provision of legal services that are enforceable EU rights.
- (3) This sub-paragraph is satisfied if it is appropriate to make the services available to the legal person under this Part, in the particular circumstances of the case, having regard to any risk that failure to do so would be such a breach.

Civil legal aid

- 3 (1) Civil legal services are to be available to a legal person under this Part only if the Director—
- (a) has made an exceptional case determination in relation to the person and the services, and
 - (b) has determined that the person qualifies for the services in accordance with this Part,
- (and has not withdrawn either determination).
- (2) Sections 11 and 12(1) apply in relation to a determination under sub-paragraph (1) (b) as they apply in relation to a determination under section 10(2)(b).
- (3) Subsections (2) to (6) of section 12 apply in relation to a determination under this paragraph as they apply in relation to a determination under section 10.
- (4) In sections 11 and 12 as applied by this paragraph, references to an individual include a legal person.

Advice and assistance for criminal proceedings

- 4 (1) Regulations may provide that prescribed advice and assistance is to be available under this Part to a legal person described in sub-paragraph (2) if—
- (a) prescribed conditions are met,
 - (b) the Director has made an exceptional case determination in relation to the person and the advice and assistance (and has not withdrawn that determination), and
 - (c) the Director has determined that the legal person qualifies for such advice and assistance in accordance with the regulations (and has not withdrawn that determination).
- (2) Those legal persons are—
- (a) legal persons who are involved in investigations which may lead to criminal proceedings, and
 - (b) legal persons who are before a court, tribunal or other person in criminal proceedings.
- (3) Subsections (3) to (9) of section 15 apply in relation to regulations under this paragraph (and decisions made under such regulations) as they apply in relation to regulations under that section (and decisions made under such regulations).
- (4) In those subsections as applied by this paragraph, references to an individual include a legal person.
- (5) In this paragraph “assistance” includes, in particular, assistance in the form of advocacy.

Representation for criminal proceedings

- 5 (1) Representation for the purposes of criminal proceedings is to be available under this Part to a legal person if—
- (a) the person is a specified legal person in relation to the proceedings, or
 - (b) the proceedings involve the person resisting an appeal to the Crown Court otherwise than in an official capacity,
- and the conditions in sub-paragraph (2) are met.
- (2) Those conditions are that the Director—
- (a) has made an exceptional case determination in relation to the legal person and representation for the purposes of the proceedings, and
 - (b) has determined (provisionally or otherwise) that the legal person qualifies for such representation in accordance with this Part,
- (and has not withdrawn either determination).
- (3) Where a legal person qualifies under this Part for representation for the purposes of criminal proceedings, representation is also to be available to the legal person for the purposes of any preliminary or incidental proceedings.
- (4) Regulations under section 16(4) and (5) apply for the purposes of sub-paragraph (3) as they apply for the purposes of section 16(3), except to the extent that the regulations provide otherwise.
- (5) Section 17(1)(b) applies in relation to an exceptional case determination under sub-paragraph (2)(a) as it applies in relation to a determination under section 16.

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

- (6) Paragraphs (a) and (b) of section 17(1) apply in relation to a determination under sub-paragraph (2)(b) as they apply in relation to a determination under section 16.
- (7) Subsections (2) to (7) of section 18 apply in relation to a determination under sub-paragraph (2) (and a decision in relation to the interests of justice for the purposes of such a determination) as they apply in relation to a determination under section 16 (and a decision for the purposes of such a determination).
- (8) The Director may not make a provisional determination under sub-paragraph (2)(b) unless authorised to do so by regulations under sub-paragraph (9).
- (9) Regulations may provide that the Director may make a provisional determination that a legal person qualifies under this Part for representation for the purposes of criminal proceedings where—
 - (a) the legal person is involved in an investigation which may result in criminal proceedings,
 - (b) the determination is made for the purposes of criminal proceedings that may result from the investigation, and
 - (c) any prescribed conditions are met.
- (10) Subsections (2) and (3) of section 20 apply in relation to regulations under sub-paragraph (9) (and determinations and decisions made under such regulations) as they apply in relation to regulations under that section (and determinations and decisions made under such regulations).
- (11) In sections 17, 18 and 20 as applied by this paragraph—
 - (a) references to an individual include a legal person,
 - (b) references to the relevant authority have effect as if they were references to the Director, and
 - (c) the reference in section 20(2)(d) to a determination made by the Director or a court in reliance on section 18 or 19 has effect as if it were a reference to a determination by the Director under sub-paragraph (2)(b) made otherwise than in reliance on regulations under sub-paragraph (9).
- (12) Regulations may prescribe circumstances in which making representation available to a legal person for the purposes of criminal proceedings is to be taken to be in the interests of justice for the purposes of a determination under this paragraph.
- (13) In this paragraph “specified legal person”, in relation to criminal proceedings, means a description of legal person specified in regulations in relation to those proceedings.

Financial resources

- 6 Section 21 applies for the purposes of a determination under paragraph 3(1)(b) or 5(2)(b), or under regulations under paragraph 4 or 5(9), as if the references to an individual included a legal person.

Contributions and costs

- 7 In sections 23, 24, 25 and 26 and Schedule 2, references to an individual include a legal person to whom services are made available under this Part in accordance with this Schedule or regulations under this Schedule.

- 8 In Schedule 2, references to criminal legal aid include advice, assistance and representation required to be made available under paragraph 4 or 5 of this Schedule.

Providers of services etc

- 9 (1) Section 27 applies in relation to the provision of services to a legal person in accordance with this Schedule or regulations under this Schedule as it applies in relation to the provision of services to an individual under this Part.
- (2) In that section as applied by this paragraph—
- (a) references to an individual include a legal person,
 - (b) the reference to a determination under section 16 includes a determination under paragraph 5(2)(b) of this Schedule, and
 - (c) the reference to regulations under section 15 includes regulations under paragraph 4 of this Schedule.
- (3) In sections 28, 29 and 30, references to an individual include a legal person to whom services are made available under this Part in accordance with this Schedule or regulations under this Schedule.

Supplementary matters

- 10 In sections 34, 35 and 41(2), references to an individual include a legal person to whom services are made available under this Part in accordance with this Schedule or regulations under this Schedule or who is seeking the provision of such services.