
EXPLANATORY NOTE

(This note is not part of the Regulations)

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential, Transitional and Saving Provisions) Regulations 2013 (“the Regulations”) make transitional and saving provisions, and consequential amendments to secondary legislation, in connection with the replacement of the legal aid scheme under Part 1 of the Access to Justice Act 1999 (c. 12) (“the 1999 Act”) by the provisions of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) (“the Act”). Part 1 of the Act (with the exception of section 19(4)) is commenced on 1st April 2013 by article 3(a) and (e) to (i) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 6) Order 2013 (S.I. 2013/453 (C. 19); “the Commencement No. 6 Order”).

The Regulations make provision about the treatment of legal aid applications made before 1st April 2013 when Part 1 of the Act comes into force (referred to in the Regulations as pre-commencement cases). A pre-commencement case is defined in regulation 2 of the Regulations and regulations 3 to 5 make further provision about pre-commencement cases.

Regulation 6(1) provides that, subject to regulation 6(4) and (5) and subject to regulations 7 to 13, the provisions in Part 1 of the Act commenced by article 3(a) and (e) to (i) of the Commencement No. 6 Order, with the exception of section 38(1) of the Act (abolition of Legal Services Commission), do not apply to pre-commencement cases. Part 1 of the 1999 Act and the Legal Aid Act 1988 and all orders, regulations, guidance, directions or authorisations made or given under them, in so far as they were in force immediately before 1st April 2013, continue to apply to a pre-commencement case, as does any power or duty to make orders or regulations or give guidance, directions or authorisations. Regulation 6(4) and (5) sets out provisions repealed or amended by Part 1 of the Act that do apply to pre-commencement cases.

On 1st April 2013 the Legal Services Commission (“the Commission”) will be abolished with the commencement of section 38(1) of the Act. Regulation 7 makes provision, in relation to a pre-commencement case, about the exercise of powers, duties and other functions of the Commission that were exercisable by the Commission before 1st April 2013. Regulation 7(1) and (2) provides for the exercise of powers etc under Part 1 of the 1999 Act by the Director and the Lord Chancellor. Regulation 7(3) does the same in relation to powers etc under the Legal Aid Act 1988. Regulation 7(4) and (5) allows the Director of Legal Aid Casework and the Lord Chancellor to authorise others to exercise powers, duties or other functions on their behalf and ensures that the delegations conferred by the Commission continue to have effect as such authorisations.

Regulation 9 makes provision about financial eligibility in a pre-commencement case under the Community Legal Service.

Regulation 10 modifies the provisions of, and made under, section 25 of the Act about the statutory charge in circumstances where both civil legal services under Part 1 of the Act and funded services under the Community Legal Service have been provided.

Regulation 11 provides that where an application for funding under the Criminal Defence Service is not considered until after 31st March 2013, it is treated as an application for criminal legal aid under Part 1 of the Act. Regulation 12 provides that where, in the same proceedings, there is both a grant of a right to representation under Part 1 of the 1999 Act and a determination for representation for the purposes of criminal proceedings under Part 1 of the Act, the Criminal Defence Service (Funding) Order 2007 (S.I. 2007/1174) applies and the Criminal Legal Aid (Remuneration) Regulations 2013 (S.I. 2013/435) do not apply.

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

Regulation 13 provides that an exclusion under section 42 of the Administration of Justice Act 1985 (c. 61) or section 47 of the Solicitors Act 1974 (c. 47) from providing services under the Legal Aid Act 1988 or from providing representation as part of the Criminal Defence Service also takes effect as an exclusion from criminal legal aid work under Part 1 of the Act.

Regulation 14 and the Schedule make consequential amendments to secondary legislation.