

2013 No. 9

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Criminal Legal Aid (General) Regulations 2013

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The Lord Chancellor makes the following Regulations^(a) in exercise of the powers conferred by sections 5(2) and (4), 13(4) and (5), 14(h), 15(1), (4) to (7) and (9), 16(4) and (6), 17(4), 18(3), (4) and (6), 28(1) and (3), 30(2) and (3), 41(1), (2) and (3) of, and paragraphs 4(1) and (3), 5(4), (7) and (13) and 9(3) of Schedule 3 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012^(b).

In making these Regulations, in accordance with section 15(3)^(c) of that Act, the Lord Chancellor has had regard, in particular, to the interests of justice.

^(a) Section 42(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) ("the Act") provides that in Part 1 of that Act "regulations" means regulations made by the Lord Chancellor.

^(b) 2012 c. 10.

^(c) Paragraph 4(3) of Schedule 3 to the Act (legal aid for legal persons: advice and assistance for criminal proceedings) applies section 15(3) of the Act to regulations made under paragraph 4 of Schedule 3.

PART 1

Interpretation and General

Citation and commencement

1. These Regulations may be cited as the Criminal Legal Aid (General) Regulations 2013 and come into force on 1st April 2013.

Interpretation

2. In these Regulations—

“the Act” means the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

“constable” means a member of a police force, an officer of the British Transport Police Force, an officer of Revenue and Customs and any other official who has a power of arrest by virtue of their office;

“criminal legal aid” means advice, assistance and representation made available under sections 13, 15 and 16 of the Act;

“provider” means a person with whom the Lord Chancellor has made an arrangement under section 2(1) of the Act (arrangements) for the provision of criminal legal aid;

“representation order” means a document which records a determination under section 16 of the Act (representation for criminal proceedings);

“Unit of Work” has the meaning given in paragraph 1.5 of Part A of the Specification to the 2010 Standard Crime Contract; and

“2010 Standard Crime Contract” means the contract so named between the Lord Chancellor and providers for the provision of criminal legal aid^(a).

Disregarding determinations

3. A determination may be disregarded if made in response to an application made otherwise than in accordance with these Regulations.

Delegation

4. A function of the Lord Chancellor or Director^(b) under these Regulations may be exercised by, or by an employee of, a person authorised for that purpose by the Lord Chancellor or Director respectively^(c).

Reporting duty

5.—(1) Notwithstanding the relationship between an individual and the provider or any privilege arising out of that relationship, where the provider knows or suspects that the individual—

(a) has failed without good reason to comply with a requirement to provide information or documents; or

(b) in providing such required information or documents has made a statement or representation knowing or believing it to be false,

the provider must immediately report the relevant circumstances to the Director.

(a) A copy of the 2010 Standard Crime Contract is available at www.justice.gov.uk/legal-aid. Copies can be inspected at the Legal Aid Agency (Head Office), 102 Petty France, London, SW1H 9AJ.

(b) Section 42(1) of the Act provides that in Part 1 of the Act (legal aid) “the Director” means the Director of Legal Aid Casework.

(c) Section 6 of the Act (authorisations) makes provision for authorisations given for the purposes of section 5 of the Act (delegation) or regulations under that section.

(2) The withdrawal of a determination does not affect a provider's right to remuneration for work done prior to the date on which a determination is withdrawn under these Regulations unless the provider has failed without good reason to comply with the reporting requirements in paragraph (1).

Transfer of documents

6.—(1) This regulation applies where an individual—

- (a) is sent, committed or transferred for trial to the Crown Court; or
- (b) appeals or seeks permission to appeal from a lower court to a higher court.

(2) An officer of the lower court must ensure that the following documents are sent from the lower court to the higher court—

- (a) a copy of any representation order made in the proceedings; and
- (b) a copy of any application for a representation order in relation to the proceedings which has been refused.

PART 2

Advice and assistance for individuals in custody

General

7. This Part makes provision about the making of determinations by the Director under section 13 of the Act (advice and assistance for individuals in custody).

Applications

8. An application for initial advice and initial assistance must be made—

- (a) to the Defence Solicitor Call Centre established by the Lord Chancellor under section 2 of the Act (arrangements); and
- (b) in accordance with the requirements set out in the 2010 Standard Crime Contract for the Unit of Work which is the subject of the application.

PART 3

Criminal proceedings

Criminal proceedings

9. The following proceedings are criminal proceedings for the purposes of section 14(h) of the Act (criminal proceedings)—

- (a) civil proceedings in a magistrates' court arising from a failure to pay a sum due or to obey an order of that court where such failure carries the risk of imprisonment;
- (b) proceedings under sections 14B, 14D, 14G, 14H, 21B and 21D of the Football Spectators Act 1989(a) in relation to banning orders and references to a court;

(a) 1989 c. 37. Sections 14B, 14D, 14G and 14H were inserted by section 1 of, and paragraphs 1 and 2 of Schedule 1 to, the Football (Disorder) Act 2000 (c. 25). Section 14B was amended by section 52(2) of, and paragraphs 1 and 4 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38). Sections 21B and 21D were inserted by section 1 of, and paragraphs 1 and 4 of Schedule 1 to, the Football (Disorder) Act 2000. Section 21B was amended by section 12 of, and paragraphs 3 and 4 of the Schedule to, the Identity Documents Act 2010 (c. 40) and section 52(2) of, and paragraphs 1 and 4 of Part 1 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38).

- (c) proceedings under section 5A of the Protection from Harassment Act 1997(a) in relation to restraining orders on acquittal;
- (d) proceedings under sections 1, 1D and 4 of the Crime and Disorder Act 1998(b) in relation to anti-social behaviour orders;
- (e) proceedings under sections 1G and 1H of the Crime and Disorder Act 1998(c) in relation to intervention orders, in which an application for an anti-social behaviour order has been made;
- (f) proceedings under section 8(1)(b) of the Crime and Disorder Act 1998(d) in relation to parenting orders made where an anti-social behaviour order or a sex offender order is made in respect of a child;
- (g) proceedings under section 8(1)(c) of the Crime and Disorder Act 1998(e) in relation to parenting orders made on the conviction of a child;
- (h) proceedings under section 9(5) of the Crime and Disorder Act 1998 to discharge or vary a parenting order made as set out in sub-paragraph (f) or (g);
- (i) proceedings under section 10 of the Crime and Disorder Act 1998(f) in relation to an appeal against a parenting order made as set out in sub-paragraph (f) or (g);
- (j) proceedings under Part 1A of Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000(g) in relation to parenting orders for failure to comply with orders under section 20 of that Act;
- (k) proceedings under sections 2, 5 and 6 of the Anti-social Behaviour Act 2003(h) in relation to closure orders;
- (l) proceedings under sections 20, 22, 26 and 28 of the Anti-social Behaviour Act 2003(i) in relation to parenting orders—
 - (i) in cases of exclusion from school; or
 - (ii) in respect of criminal conduct and anti-social behaviour;
- (m) proceedings under sections 97, 100 and 101 of the Sexual Offences Act 2003(j) in relation to notification orders and interim notification orders;

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- (a) 1997 c. 40. Section 5A was inserted by section 12(5) of the Domestic Violence, Crime and Victims Act 2004 (c. 28).
 - (b) 1998 c. 37. Section 1 was amended by sections 61(1) to (5), (8) and (9)(a) and (b) and 107(2) of, and Schedule 8 to, the Police Reform Act 2002 (c. 30); sections 123(2) and 124(4) of the Criminal Justice and Immigration Act 2008 (c. 4); sections 85(1) to (4) and 92 of, and Schedule 3 to, the Anti-social Behaviour Act 2003 (c. 38); section 59(1) of the Violent Crime Reduction Act 2006 (c. 38); section 139(1) and (2) and 141(1) and (2)(a) and (b) of the Serious Organised Crime and Police Act 2005 (c. 15); and section 29(a) of the Transport for London Act 2008 (c. i); and by article 12(5)(a), (b) and (d) of S.I. 2004/1573; article 2 of, and paragraph 55 of the Schedule to, S.I. 2005/886; and article 5 of, and paragraphs 109 and 110 of Schedule 2 to, S.I. 2010/866. Section 1 will also be amended by section 40(1) and (2) of the Crime and Security Act 2010 (c. 17) at a date to be appointed. Section 1D was inserted by section 65(1) of the Police Reform Act 2002 (c.30) and amended by section 139(1) and (5) to (9) of the Serious Organised Crime and Police Act 2005 (c. 15). Section 4 has been amended by section 65(2) of the Police Reform Act 2002 (c.30); section 323(1) and (2) of the Criminal Justice Act 2003 (c. 44); and sections 139 and 140 of, and paragraph 38(3) of Schedule 6 and Schedule 7 to, the Sexual Offences Act 2003 (c. 42).
 - (c) Sections 1G and 1H were inserted by section 20(1) of the Drugs Act 2005 (c. 17).
 - (d) Section 8(1)(b) was amended by section 60(1) and (2) of the Violent Crime Reduction Act 2006 (c. 38).
 - (e) Section 8(1)(c) will be amended by section 41(1) and (2) of the Crime and Security Act 2010 (c. 17) at a date to be appointed.
 - (f) Section 10 was amended by section 15 of, and paragraphs 276 and 277 of Part 1 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4) and article 9 of S.I. 2009/871. Section 10 will also be amended by section 40(1) and (5) of the Crime and Security Act 2010 (c. 17) at a date to be appointed.
 - (g) 2000 c. 6. Part 1A was inserted by section 324 of, and paragraph 6 of Schedule 34 to, the Criminal Justice Act 2003 (c. 44) and amended by article 2 of and paragraph 81(b) of the Schedule to S.I. 2005/886.
 - (h) 2003 c. 38. Section 5 was amended by article 2 of and paragraph 98 of the Schedule to S.I. 2005/886.
 - (i) Section 20 was amended by section 98 of the Education and Inspections Act 2006 (c. 40) and article 5(1) of and paragraph 52 of Part 2 of Schedule 2 to S.I. 2010/1158. Section 26 was amended by section 52 of and paragraph 54 of Schedule 14 to the Police and Justice Act 2006 (c. 48) in relation to England only. Section 28 was amended by section 52 of and paragraph 56 of Schedule 14 to the Police and Justice Act 2006 (c. 48) in relation to England only.
 - (j) 2003 c. 42.

- (n) proceedings under sections 104, 108(a), 109 and 110 of the Sexual Offences Act 2003 in relation to sexual offences prevention orders and interim sexual offences prevention orders;
- (o) proceedings under sections 114, 118 and 119 of the Sexual Offences Act 2003 in relation to foreign travel orders;
- (p) proceedings under sections 123, 125, 126 and 127 of the Sexual Offences Act 2003 in relation to risk of sexual harm orders and interim risk of sexual harm orders;
- (q) proceedings under sections 3, 5, 9 and 10 of the Violent Crime Reduction Act 2006(b) in relation to drinking banning orders and interim drinking banning orders;
- (r) proceedings under section 13 of the Tribunals, Courts and Enforcement Act 2007(c) on appeal against a decision of the Upper Tribunal in proceedings in respect of—
 - (i) a decision of the Financial Services Authority;
 - (ii) a decision of the Bank of England; or
 - (iii) a decision of a person in relation to the assessment of any compensation or consideration under the Banking (Special Provisions) Act 2008(d) or the Banking Act 2009(e);
- (s) proceedings before the Crown Court or the Court of Appeal in relation to serious crime prevention orders under sections 19, 20, 21 and 24 of the Serious Crime Act 2007(f);
- (t) proceedings under sections 100, 101, 103, 104 and 106 of the Criminal Justice and Immigration Act 2008(g) in relation to violent offender orders and interim violent offender orders;
- (u) proceedings under sections 26, 27 and 29 of the Crime and Security Act 2010(h) in relation to—
 - (i) domestic violence protection notices; or
 - (ii) domestic violence protection orders; and
- (v) any other proceedings that involve the determination of a criminal charge for the purposes of Article 6(1) of the European Convention on Human Rights.

Criminal proceedings: specified individual

10. An individual who is or may be brought before a court or tribunal in proceedings specified in regulation 9 is a specified individual for the purposes of section 16(6) of the Act (representation for criminal proceedings).

PART 4

Advice and assistance for criminal proceedings

General

11.—(1) This Part makes provision about the making and withdrawal of determinations by the Director under section 15 of the Act (advice and assistance for criminal proceedings).

(a) Section 108 will be amended by section 17(2) of the Armed Forces Act 2011 (c. 18) at a date to be appointed.
 (b) 2006 c. 38. Sections 9 and 10 are in force for specified purposes in specified areas only.
 (c) 2007 c. 15.
 (d) 2008 c. 2.
 (e) 2009 c. 1.
 (f) 2007 c. 27.
 (g) 2008 c. 4.
 (h) 2010 c. 17.

(2) Prescribed advice and assistance is to be made available to an individual described in section 15(2) of the Act if—

- (a) the conditions prescribed in regulation 12 are met; and
- (b) the Director has determined that the individual qualifies for advice and assistance in accordance with these Regulations (and has not withdrawn the determination).

(3) For the purposes of this regulation “prescribed advice and assistance” means advice and assistance that is available in accordance with the 2010 Standard Crime Contract.

Prescribed conditions

12.—(1) The conditions set out in paragraph (2) are prescribed for the purposes of section 15(1) of the Act.

(2) The conditions are that an individual must—

- (a) be the subject of an investigation which may lead to criminal proceedings;
- (b) be the subject of criminal proceedings;
- (c) require advice and assistance regarding an appeal or potential appeal against the outcome of any criminal proceedings or an application to vary a sentence;
- (d) require advice and assistance regarding a sentence;
- (e) require advice and assistance regarding an application or potential application to the Criminal Cases Review Commission^(a);
- (f) require advice and assistance regarding the individual’s treatment or discipline in a prison, young offender institution or secure training centre (other than in respect of actual or contemplated proceedings regarding personal injury, death or damage to property);
- (g) be the subject of proceedings before the Parole Board^(b);
- (h) require advice and assistance regarding representation in relation to a mandatory life sentence or other parole review;
- (i) be a witness in criminal proceedings and require advice and assistance regarding self-incrimination;
- (j) be a volunteer; or
- (k) be detained under Schedule 7 to the Terrorism Act 2000^(c).

(3) In this regulation “volunteer” means an individual who, for the purposes of assisting with an investigation, without having been arrested—

- (a) attends voluntarily at a police station, customs office or any other place where a constable is present; or
- (b) accompanies a constable to a police station, customs office or any other such place.

Interests of justice

13. When making a determination under section 15 of the Act, the Director must have regard, in particular, to the interests of justice.

Applications

14. An application for advice and assistance for criminal proceedings must be made—

- (a) in accordance with the requirements of the 2010 Standard Crime Contract for the Unit of Work which is the subject of the application; and

(a) The Criminal Cases Review Commission was established by section 8 of the Criminal Appeal Act 1995 (c. 35).

(b) The Parole Board is constituted under section 239 of the Criminal Justice Act 2003 (c. 44).

(c) 2000 c. 11.

- (b) in a form specified by the Lord Chancellor, in circumstances where the 2010 Standard Crime Contract requires an application form to be completed.

Determinations

15.—(1) The Director must determine whether an individual qualifies under section 15 of the Act for advice and assistance for criminal proceedings in accordance with—

- (a) section 21 of the Act (financial resources) and regulations made under that section^(a); and
- (b) the qualifying criteria set out in the 2010 Standard Crime Contract.

(2) A determination that an individual qualifies under section 15 of the Act for advice and assistance for criminal proceedings must specify any limitations and conditions to which the determination is subject.

(3) A determination that an individual qualifies under section 15 of the Act for advice and assistance for criminal proceedings may specify that the determination is to be treated as having effect from a date which is no later than the date on which the application was received.

Withdrawal

16. The Director may withdraw a determination under section 15 of the Act where—

- (a) the services to which the determination relates have been provided;
- (b) the proceedings which are the subject of the determination have concluded;
- (c) the individual consents;
- (d) the individual has died; or
- (e) the individual no longer qualifies for the advice and assistance to be made available by the determination in accordance with—
 - (i) section 21 of the Act and regulations made under that section; or
 - (ii) the qualifying criteria set out in the 2010 Standard Crime Contract.

Appeal

17. An individual may appeal to an Independent Funding Adjudicator appointed by the Lord Chancellor under section 2 of the Act (arrangements) against a decision of the Director that—

- (a) the interests of justice do not require advice or assistance to be made available to an individual under these Regulations; or
- (b) the qualifying criteria set out in the 2010 Standard Crime Contract are not met.

PART 5

Representation for criminal proceedings

General

18. This Part makes provision about the making and withdrawal of determinations by the Director under section 16 of the Act (representation for criminal proceedings)^(b), except in

-
- (a) Paragraph 6 of Schedule 3 to the Act (legal aid for legal persons: financial resources) applies section 21 for the purposes of regulations made under paragraph 4 of that Schedule as if the references to an individual included a legal person.
 - (b) Paragraph 5(2) of Schedule 3 to the Act (legal aid for legal persons: representation for criminal proceedings) makes provision for the Director to determine whether a legal person qualifies for representation for criminal proceedings. Paragraph 5(7) of Schedule 3 to the Act provides that subsections (2) to (7) of section 18 of the Act (determinations by Director) apply to a determination under paragraph 5(2) of Schedule 3 as they apply in relation to a determination under section 16.

circumstances in which a court is authorised to make the determination under regulations made under section 19 of the Act (determinations by court).

Representation for criminal proceedings: proceedings which are to be regarded as incidental proceedings

19.—(1) The proceedings set out in paragraph (2) are to be regarded as incidental to the criminal proceedings from which they arise^(a).

(2) The proceedings are—

- (a) proceedings in the Crown Court, following committal for sentence by a magistrates' court;
- (b) proceedings to quash an acquittal under section 54 of the Criminal Procedure and Investigations Act 1996^(b); and
- (c) proceedings for confiscation and forfeiture in connection with criminal proceedings under RSC Order 115 in Schedule 1 to the Civil Procedure Rules 1998^(c).

Representation for criminal proceedings: proceedings which are not to be regarded as incidental proceedings

20.—(1) The proceedings set out in paragraph (2) are not to be regarded as incidental to the criminal proceedings from which they arise.

(2) The proceedings are—

- (a) proceedings for applications for judicial review or habeas corpus in relation to criminal proceedings; and
- (b) proceedings for dealing with an individual who is alleged to have failed to comply with an order of the magistrates' court or the Crown Court.

Qualifying for representation: interests of justice

21. For the purposes of a determination under section 16 of the Act, making representation available to an individual for the purposes of criminal proceedings is taken to be in the interests of justice when the proceedings are before—

- (a) the Crown Court, to the extent that such proceedings do not relate to an appeal to the Crown Court;
- (b) the High Court;
- (c) the Court of Appeal; or
- (d) the Supreme Court.

Applications

22.—(1) An application for a determination by the Director under section 16 of the Act must be in a form specified by the Lord Chancellor.

(2) Where an individual makes an application for a determination in relation to proceedings in which a determination has previously been withdrawn under this Part, the application must state—

- (a) that a previous determination in relation to those proceedings has been withdrawn; and

(a) Paragraph 5(3) of Schedule 3 to the Act (legal aid for legal persons: representation for criminal proceedings) provides that where a legal person qualifies 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. Paragraph 5(4) of Schedule 3 to the Act applies regulations made under section 16(4) of the Act to legal persons. Section 16(4) provides that regulations may make provision which specifies whether proceedings are or are not to be regarded as preliminary or incidental to the principal proceedings.

(b) 1996 c. 25.

(c) S.I. 1998/3132 (L.17).

- (b) the reasons for the withdrawal.

Determinations

23.—(1) When the Director makes a determination under section 16 of the Act that an individual qualifies for representation for the purposes of criminal proceedings, the Director must—

- (a) issue a representation order recording that determination; and
- (b) send a copy of the representation order to the individual and any provider named in the representation order.

(2) A representation order issued by the Director—

- (a) must record the date from which the determination is to be treated as having effect; and
- (b) may specify that the determination is to be treated as having effect from a date which is no later than the date on which the application was received.

(3) Where the Director makes a determination under section 16 of the Act that an individual does not qualify for representation for the purposes of criminal proceedings, the Director must provide to that individual—

- (a) written reasons for the making of such a determination; and
- (b) details of any review or appeal available to that individual in respect of the determination.

(4) A determination which is made in relation to an individual in any criminal proceedings includes representation in any incidental proceedings.

Determinations: proceedings in the magistrates' court

24.—(1) Subject to paragraph (2), a determination which is made in relation to an individual for proceedings in the magistrates' court includes representation in the Crown Court in relation to those proceedings.

(2) A determination to which paragraph (1) applies does not include representation for any appeal to the Crown Court in the proceedings to which the determination relates.

Determinations: certain proceedings in the Crown Court

25.—(1) The Director must make a determination under section 16 that an individual qualifies for representation for the purposes of criminal proceedings in relation to an individual for proceedings in the Crown Court in the circumstances described in paragraph (2).

(2) The circumstances are that—

- (a) the individual has made an application for a determination in proceedings in the magistrates' court and (should the proceedings continue there) in the Crown Court;
- (b) the Director has determined that the individual does not qualify for representation in the magistrates' court either because—
 - (i) the requirements of section 21 (financial resources) and regulations made under that section are not met; or
 - (ii) the interests of justice do not require representation to be made available to the individual; and

(c) the proceedings continue to the Crown Court other than on appeal.

Withdrawal

26.—(1) The Director must withdraw a determination under section 16 of the Act if the Director is satisfied that the interests of justice no longer require representation.

(2) The Director may withdraw a determination where—

- (a) the individual declines to accept the determination in the terms which are offered;

- (b) the individual requests that the determination is withdrawn; or
- (c) the provider named in the representation order which recorded the original determination declines to continue to represent the individual.

(3) Where the Director withdraws a determination, the Director must provide written notification of the withdrawal to—

- (a) the individual in whose favour the original determination was made;
- (b) any provider named in the representation order which records the determination; and
- (c) any advocate instructed in proceedings.

(4) In this regulation “advocate” means a person who is an authorised person for the purposes of section 18 of the Legal Services Act 2007^(a) in relation to the exercise of a right of audience.

Review

27.—(1) An individual may apply for a review by the Director of—

- (a) a determination under section 16 of the Act that the interests of justice do not require representation to be made available to an individual for the purposes of criminal proceedings; and
- (b) the withdrawal of a determination in the circumstances specified in regulation 26(1).

(2) An application for a review must be made in a form specified by the Lord Chancellor and must include any written representations supporting the application.

(3) The individual must provide such further information and documents as the Director may request in relation to the review within fourteen days of the Director making such a request.

(4) A review may be conducted without a hearing unless the Director directs otherwise.

(5) The Director must consider the application and any written representations and may—

- (a) confirm or amend the determination which is the subject of the review;
- (b) confirm the withdrawal which is the subject of the review; or
- (c) substitute a new determination.

(6) Where the Director amends or substitutes a determination—

- (a) the determination following the review takes effect (unless the Director directs otherwise) as if the original determination or withdrawal had not been made;
- (b) the Director must issue a representation order to reflect the determination following the review; and
- (c) the date of any representation order issued in accordance with sub-paragraph (b) must be the date on which the original application for a determination was received.

(7) The Director must notify the individual and the provider identified in the individual’s application of—

- (a) the determination or withdrawal following the review; and
- (b) the written reasons for that decision.

Appeal

28. Where an individual remains dissatisfied following a review under regulation 27, that individual may appeal to a court in accordance with regulations 29 and 30 against the decision that the interests of justice do not require, or no longer require, representation to be made available.

(a) 2007 c. 29.

Appeal: magistrates' court

29.—(1) In relation to a determination by the Director under section 16 of the Act that the interests of justice do not require, or no longer require, representation to be made available before the magistrates' court, the appeal lies to the magistrates' court.

(2) The court must either—

- (a) affirm the determination; or
- (b) decide that the interests of justice require representation to be made available, or to continue to be made available, to an individual for the purposes of criminal proceedings.

(3) Where the court makes a decision under paragraph (2)(b), the individual may apply to the Director for a determination.

(4) Where an individual applies to the Director under paragraph (3)—

- (a) if the individual states in writing, verified by a statement of truth, that the individual's financial resources have not changed since the date of the individual's original application for a determination, so as to make the individual financially ineligible for representation under section 21 of the Act (financial resources) and regulations made under that section, the Director must make a determination that the individual qualifies for representation; or
- (b) if the individual's financial resources may have so changed since the date of the individual's original application, the Director—
 - (i) must determine whether the individual qualifies for representation in accordance with section 21 of the Act and regulations made under that section; and
 - (ii) if the individual does so qualify, must make the determination accordingly.

(5) In this regulation—

“magistrates' court” means the magistrates' court in which the proceedings in respect of which an individual is seeking a determination under section 16 of the Act are taking place, or are to take place, and includes a single justice and a District Judge (magistrates' court); and

“statement of truth” means a declaration provided in accordance with regulations made under section 21 of the Act (financial resources).

Appeal: Crown Court

30.—(1) In relation to a determination by the Director that the interests of justice do not require, or no longer require, representation to be made available in a case in the Crown Court, the appeal lies to an officer of the Crown Court (“the officer”).

(2) The officer may refer the appeal to a judge of the Crown Court.

(3) The officer or the judge may—

- (a) affirm the determination; or
- (b) decide that the interests of justice require representation to be made available, or to continue to be made available, to an individual for the purposes of criminal proceedings.

(4) Where the officer or a judge makes a decision under paragraph (3)(b), the Director must make a determination reflecting that decision and record the determination in a representation order.

PART 6

Legal Persons

Legal persons: application of regulation 5

- 31.**—(1) Regulation 5(a) applies to legal persons with the modifications in paragraphs (2) and (3).
- (2) For “an individual” substitute “a legal person”.
 - (3) For “the individual” substitute “the legal person”.

Legal persons: application of regulation 6

- 32.**—(1) Regulation 6(b) applies to legal persons with the modification in paragraph (2).
- (2) For “an individual” substitute “a legal person”.

Legal persons: prescribed advice and assistance

- 33.**—(1) The advice and assistance set out in paragraph (2) is prescribed for the purposes of paragraph 4(1) of Schedule 3 (legal aid for legal persons) to the Act.
- (2) The prescribed advice and assistance is advice and assistance which is provided in relation to—
- (a) an investigation which may lead to criminal proceedings;
 - (b) criminal proceedings;
 - (c) an appeal or a potential appeal against the outcome of criminal proceedings; or
 - (d) a sentence imposed on a legal person.

Legal persons: prescribed conditions

- 34.**—(1) The conditions set out in paragraph (2) are prescribed for the purposes of paragraph 4(1)(a) of Schedule 3 to the Act.
- (2) The prescribed conditions are that the legal person must be the subject of—
- (a) an investigation which may lead to criminal proceedings; or
 - (b) criminal proceedings, including an appeal, potential appeal and an application to vary sentence.

Legal persons: applications for advice and assistance for criminal proceedings

- 35.**—(1) An application by a legal person for advice and assistance(c) must be made in writing to the Director.
- (2) The legal person must provide any additional information and documents requested by the Director in order to make a determination in relation to an application made in accordance with paragraph (1).

(a) Paragraph 9(3) of Schedule 3 to the Act (legal aid for legal persons: providers of services etc) provides that in section 28 of the Act (position of providers of services) references to an individual include a legal person.

(b) Paragraph 9(3) of Schedule 3 to the Act (legal aid for legal persons: providers of services etc) provides that in section 30 of the Act (position of other parties, courts and tribunals) references to an individual include a legal person.

(c) Paragraph 4(3) of Schedule 3 to the Act (legal aid for legal persons: advice and assistance for criminal proceedings) provides that subsections (3) to (9) of section 15 apply in relation to regulations made under paragraph 4 of Schedule 3 as they apply in relation to regulations made under that section.

Legal persons: application of Part 4 of the Regulations

36.—(1) Regulations 13, 15(1)(a), (2) and (3), 16(a) to (c) and (e)(i) and 17(a) apply to legal persons with the modifications in paragraphs (2) to (4).

- (2) For “an individual” substitute “a legal person”.
- (3) For “the individual” substitute “the legal person”.
- (4) For “section 15 of” substitute “paragraph 4 of Schedule 3 to”.

Legal persons: specified legal persons in relation to criminal proceedings

37. A legal person is a specified legal person in relation to criminal proceedings if that person meets the condition prescribed in regulation 34(2)(b).

Legal persons: applications for representation

38.—(1) An application by a legal person for representation(a) for the purposes of criminal proceedings must be made in writing to the Director.

(2) The legal person must provide any additional information and documents requested by the Director in order to make a determination in relation to an application made in accordance with paragraph (1).

Legal persons: application of Part 5 of the Regulations

39.—(1) With the exception of regulations 21, 22(1) and 25(2)(b)(ii), Part 5 of these Regulations applies(b) to legal persons with the modifications in paragraphs (2) to (5).

- (2) For “an individual” substitute “a legal person”.
- (3) For “the individual” substitute “the legal person”.
- (4) For “that individual” substitute “that legal person”.
- (5) For “section 16 of” substitute “paragraph 5 of Schedule 3 to”.

Signed by authority of the Lord Chancellor

9th January 2013

McNally
Minister of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Criminal Legal Aid (General) Regulations 2013 (“the Regulations”) make provision for determinations in relation to whether an individual qualifies for criminal legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) (“the Act”).

Regulation 4 provides that the functions of the Lord Chancellor or the Director under the Regulations may be exercised by, or by an employee of, a person authorised for that purpose by the Lord Chancellor or Director.

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- (a) Paragraph 5(7) of Schedule 3 to the Act (legal aid for legal persons: representation for criminal proceedings) provides that subsections (2) to (7) of section 18 apply in relation to a determination under paragraph 5(2) of Schedule 3 as they apply in relation to a determination under section 16.
 - (b) Paragraph 5(4) of Schedule 3 to the Act (legal aid for legal persons: representation for criminal proceedings) provides that regulations under section 16(4) and (5) apply for the purposes of paragraph 5(3) of Schedule 3 as they apply for the purposes of section 16(3). Paragraphs 5(5) to (7) of Schedule 3 to the Act apply sections 17 and 18 to determinations made under paragraph 5 of Schedule 3.

Part 2 makes provision for the making of determinations in relation to individuals who are arrested and held in custody.

Part 3 makes provision about the proceedings which constitute criminal proceedings in addition to those already listed in section 14 of the Act (criminal proceedings).

Part 4 makes provision about the making and withdrawal of determinations about advice and assistance for criminal proceedings.

Part 5 makes provision in relation to determinations about representation for criminal proceedings and for the withdrawal of such determinations. Part 5 also makes provision in relation to proceedings which are and which are not to be regarded as incidental to criminal proceedings (regulations 19 and 20). Regulation 21 makes provision about the circumstances in which the interests of justice test set out in section 17 of the Act (qualifying for representation) is taken to be met. An individual may apply for a review of a determination by the Director that the interests of justice do not require representation to be made available (regulation 27). If the individual is dissatisfied with the review, then that individual may appeal (as set out in regulations 29 and 30).

Part 6 makes provision for the application of these Regulations to legal persons.

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