

# LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

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## EXPLANATORY NOTES

### SUMMARY

#### **Part 2: Litigation funding and costs**

29. **Part 2** of the Act contains provisions to implement reforms to the existing arrangements for civil litigation funding and costs as recommended by Lord Justice Jackson, a judge of the Court of Appeal, in his *Review of Civil Litigation Costs: Final Report*.<sup>1</sup>
30. This Part of the Act also amends the Matrimonial Causes Act 1973 and the Civil Partnership Act 2004 to give the court powers to make orders in divorce proceedings, and corresponding civil partnership proceedings, for payments to be made by one party to another for the purposes of paying for legal services.
31. **Part 2** of the Act provides for the prohibition in personal injury cases both of the payment of referral fees (for access to potential claimants) by regulated persons, such as solicitors, to third parties, such as claims management companies and insurers, and of the receipt of such fees. Provision is also made for a power to extend the prohibition to other types of claim and legal services. It will be for the appropriate regulators, for example the Law Society, the Claims Management Regulator and the Financial Services Authority, to enforce the prohibition.
32. In Part 2 of the Act, section 61 amends the Legal Services Act 2007 to enable the Supreme Court to make costs orders in civil proceedings where a successful party is represented pro bono, with the monies recovered going to a prescribed charity.
33. **Part 2** of the Act also amends the Prosecution of Offences Act 1985 (“POA 1985”) by restricting the powers of the courts in England and Wales to order the payment out of central funds of amounts in respect of costs incurred by defendants, witnesses and appellants in criminal proceedings, particularly amounts in respect of legal costs (that is, lawyers’ fees, charges and disbursements including expert witness costs). Similar restrictions are to be applied to amounts awarded by courts in respect of costs incurred by persons who make representations to a court in England and Wales in the course of references made by the Attorney General, persons who are discharged following extradition proceedings in England and Wales and persons involved in proceedings before the Court Martial Appeals Court. The restrictions will not apply in relation to costs incurred in proceedings in the Supreme Court.

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<sup>1</sup> Ministry of Justice (2010) “*Review of Civil Litigation Costs: Final Report*”, available at <http://www.judiciary.gov.uk/publications-and-reports/reports/civil/review-of-civil-litigation-costs/civil-litigation-costs-review-reports>