



# Legal Aid, Sentencing and Punishment of Offenders Act 2012

## 2012 CHAPTER 10

### PART 1

#### LEGAL AID

##### *Criminal legal aid*

#### **13 Advice and assistance for individuals in custody**

- (1) Initial advice and initial assistance are to be available under this Part to an individual who is arrested and held in custody at a police station or other premises if the Director has determined that the individual qualifies for such advice and assistance in accordance with this Part (and has not withdrawn the determination).
- (2) The Director must make a determination under this section having regard, in particular, to the interests of justice.
- (3) A determination under this section must specify the type of advice or assistance (or both) to be available under this Part.
- (4) Regulations may make provision about the making and withdrawal of determinations under this section.
- (5) Regulations under subsection (4) may, in particular, include—
  - (a) provision about the form and content of determinations and applications for determinations,
  - (b) provision permitting or requiring applications and determinations to be made and withdrawn in writing, by telephone or by other prescribed means,
  - (c) provision setting time limits for applications and determinations,
  - (d) provision for a determination to be disregarded for the purposes of this Part if made in response to an application that is made otherwise than in accordance with the regulations,

- (e) provision about conditions which must be satisfied by an applicant before a determination is made,
  - (f) provision about the circumstances in which a determination may or must be withdrawn,
  - (g) provision requiring information and documents to be provided, and
  - (h) provision requiring individuals who are the subject of a determination to be informed of the reasons for making or withdrawing the determination.
- (6) The circumstances prescribed under subsection (5)(f) may, in particular, relate to whether the individual who is the subject of the determination has complied with requirements imposed by or under this Part.
- (7) For the purposes of this section, in relation to an individual who is in custody—  
“initial advice” means advice as to how the law in relation to a matter relevant to the individual’s arrest applies in particular circumstances and as to the steps that might be taken having regard to how it applies;  
“initial assistance” means assistance in taking any of those steps which the individual might reasonably take while in custody, including assistance in the form of advocacy.
- (8) The Lord Chancellor may by regulations provide that prescribed advice or assistance is not initial advice or initial assistance for the purposes of this section.

## **14 Criminal proceedings**

In this Part “criminal proceedings” means—

- (a) proceedings before a court for dealing with an individual accused of an offence,
- (b) proceedings before a court for dealing with an individual convicted of an offence, including proceedings in respect of a sentence or order,
- (c) proceedings for dealing with an individual under the Extradition Act 2003,
- (d) proceedings for binding an individual over to keep the peace or to be of good behaviour under section 115 of the Magistrates’ Courts Act 1980 and for dealing with an individual who fails to comply with an order under that section,
- (e) proceedings on an appeal brought by an individual under section 44A of the Criminal Appeal Act 1968 (appeal in case of death of appellant),
- (f) proceedings on a reference under section 36 of the Criminal Justice Act 1972 on a point of law following the acquittal of an individual on indictment,
- (g) proceedings for contempt committed, or alleged to have been committed, by an individual in the face of a court, and
- (h) such other proceedings, before any court, tribunal or other person, as may be prescribed.

## **15 Advice and assistance for criminal proceedings**

- (1) Regulations may provide that prescribed advice and assistance is to be available under this Part to an individual described in subsection (2) if—
- (a) prescribed conditions are met, and

- (b) the Director has determined that the individual qualifies for such advice and assistance in accordance with the regulations (and has not withdrawn the determination).
- (2) Those individuals are—
- (a) individuals who are involved in investigations which may lead to criminal proceedings (other than individuals arrested and held in custody at a police station or other premises),
  - (b) individuals who are before a court, tribunal or other person in criminal proceedings, and
  - (c) individuals who have been the subject of criminal proceedings.
- (3) When making the regulations, the Lord Chancellor must have regard, in particular, to the interests of justice.
- (4) The regulations must require the Director to make determinations under the regulations having regard, in particular, to the interests of justice.
- (5) The regulations may require the Director to make such determinations in accordance with—
- (a) section 21 (financial resources) and regulations under that section, and
  - (b) criteria set out in the regulations.
- (6) The regulations may make provision about the making and withdrawal of determinations under the regulations.
- (7) The regulations may, in particular, include—
- (a) provision about the form and content of determinations and applications for determinations,
  - (b) provision permitting or requiring applications and determinations to be made and withdrawn in writing, by telephone or by other prescribed means,
  - (c) provision setting time limits for applications and determinations,
  - (d) provision for a determination to be disregarded for the purposes of this Part if made in response to an application that is made otherwise than in accordance with the regulations,
  - (e) provision about conditions which must be satisfied by an applicant before a determination is made,
  - (f) provision about the circumstances in which a determination may or must be withdrawn,
  - (g) provision requiring information and documents to be provided, and
  - (h) provision requiring individuals who are the subject of a determination to be informed of the reasons for making or withdrawing the determination.
- (8) The circumstances prescribed under subsection (7)(f) may, in particular, relate to whether the individual who is the subject of the determination has complied with requirements imposed by or under this Part.
- (9) The regulations may provide for the review of, or appeals to a court, tribunal or other person against, a decision by the Director—
- (a) that the interests of justice do not require advice or assistance to be made available to an individual under the regulations, or
  - (b) that criteria prescribed under subsection (5)(b) are not met.

(10) In this section “assistance” includes, in particular, assistance in the form of advocacy.

## 16 Representation for criminal proceedings

- (1) Representation for the purposes of criminal proceedings is to be available under this Part to an individual if—
- (a) the individual is a specified individual in relation to the proceedings, and
  - (b) the relevant authority has determined (provisionally or otherwise) that the individual qualifies for such representation in accordance with this Part (and has not withdrawn the determination).
- (2) Representation for the purposes of criminal proceedings is to be available under this Part to an individual if—
- (a) the proceedings involve the individual resisting an appeal to the Crown Court otherwise than in an official capacity, and
  - (b) the relevant authority has determined (provisionally or otherwise) that the individual qualifies for such representation in accordance with this Part (and has not withdrawn the determination).
- (3) Where an individual qualifies under this Part for representation for the purposes of criminal proceedings (“the principal proceedings”), representation is also to be available to the individual for the purposes of—
- (a) any related bail proceedings, and
  - (b) any preliminary or incidental proceedings.
- (4) Regulations may—
- (a) make provision specifying whether proceedings are or are not to be regarded as preliminary or incidental for the purposes of subsection (3), and
  - (b) make provision for exceptions from subsection (3).
- (5) Regulations under subsection (4)(b) may, in particular, make exceptions for proceedings taking place more than a prescribed period of time before or after the principal proceedings.
- (6) In this section—
- “the relevant authority”, in relation to a specified individual and criminal proceedings, means the person who is authorised by or under section 18, 19 or 20 to determine (provisionally or otherwise) whether the individual qualifies under this Part for representation for the purposes of the proceedings;
- “specified individual” means—
- (a) in relation to criminal proceedings mentioned in any of paragraphs (a) to (g) of section 14, an individual mentioned in that paragraph in relation to those proceedings, and
  - (b) in relation to criminal proceedings prescribed by regulations under section 14(h), a description of individual specified in the regulations in relation to those proceedings.

## **17 Qualifying for representation**

- (1) The relevant authority must determine whether an individual qualifies under this Part for representation for the purposes of criminal proceedings (whether provisionally or otherwise) in accordance with—
  - (a) section 21 (financial resources) and regulations under that section, and
  - (b) the interests of justice.
- (2) In deciding what the interests of justice consist of for the purposes of such a determination, the following factors must be taken into account—
  - (a) whether, if any matter arising in the proceedings is decided against the individual, the individual would be likely to lose his or her liberty or livelihood or to suffer serious damage to his or her reputation,
  - (b) whether the determination of any matter arising in the proceedings may involve consideration of a substantial question of law,
  - (c) whether the individual may be unable to understand the proceedings or to state his or her own case,
  - (d) whether the proceedings may involve the tracing, interviewing or expert cross-examination of witnesses on behalf of the individual, and
  - (e) whether it is in the interests of another person that the individual be represented.
- (3) The Lord Chancellor may by order amend subsection (2) by adding or varying a factor.
- (4) Regulations may prescribe circumstances in which making representation available to an individual for the purposes of criminal proceedings is to be taken to be in the interests of justice for the purposes of a determination under section 16.
- (5) In this section “the relevant authority”, in relation to an individual and criminal proceedings, means the person who is authorised by or under section 18, 19 or 20 to determine (provisionally or otherwise) whether the individual qualifies under this Part for representation for the purposes of the proceedings.

## **18 Determinations by Director**

- (1) The Director is authorised to determine whether an individual qualifies under this Part for representation for the purposes of criminal proceedings, except in circumstances in which a court is authorised to make the determination under regulations under section 19.
- (2) A determination by the Director under section 16 must specify the criminal proceedings.
- (3) Regulations may make provision about the making and withdrawal of determinations by the Director under that section.
- (4) Regulations under subsection (3) may, in particular, include—
  - (a) provision about the form and content of determinations and applications for determinations,
  - (b) provision permitting or requiring applications and determinations to be made and withdrawn in writing, by telephone or by other prescribed means,
  - (c) provision setting time limits for applications and determinations,

- (d) provision for a determination to be disregarded for the purposes of this Part if made in response to an application that is made otherwise than in accordance with the regulations,
  - (e) provision about conditions which must be satisfied by an applicant before a determination is made,
  - (f) provision about the circumstances in which a determination may or must be withdrawn,
  - (g) provision requiring information and documents to be provided,
  - (h) provision requiring individuals who are the subject of a determination to be informed of the reasons for making or withdrawing the determination, and
  - (i) provision for the review of a decision by the Director that the interests of justice do not require representation to be made available, or to continue to be made available, to an individual under this Part for the purposes of criminal proceedings.
- (5) The circumstances prescribed under subsection (4)(f) may, in particular, relate to whether the individual who is the subject of the determination has complied with requirements imposed by or under this Part.
- (6) An appeal lies to such court, tribunal or other person as may be prescribed against a decision by the Director that the interests of justice do not require representation to be made available, or to continue to be made available, to an individual under this Part for the purposes of criminal proceedings, subject to subsection (7).
- (7) Regulations may provide for exceptions from subsection (6).
- (8) This section does not authorise the Director to make a provisional determination and accordingly—
- (a) references in this section to a determination do not include a provisional determination, and
  - (b) references in this section to a decision do not include a decision made as part of such a determination.

## **19 Determinations by court**

- (1) Regulations may—
- (a) provide that a court before which criminal proceedings take place, or are to take place, is authorised to determine whether an individual qualifies under this Part for representation for the purposes of criminal proceedings of a prescribed description, and
  - (b) make provision about the making and withdrawal of such determinations by a court.
- (2) The regulations may, in particular, include—
- (a) provision about the form and content of determinations and applications for determinations,
  - (b) provision permitting or requiring applications and determinations to be made and withdrawn in writing, by telephone or by other prescribed means,
  - (c) provision setting time limits for applications and determinations,
  - (d) provision enabling a court to determine that an individual qualifies under this Part for representation for the purposes of criminal proceedings before another court,

- (e) provision for the powers of a magistrates' court of any area under the regulations to be exercised by a single justice of the peace for the area, and
  - (f) provision about the circumstances in which a determination may or must be withdrawn.
- (3) The circumstances prescribed under subsection (2)(f) may, in particular, relate to whether the individual who is the subject of the determination has complied with requirements imposed by or under this Part.
- (4) The regulations must provide that, subject to prescribed exceptions, an appeal lies to such court, tribunal or other person as may be prescribed against a decision by a court that the interests of justice do not require representation to be made available, or to continue to be made available, to an individual under this Part for the purposes of criminal proceedings.
- (5) The regulations may include consequential provision modifying an Act or instrument.
- (6) Regulations under this section may not authorise a court to make a provisional determination and accordingly—
- (a) references in this section to a determination do not include a provisional determination, and
  - (b) references in this section to a decision do not include a decision made as part of such a determination.

## 20 Provisional determinations

- (1) Regulations may provide that the Director or a court may make a provisional determination that an individual qualifies under this Part for representation for the purposes of criminal proceedings where—
- (a) the individual 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.
- (2) The regulations may, in particular, include—
- (a) provision about the stage in an investigation at which a provisional determination may be made,
  - (b) provision about the making and withdrawal of provisional determinations, including provision equivalent to that described in section 18(4)(a) to (i) and (5),
  - (c) provision about the circumstances in which a provisional determination is to cease to be provisional, and
  - (d) provision about the circumstances in which a provisional determination is to be treated as if it were a determination made by the Director or a court in reliance on section 18 or 19.
- (3) In this Part, as it applies in connection with a provisional determination made under regulations under this section as to whether an individual qualifies for representation for the purposes of criminal proceedings, references to proceedings include criminal proceedings that may result from the investigation concerned.