



Legal Aid, Sentencing and Punishment of Offenders Act 2012

2012 CHAPTER 10

PART 1

LEGAL AID

Supplementary

31 Legal aid for legal persons

Schedule 3 (legal aid for legal persons) has effect.

32 Foreign law

- (1) The civil legal services described in Part 1 of Schedule 1 do not include services relating to any law other than the law of England and Wales, except—
 - (a) where express provision to the contrary is made by or under Part 1 of Schedule 1;
 - (b) where such law is relevant for determining any issue relating to the law of England and Wales;
 - (c) in other circumstances specified by the Lord Chancellor by order.
- (2) A determination by the Director or a court under section 13, 15 or 16 that an individual qualifies for advice, assistance or representation under this Part does not impose a duty on the Lord Chancellor to secure that services relating to any law other than the law of England and Wales are made available, except—
 - (a) where such law is relevant for determining any issue relating to the law of England and Wales;
 - (b) in other circumstances specified by the Lord Chancellor by order.
- (3) The Lord Chancellor may not make an order under subsection (1) or (2) unless the Lord Chancellor considers—

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- (a) that it is necessary to make the order because failure to do so would result in a breach of—
 - (i) an individual's Convention rights (within the meaning of the Human Rights Act 1998), or
 - (ii) any rights of an individual to the provision of legal services that are enforceable EU rights, or
- (b) that it is appropriate to make the order having regard to any risk that failure to do so would result in such a breach.

33 Restriction on disclosure of information about financial resources

- (1) A person to whom information is disclosed under section 22 or this subsection may disclose the information to any person to whom its disclosure is necessary or expedient in connection with facilitating a determination in respect of an individual's financial resources that is required under section 21.
- (2) A person to whom such information is disclosed must not—
 - (a) disclose the information other than in accordance with subsection (1), or
 - (b) use the information other than for the purpose of facilitating a determination described in subsection (1).
- (3) Subsection (2) does not prevent—
 - (a) the disclosure of information in accordance with an enactment or an order of a court,
 - (b) the disclosure of information for the purposes of the investigation or prosecution of an offence (or suspected offence) under the law of England and Wales or Northern Ireland or any other jurisdiction, except where regulations otherwise provide,
 - (c) the disclosure of information for the purposes of instituting, or otherwise for the purposes of, proceedings before a court, or
 - (d) the disclosure of information which has previously been lawfully disclosed to the public.
- (4) A person who discloses or uses information in contravention of this section is guilty of an offence and liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both);
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both), and
 - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both).
- (5) It is a defence for a person charged with an offence under this section to prove that the person reasonably believed that the disclosure or use was lawful.
- (6) In this section “enactment” includes—
 - (a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978), and
 - (b) an enactment contained in, or in an instrument made under, an Act or Measure of the National Assembly for Wales or Northern Ireland legislation.

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- (7) In relation to an offence under this section committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (4)(b)(i) to 12 months has effect as if it were a reference to 6 months.

34 Restriction on disclosure of other information

- (1) This section applies to information that is provided—
- (a) to the Lord Chancellor, the Director, a court, a tribunal or any other person on whom functions are imposed or conferred by or under this Part, and
 - (b) in connection with the case of an individual seeking or receiving services provided under arrangements made for the purposes of this Part.
- (2) Such information must not be disclosed, subject to the exceptions in section 35.
- (3) A person who discloses information in contravention of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) It is a defence for a person charged with an offence under this section to prove that the person reasonably believed that the disclosure was lawful.
- (5) Proceedings for an offence under this section may not be brought without the consent of the Director of Public Prosecutions.
- (6) Nothing in this section applies to information if—
- (a) it is provided to a person providing services under arrangements made for the purposes of this Part, and
 - (b) it is provided by or on behalf of an individual seeking or receiving the services.
- (7) Nothing in this section applies to information to which section 33 applies.

35 Exceptions from restriction under section 34

- (1) Section 34(2) does not prevent the disclosure of information—
- (a) for the purpose of enabling or assisting the Lord Chancellor or the Secretary of State for Justice to carry out their functions (whether conferred or imposed by an Act or otherwise),
 - (b) for the purpose of enabling or assisting the Director to carry out functions imposed or conferred on the Director by or under this Part, or
 - (c) for the purpose of enabling or assisting a court, tribunal or other person on whom functions are imposed or conferred by or under this Part to carry out those functions.
- (2) Section 34(2) does not prevent—
- (a) the disclosure of information in accordance with the law of England and Wales or an order of a court,
 - (b) the disclosure of information for the purposes of the investigation or prosecution of an offence (or suspected offence) under the law of England and Wales or any other jurisdiction, except where regulations otherwise provide,
 - (c) the disclosure of information for the purposes of instituting, or otherwise for the purposes of, proceedings before a court,

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- (d) the disclosure of information which has previously been lawfully disclosed to the public, or
 - (e) the disclosure of information for the purpose of facilitating the proper performance by a tribunal of disciplinary functions.
- (3) Section 34(2) does not prevent the disclosure of—
- (a) information in the form of a summary or collection of information that is framed so that information relating to an individual cannot be ascertained from it, or
 - (b) information about the amount of any grant, loan or other payment made to a person by the Lord Chancellor under arrangements made for the purposes of this Part.
- (4) Section 34(2) does not prevent the disclosure of information for any purpose—
- (a) with the consent of the individual in connection with whose case it was provided, and
 - (b) if the information was provided other than by that individual, with the consent of the person who provided the information.
- (5) Section 34(2) does not prevent the disclosure of information after the end of the restricted period if—
- (a) the disclosure is by a person who is a public authority for the purposes of the Freedom of Information Act 2000 or who is acting on behalf of such a person, and
 - (b) the information is not held by the public authority on behalf of another person.
- (6) The restricted period is the period of 100 years beginning with the end of the calendar year in which a record containing the information was first created by a person to whom the information was provided in connection with a case described in section 34(1)(b).

36 Misrepresentation

- (1) This section applies where a person—
- (a) intentionally fails to comply with a requirement imposed by or under this Part to provide documents or information, or
 - (b) in providing documents or information in accordance with such a requirement, makes a statement or representation knowing or believing it to be false.
- (2) The person is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (3) Proceedings in respect of an offence under this section may (despite anything in the Magistrates' Courts Act 1980) be brought at any time within the period of 6 months beginning with the date on which evidence sufficient in the opinion of the prosecutor to justify a prosecution comes to the prosecutor's knowledge.
- (4) Subsection (3) does not authorise the commencement of proceedings for an offence more than 2 years after the date on which the offence was committed.
- (5) A county court is to have jurisdiction to hear and determine an action brought by the Lord Chancellor to recover loss sustained by reason of—

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- (a) the failure by a person to comply with a requirement imposed by or under this Part to provide documents or information, or
- (b) a false statement or false representation made by a person in providing documents or information in accordance with such a requirement.

37 Status of Director and Lord Chancellor

- (1) The Director is to carry out the functions of the office on behalf of the Crown.
- (2) Service as the Director is service in the civil service of the State.
- (3) The Lord Chancellor is to be treated as a corporation sole—
 - (a) for all purposes relating to the acquisition, holding, management and disposal of property and interests in property under this Part, and
 - (b) for all other purposes relating to the Lord Chancellor's functions in connection with legal aid and other functions under this Part.
- (4) An instrument in connection with the acquisition, holding, management or disposal by the Lord Chancellor of property or an interest in property under this Part or for a purpose mentioned in subsection (3)(b) may be executed on the Lord Chancellor's behalf by a person authorised by the Lord Chancellor for that purpose.
- (5) Any such instrument purporting to have been executed by the Lord Chancellor or on the Lord Chancellor's behalf is to be received in evidence and, unless the contrary is proved, to be treated as having been so executed.

38 Abolition of Legal Services Commission

- (1) The Legal Services Commission ceases to exist.
- (2) Schedule 4 (transfer of employees and property etc of Legal Services Commission) has effect.
- (3) The Lord Chancellor must, as soon as practicable after subsection (1) comes into force—
 - (a) prepare a report on how the Legal Services Commission has carried out its functions in the final period,
 - (b) lay a copy of the report before Parliament, and
 - (c) once it has been laid, publish the report.
- (4) The Lord Chancellor must, as soon as practicable after subsection (1) comes into force—
 - (a) prepare a statement of accounts for the Legal Services Commission for the final period, and
 - (b) send a copy of the statement to the Comptroller and Auditor General.
- (5) The Comptroller and Auditor General must—
 - (a) examine, certify and report on the statement, and
 - (b) arrange for a copy of the statement and the report to be laid before Parliament.
- (6) In this section—
 - “the final period” means the period—

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- (a) beginning with end of the last financial year for which the Legal Services Commission produced a report and accounts in accordance with paragraphs 14 and 16 of Schedule 1 to the Access to Justice Act 1999, and
 - (b) ending immediately before the day on which subsection (1) comes into force;
- “financial year” means a period of 12 months ending with 31 March.

Commencement Information

- II** S. 38 wholly in force at 1.4.2013; s. 38 not in force at Royal Assent, see s, 151(1); s. 38(2) in force at 4.3.2013 and s. 38(1)(3)-(6) in force at 1.4.2013 by S.I. 2013/453, arts. 2(a), 3(a)

39 Consequential and transitional provision

- (1) Schedule 5 (legal aid: consequential amendments) has effect.
- (2) Where the Lord Chancellor considers it appropriate as part of the arrangements for effecting the transition from the operation of Part 1 of the Access to Justice Act 1999 to the operation of this Part of this Act, the Lord Chancellor may by regulations make provision requiring or enabling prescribed 1999 Act services to be made available to individuals or other persons under this Part for a period specified or described in the regulations.
- (3) In subsection (2) “1999 Act services” means services which, immediately before the day on which the first regulations under that subsection come into force, may be funded under Part 1 of the Access to Justice Act 1999.
- (4) Where the Lord Chancellor considers it appropriate for the Legal Services Commission to cease to exist before this Part is brought fully into force, the Lord Chancellor may by regulations make provision for the purpose of requiring or enabling the Lord Chancellor and the Director, or persons authorised by the Lord Chancellor or the Director, to carry out LSC functions for a period specified or described in the regulations.
- (5) In subsection (4) “LSC functions” means functions conferred or imposed on the Legal Services Commission by or under Part 1 of the Access to Justice Act 1999.
- (6) Regulations under subsection (4) may not include provision requiring or enabling the Lord Chancellor—
 - (a) to take decisions about whether services should be funded in individual cases, or
 - (b) to give directions or guidance about the carrying out of functions under Part 1 of the Access to Justice Act 1999 in relation to individual cases.
- (7) Regulations under this section—
 - (a) may amend, repeal, revoke or otherwise modify Part 1 of the Access to Justice Act 1999, this Part of this Act, any other Act and any instrument made under an Act;
 - (b) may describe a period, in particular, by reference to the coming into force of a provision of this Part of this Act or the repeal of a provision of Part 1 of the Access to Justice Act 1999.

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- (8) The requirement for regulations under this section to specify or describe a period does not prevent the making of further regulations under this section.
- (9) The powers to make regulations under this section are without prejudice to the generality of the powers to make regulations under the other provisions of this Part and under section 149.
- (10) In this section “Act” includes an Act or Measure of the National Assembly for Wales.

40 Northern Ireland: information about financial resources

Schedule 6 (Northern Ireland: information about financial resources) has effect.

41 Orders, regulations and directions

- (1) Orders, regulations and directions under this Part—
 - (a) may make different provision for different cases, circumstances or areas,
 - (b) may make provision generally or only for specified cases, circumstances or areas, and
 - (c) may make provision having effect for a period specified or described in the order, regulations or direction.
- (2) They may, in particular, make provision by reference to—
 - (a) services provided for the purposes of proceedings before a particular court, tribunal or other person,
 - (b) services provided for a particular class of individual, or
 - (c) services provided for individuals selected by reference to particular criteria or on a sampling basis.
- (3) Orders and regulations under this Part—
 - (a) may provide for a person to exercise a discretion in dealing with any matter,
 - (b) may make provision by reference to a document produced by any person, and
 - (c) may make consequential, supplementary, incidental, transitional or saving provision.
- (4) Orders and regulations under this Part are to be made by statutory instrument.
- (5) A statutory instrument containing an order or regulations under this Part is subject to annulment in pursuance of a resolution of either House of Parliament, unless it is an instrument described in subsection (6) or (9).
- (6) A statutory instrument containing an order or regulations listed in subsection (7) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (7) Those orders and regulations are—
 - (a) orders under section 9;
 - (b) regulations under section 11(1)(b), other than regulations in respect of which the Lord Chancellor has made an urgency statement;
 - (c) regulations under section 13(8);
 - (d) orders under section 17(3);

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- (e) regulations under section 18(7);
 - (f) regulations under section 19;
 - (g) regulations under section 20;
 - (h) regulations under section 22;
 - (i) regulations under section 26(3) or (6)(b) or (d);
 - (j) regulations under section 27(6)(a) or (8);
 - (k) regulations under section 39 that amend or repeal a provision of an Act (as defined in that section), other than regulations revoking such regulations or inserting or repealing provision previously repealed or inserted by such regulations;
 - (l) regulations under paragraph 5(9) of Schedule 3;
 - (m) regulations under paragraph 11 of Schedule 4 that amend or repeal a provision of an Act (as defined in that Schedule).
- (8) An urgency statement is a statement that the Lord Chancellor considers that it is desirable for the regulations to come into force without delay for the reasons given in the statement.
- (9) Where a statutory instrument contains regulations under section 11(1)(b) in respect of which the Lord Chancellor has made an urgency statement—
- (a) the regulations may not come into force before the instrument and the statement are laid before Parliament, and
 - (b) the regulations cease to have effect at the end of the period of 120 days beginning with the day on which the instrument is made unless the instrument is approved by a resolution of each House of Parliament before the end of that period.
- (10) In reckoning the period of 120 days no account is to be taken of any time—
- (a) during which Parliament is dissolved or prorogued, or
 - (b) during which both Houses are adjourned for more than 4 days.
- (11) Where regulations cease to have effect under subsection (9) that does not affect—
- (a) anything previously done in reliance on the regulations, or
 - (b) the making of further regulations.

42 Interpretation

(1) In this Part—

“advocacy” means the exercise of a right of audience before a court, tribunal or other person;

“civil legal services” has the meaning given in section 8;

“civil servant” means an individual employed in the civil service of the State;

“criminal proceedings” has the meaning given in section 14;

“the Director” means the Director of Legal Aid Casework;

“functions” includes powers and duties;

“legal aid” has the meaning given in section 1;

“legal proceedings” means proceedings before a court or tribunal;

“legal services” has the meaning given in section 8;

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“modify”, in relation to an Act or instrument, includes amend, repeal or revoke and related terms are to be interpreted accordingly;

“prescribed” means prescribed by regulations (except in Schedule 6) and related terms are to be interpreted accordingly;

“regulations” means regulations made by the Lord Chancellor (except in Schedule 6);

“remuneration” includes disbursements;

“representation” means representation for the purposes of proceedings and includes—

- (a) the advice and assistance which is usually given by a representative in the steps preliminary or incidental to proceedings, and
- (b) subject to any time limits which may be prescribed, advice and assistance as to any appeal.

- (2) In this Part references to proceedings are to be interpreted in accordance with section 20(3).

43 Crown application

This Part binds the Crown.

Status:

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