

**2013 No. 2814**

**LEGAL AID AND ADVICE, ENGLAND AND WALES**

**The Criminal Legal Aid (Determinations by a Court and Choice of Representative) (Amendment) Regulations 2013**

<i>Made</i>	- - - -	<i>31st October 2013</i>
<i>Laid before Parliament</i>		<i>1st November 2013</i>
<i>Coming into force</i>	- -	<i>2nd December 2013</i>

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by sections 27(6)(c) and (e) and (10), 30(2) and 41(1) to (3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(a).

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Criminal Legal Aid (Determinations by a Court and Choice of Representative) (Amendment) Regulations 2013 and come into force on 2nd December 2013.

(2) The amendments made by regulation 2 apply to an application for a determination under regulation 11 of the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013(b) (“the 2013 Regulations”) made on or after 2nd December 2013.

**Amendment to the 2013 Regulations**

2.—(1) Part 3 of the 2013 Regulations (choice of representative) is amended as follows.

(2) In sub-paragraph (a) of the definition of “the prosecution condition” in regulation 18(7), after “prosecution” insert “and the relevant court is satisfied that the individual will be, or will be likely to be, prejudiced if they too are not represented by two or more advocates”.

(3) For regulation 19 substitute—

**“Selection of a Queen’s Counsel or multiple advocates**

19.—(1) A determination that an individual is entitled to select a Queen’s Counsel or more than one advocate under regulation 18 may only be made by the following judges—

- (a) subject to paragraph (2), in the course of a trial or a preliminary hearing, pre-trial review or plea and directions hearing, the judge who has been assigned as the trial judge;
- (b) where a trial judge has not been assigned, by—

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(a) 2012 c. 10. Section 42(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 provides that in Part 1 of that Act “regulations” means regulations made by the Lord Chancellor.  
(b) S.I. 2013/614.

- (i) a High Court judge; or
  - (ii) subject to paragraph (2), a resident judge of the Crown Court or, in the absence of a resident judge, a judge nominated by a resident judge of the Crown Court for the purpose of making such a determination; or
  - (c) where the proceedings are in the Court of Appeal, by the Registrar of Criminal Appeals, a High Court judge or a judge of the Court of Appeal.
- (2) A determination made by a judge referred to in paragraph (1)(a) or (b)(ii) does not take effect unless it is approved by a presiding judge of the circuit or by a judge nominated by a presiding judge of the circuit for the purpose of giving such approval.”

Signed by authority of the Lord Chancellor

*Shailesh Vara*  
Parliamentary Under Secretary of State  
Ministry of Justice

31st October 2013

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend Part 3 of the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013 (S.I. 2013/614) (“the 2013 Regulations”). Part 3 of the 2013 Regulations makes provision for the circumstances in which a relevant court may permit a defendant who qualifies for criminal legal aid to select a Queen’s Counsel or multiple advocates to represent them.

Regulation 2(2) amends sub-paragraph (a) of the definition of “the prosecution condition” in regulation 18(7) of the 2013 Regulations, which applies where two or more advocates have been instructed on behalf of the prosecution. The prosecution condition is one of the conditions set out in regulation 18 of the 2013 Regulations. If the relevant conditions in regulation 18 are met, this enables the court to make a determination that permits a defendant to instruct multiple advocates. The amended definition of “the prosecution condition” provides that the condition will be met only where the court is satisfied that the defendant will be prejudiced, or will likely to be prejudiced, if they are not represented by two or more advocates in circumstances in which the prosecution has two or more advocates.

Regulation 2(3) substitutes regulation 19 of the 2013 Regulations to set out the judges who may make a determination in relation to multiple Counsel or Queen’s Counsel. In the Crown Court, the trial judge may make such a determination or, if a trial judge has not been assigned, the resident judge may make such a determination. The resident judge may also nominate another judge to make such a determination if the resident judge is absent. Regulation 19(2) provides that a determination made by the trial judge or the resident judge of the Crown Court (or a judge nominated for that purpose by the resident judge) that an individual is entitled to select a Queen’s Counsel or more than one advocate, does not take effect without the approval of a presiding judge of the circuit or their nominee.

A full impact assessment of the effect of the policy implemented by this instrument on the costs of business and the voluntary sector was produced with the Government’s response to consultation, *Transforming Legal Aid: Next Steps*, and is available at <https://consult.justice.gov.uk/>.

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