

Draft Order laid before Parliament under section 41(6) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No.

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

**The Legal Aid, Sentencing and Punishment of Offenders
Act 2012 (Amendment of Schedule 1) Order 2012**

Made - - - - *****
Coming into force - - *1st April 2013*

The Lord Chancellor makes the following Order in exercise of the powers conferred by sections 9(2)(1) and 41(1)(a) and (b) and (2)(a) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(2).

In accordance with section 41(6) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, a draft of this instrument was laid before Parliament and approved by resolution of each House of Parliament.

Citation, commencement and interpretation

1. This Order may be cited as the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2012 and comes into force on 1st April 2013.
2. In this Order “the Act” means the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Civil legal services: Review of decision of First-tier Tribunal relating to welfare benefits

3. In Part 1 of Schedule 1 to the Act (services), after paragraph 7 (facilities for disabled persons) insert—

(1) Section 9(2) enables the Lord Chancellor to modify Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 42(1) of the Act provides that in Part 1 of the Act, “modify”, in relation to an Act or instrument, includes amend, repeal or revoke and related terms are to be interpreted accordingly.

(2) 2012 c. 10.

“Review of decision of First-tier Tribunal relating to welfare benefits

(1) Civil legal services provided to an individual in relation to a review by the First-tier Tribunal under section 9 of the Tribunals, Courts and Enforcement Act 2007(3) of a decision made by it relating to a benefit, allowance, payment, credit or pension under—

- (a) a social security enactment,
- (b) the Vaccine Damage Payments Act 1979(4), or
- (c) Part 4 of the Child Maintenance and Other Payments Act 2008(5),

but only where the first or second condition is met.

(2) The first condition is that—

- (a) the individual was an appellant in the proceedings before the First-tier Tribunal that resulted in the decision,
- (b) the First-tier Tribunal has given the individual an opportunity to make representations as part of the review, and
- (c) the services are provided in relation to the making of such representations by the individual.

(3) The second condition is that—

- (a) the individual was an appellant in the proceedings before the First-tier Tribunal that resulted in the decision,
- (b) the First-tier Tribunal has taken action in relation to the decision following the review without first giving every appellant and respondent in those proceedings an opportunity to make representations as part of the review, and
- (c) the services are provided in relation to an application for the action to be set aside and for the First-tier Tribunal to review the decision again.

General exclusions

(4) Sub-paragraph (1) is subject to—

- (a) the exclusions in Part 2 of this Schedule, with the exception of paragraphs 1 and 15 of that Part, and
- (b) the exclusion in Part 3 of this Schedule.

Definitions

(5) In this paragraph “social security enactment” means—

- (a) the Social Security Contributions and Benefits Act 1992(6),
- (b) the Jobseekers Act 1995(7),
- (c) the State Pension Credit Act 2002(8),
- (d) the Tax Credits Act 2002(9),
- (e) the Welfare Reform Act 2007(10),

(3) 2007 c. 15.
(4) 1979 c. 17.
(5) 2008 c. 6.
(6) 1992 c. 4.
(7) 1995 c. 18.
(8) 2002 c. 16.
(9) 2002 c. 21.
(10) 2007 c. 5.

- (f) the Welfare Reform Act 2012(11), or
- (g) any other enactment relating to social security.”

Civil legal services: EU and international agreements concerning maintenance

4.—(1) Paragraph 18 of Part 1 of Schedule 1 to the Act (EU and international agreements concerning maintenance) is amended as follows.

(2) After sub-paragraph (3) insert—

“(3A) Civil legal services provided in relation to an application under Article 10 of the 2007 Hague Convention (applications relating to maintenance decisions).

(3B) Civil legal services provided to an individual in relation to proceedings in England and Wales relating to the recognition or enforcement of a maintenance decision in circumstances in which—

- (a) Article 17(b) of the 2007 Hague Convention (free legal assistance for persons who benefited from such assistance in State of origin) applies to the proceedings by virtue of Article 37(2) of that Convention (direct request to competent authority of Contracting State), and
- (b) the individual falls within Article 17(b) as so applied.”

(3) In sub-paragraph (4), for “(3)” substitute “(3B)”.

(4) In sub-paragraph (5), after the definition of “the 2000 Brussels Regulation” insert—

““the 2007 Hague Convention” means the Convention on the international recovery of child support and other forms of family maintenance concluded at The Hague on 23 November 2007(12);”.

Civil legal services: Judicial review

5. In paragraph 19 of Part 1 of Schedule 1 to the Act (judicial review), in sub-paragraph (2)(a) for “15 and 16” substitute “15, 16 and 18”.

Excluded services: Judicial review

6. In Part 2 of Schedule 1 to the Act (excluded services), after paragraph 17 insert—

(1) Civil legal services provided in relation to judicial review of an enactment, decision, act or omission.

(2) In this paragraph “judicial review” means—

- (a) the procedure on an application for judicial review (see section 31 of the Senior Courts Act 1981(13)), but not including the procedure after the application is treated under rules of court as if it were not such an application, and
- (b) any procedure in which a court, tribunal or other person mentioned in Part 3 of this Schedule is required by an enactment to make a decision applying the principles that are applied by the court on an application for judicial review.”

(11) 2012 c. 5.

(12) OJ No L 192, 22.7.11, p 51-70.

(13) 1981 c. 54; section 31 was amended by S.I. 2004/1033 and the Tribunals, Courts and Enforcement Act 2007 (c. 15), section 141.

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2013 ISBN 978-0-11-153398-7

Signed by authority of the Lord Chancellor

Date

Name
Minister of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) (“the Act”), which sets out the scope of civil legal aid.

Article 3 adds a new paragraph 7A to Part 1 of Schedule 1 to the Act to provide that civil legal services are available in relation to a review by the First-tier Tribunal under section 9 of the Tribunals, Courts and Enforcement Act 2007 (c. 15) of a decision made by it in a case relating to welfare benefits, if one of two conditions is met. The first condition is that the civil legal services are provided to the individual in relation to making representations to the First-tier Tribunal in circumstances where the Tribunal has invited such representations as part of a review of its decision. The second condition is that the civil legal services are provided to an individual in relation to an application to the First-tier Tribunal for any action taken following a review to be set aside and for the First-tier Tribunal’s decision to be reviewed again, in circumstances where the Tribunal has taken that action without first giving every party an opportunity to make representations. This new paragraph is subject to the exclusions in Part 2 of Schedule 1 of the Act, except for paragraphs 1 and 15, and to the exclusion in Part 3 of Schedule 1 to the Act.

Article 4 amends paragraph 18 of Part 1 of Schedule 1 to the Act to provide that civil legal services are available in relation to an application under Article 10 of the Convention on the international recovery of child support and other forms of family maintenance concluded at The Hague on 23 November 2007, for the recognition, enforcement or establishment of a decision in relation to maintenance. Civil legal services will also be available to an individual for proceedings in England and Wales in relation to recognition and enforcement of a maintenance decision where the individual makes a request directly to a competent authority for recognition and enforcement of the decision. Legal aid will only be available in these circumstances if the individual previously received legal aid in the State of origin.

Articles 5 and 6 amend Schedule 1 to the Act in respect of civil legal services provided in relation to judicial review. Article 6 adds to Part 2 of Schedule 1 a new exclusion for civil legal services provided in relation to judicial review of an enactment, decision, act or omission. Article 5 provides an exception to this exclusion in paragraph 19(2) of Part 1 of Schedule 1. This ensures that legal aid is available for judicial review only as set out in paragraph 19 of Part 1 of Schedule 1 to the Act, which continues to be subject to a number of general and specific exclusions.