

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

BACKGROUND

4. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 has 4 Parts and 27 Schedules.

Part 1: Legal aid

5. Part 1 of the Access to Justice Act 1999 sets out the current statutory framework for legal aid in England and Wales. That Act established the Legal Services Commission (“the LSC”), the non-departmental public body responsible for administering civil and criminal legal aid schemes in England and Wales. It also gives the Lord Chancellor powers to set the overall scope of legal aid, along with a number of powers and duties in relation to the LSC.
6. In *The Coalition: Our Programme for Government*, the Government set out its intention to “carry out a fundamental review of legal aid to make it work more efficiently.”
7. In March 2010, Sir Ian Magee published the conclusions of his review into the delivery of legal aid. A key recommendation was that consideration should be given to transferring the administration of the civil and criminal legal aid schemes to an executive agency of the Ministry of Justice. The previous Government announced later that month that it had accepted this recommendation. In November 2010 the Ministry of Justice published a consultation paper on proposals for reform of legal aid (see paragraph 8 below). In the paper the coalition Government stated that it had reached a similar conclusion and would seek to legislate when parliamentary time allowed. The Act therefore contains provisions to abolish the LSC and transfer the day-to-day administration of legal aid to the Lord Chancellor. In practice, this will be done by civil servants in an executive agency of the Ministry of Justice. However, decisions on legal aid in individual cases will be taken by a statutory office holder: a civil servant designated by the Lord Chancellor as the Director of Legal Aid Casework. The Lord Chancellor will have no power to direct or issue guidance to the Director in relation to individual cases.
8. The Ministry of Justice published a consultation paper entitled “*Proposals for the Reform of Legal Aid in England and Wales*”¹ on 15 November 2010. The consultation closed on 14 February 2011. On 21 June 2011 the Government published its response to the consultation, which set out its finalised proposals for reform². This Act implements many of these proposals.

1 “*Proposals for the Reform of Legal Aid in England and Wales*” Cm 7967 available at: <http://www.justice.gov.uk/consultations/legal-aid-reform-151110.htm>

2 The Government’s response is available at: <http://www.justice.gov.uk>. It is Command Paper CM8072.

Part 2: Litigation funding and costs

9. The Ministry of Justice published on 15 November 2010 a further consultation paper entitled “*Proposals for reform of civil litigation funding and costs in England and Wales*”³ which relates to proposals from Lord Justice Jackson’s review⁴ (published in January 2010). This consultation exercise closed on 14 February 2011. On 29 March 2011 the Government published its response to the consultation exercise, announcing its intention to implement the proposals to reform “no win no fee” conditional fee agreements (“CFAs”)⁵. This Act implements those proposals.
10. On 9 September 2011, the Government announced its intention to ban referral fees in personal injury claims via written ministerial statement to Parliament⁶ as part of the wider package of reforms of civil litigation funding and costs. Provision to achieve that is now made in Part 2 of the Act.
11. In some circumstances, the courts have power to order that an amount in respect of costs incurred by a successful defendant, witness or successful appellant is to be paid out of central funds (in other words, out of money provided by Parliament). In the case of *R (on the application of the Law Society of England and Wales) v Lord Chancellor*⁷ in June 2010, the court held that the Lord Chancellor cannot cap the amounts that the courts award. This Act will provide the Lord Chancellor with a power to do so for the purposes of proceedings in England and Wales, other than in relation to costs incurred in proceedings in the Supreme Court. It will also largely prevent orders being made in respect of legal costs (that is, lawyers’ fees, charges and disbursements including expert witness costs) where legal aid is available.

Part 3 Sentencing and Punishment of Offenders

12. The current sentencing framework is broadly governed by the Criminal Justice Act 2003 (“the 1991 Act”).
13. In *The Coalition: Our Programme for Government*, the Government set out its intention to: “conduct a full review of sentencing policy to ensure that it is effective in deterring crime, protecting the public, punishing offenders and cutting reoffending.”
14. On 7 December 2010, the Ministry of Justice published a consultation paper entitled “*Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*”⁸. The document set out the Government’s plans to cut crime and reoffending through fundamental changes to the criminal justice system. The consultation paper proposed a number of reforms to the existing sentencing legislation including a number of changes to the sentencing framework, reform of release and recall arrangements, and reforms to the youth justice system. The consultation ran for 12 weeks and concluded on 4 March 2011. The Ministry of Justice published its response to the consultation on 21 June 2011. This Act implements a number of the sentencing reforms that formed part of the consultation.
15. On 13 July 2011, the Ministry of Justice published a consultation paper entitled “*Options for dealing with squatting*.”⁹ The purpose of the consultation was to gather

3 “*Proposals for reform of civil litigation funding and costs in England and Wales*” Cm 7947 available at <http://www.justice.gov.uk/consultations/jackson-review-151110.htm>

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

5 “*Reforming Civil Litigation Funding and Costs in England and Wales – Implementation of Lord Justice Jackson’s Recommendations: The Government Response*” Cm 8041 available at <http://www.justice.gov.uk/consultations/566.htm>

6 *Personal Injury Cases (referral fees)*, available at: <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110909/wmstext/110909m0001.htm#11090987000046>

7 *R (on the application of the Law Society of England and Wales) v Lord Chancellor* available at www.bailii.org/ew/cases/EWHC/Admin/2010/1406.html

8 “*Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*” Cm 7972 available at www.justice.gov.uk/consultations/consultation-040311

9 “*Options for dealing with squatting*” CP12/2011 available at www.justice.gov.uk/consultations/dealing-with-squatters.htm.

*These notes refer to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10)
which received Royal Assent on 1 May 2012*

more information about the nature and extent of squatting in England and Wales, and to invite views on whether, and how, existing criminal and civil mechanisms should be strengthened to deal with it. The consultation ran for 12 weeks and concluded on 5 October 2011. The Ministry of Justice published its response to the consultation on 26 October 2011. Following the consultation, a new offence of squatting in a residential building was added to the Bill during its passage through Parliament (see what is now section 144).