

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 1: Legal Aid

Section 10: Exceptional cases

104. *Section 10* gives the Director the power to provide individuals with civil legal services not included in Schedule 1 in exceptional circumstances subject to certain conditions.
105. *Subsections (1) and (2)* provide that civil legal services not included in Schedule 1 are to be provided to an individual if the Director has, first, made an exceptional case determination and, second, determined that the individual qualifies for those services (provided that neither determination has been withdrawn).
106. *Subsection (3)(a)* provides that an exceptional case determination is a determination by the Director that it is necessary to make legal services available to an individual because the failure to do so would amount to a breach of the individual's Convention rights (as defined in s.1(1) of the Human Rights Act 1998) or any rights of the individual to the provision of legal services that are enforceable EU rights (as defined in section 2(1) of the European Communities Act 1972).
107. It will be necessary to make legal services available to an individual where the withholding of such services would clearly amount to a breach of Article 6 of the ECHR ('right to a fair trial'), Article 2 of the ECHR ('right to life') or any other provision of the Convention giving rise to an obligation to provide such services. There will be a breach of the enforceable EU rights of the individual to the provision of legal services where the withholding of such services would be clearly contrary to the rights reaffirmed by Article 47 of the Charter of Fundamental Rights, or to the rights to legal services that are conferred on individuals by EU instruments.
108. *Subsection (3)(b)* provides that an exceptional case determination may also be made where the Director considers that the failure to provide legal services would not necessarily amount to a breach of an individual's rights, but that it is nevertheless appropriate for the services to be made available, having regard to the risk of such a breach occurring.
109. *Subsections (1) and (4)* provide that advocacy services are to be made available to an individual for the purposes of an inquest under the Coroners Act 1988 into the death of a member of that individual's family if the Director, first, has made a wider public interest determination in relation to the individual and the inquest and, second, has determined that the individual qualifies for the services (provided that neither determination has been withdrawn). *Subsection (4)* does not preclude the making available of advocacy services in such inquest proceedings by virtue of an exceptional case determination under *subsection (3)*.

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

110. *Subsection (5)* provides that a wider public interest determination may be made in relation to advocacy for the purposes of an inquest into the death of a member of an individual's family where, in the particular circumstances of the case, the provision of advocacy is likely to produce significant benefits for a class of person other than the individual or the individual's family.
111. *Subsection (6)* defines when one individual is a member of another individual's family for the purposes of this section.