



# Legal Aid, Sentencing and Punishment of Offenders Act 2012

## 2012 CHAPTER 10

### PART 1

#### LEGAL AID

##### *Civil legal aid*

### **8 Civil legal services**

- (1) In this Part “legal services” means the following types of services—
- providing advice as to how the law applies in particular circumstances,
  - providing advice and assistance in relation to legal proceedings,
  - providing other advice and assistance in relation to the prevention of disputes about legal rights or duties (“legal disputes”) or the settlement or other resolution of legal disputes, and
  - providing advice and assistance in relation to the enforcement of decisions in legal proceedings or other decisions by which legal disputes are resolved.
- (2) The services described in subsection
- (1) include, in particular, advice and assistance in the form of—
- representation, and
  - mediation and other forms of dispute resolution.
- (3) In this Part “civil legal services” means any legal services other than the types of advice, assistance and representation that are required to be made available under sections 13, 15 and 16 (criminal legal aid).

### **9 General cases**

- (1) Civil legal services are to be available to an individual under this Part if—

- (a) they are civil legal services described in Part 1 of Schedule 1, and
  - (b) the Director has determined that the individual qualifies for the services in accordance with this Part (and has not withdrawn the determination).
- (2) The Lord Chancellor may by order—
- (a) add services to Part 1 of Schedule 1, or
  - (b) vary or omit services described in that Part,
- (whether by modifying that Part or Part 2, 3 or 4 of the Schedule).

## 10 Exceptional cases

- (1) Civil legal services other than services described in Part 1 of Schedule 1 are to be available to an individual under this Part if subsection
- (2)
- or
- (4)
- is satisfied.
- (2) This subsection is satisfied where the Director—
- (a) has made an exceptional case determination in relation to the individual and the services, and
  - (b) has determined that the individual qualifies for the services in accordance with this Part,
- (and has not withdrawn either determination).
- (3) For the purposes of subsection (2), an exceptional case determination is a determination—
- (a) that it is necessary to make the services available to the individual under this Part because failure to do so would be a breach of—
    - (i) the individual’s Convention rights (within the meaning of the Human Rights Act 1998), or
    - (ii) any rights of the individual to the provision of legal services that are enforceable EU rights, or
  - (b) that it is appropriate to do so, in the particular circumstances of the case, having regard to any risk that failure to do so would be such a breach.
- (4) This subsection is satisfied where—
- (a) the services consist of advocacy in proceedings at an inquest under the Coroners Act 1988 into the death of a member of the individual’s family,
  - (b) the Director has made a wider public interest determination in relation to the individual and the inquest, and
  - (c) the Director has determined that the individual qualifies for the services in accordance with this Part,
- (and neither determination has been withdrawn).
- (5) For the purposes of subsection (4), a wider public interest determination is a determination that, in the particular circumstances of the case, the provision of advocacy under this Part for the individual for the purposes of the inquest is likely to produce significant benefits for a class of person, other than the individual and the members of the individual’s family.

- (6) For the purposes of this section an individual is a member of another individual's family if—
- (a) they are relatives (whether of the full blood or half blood or by marriage or civil partnership),
  - (b) they are cohabitants (as defined in Part 4 of the Family Law Act 1996), or
  - (c) one has parental responsibility for the other.

## **11 Qualifying for civil legal aid**

- (1) The Director must determine whether an individual qualifies under this Part for civil legal services in accordance with—
- (a) section 21 (financial resources) and regulations under that section, and
  - (b) criteria set out in regulations made under this paragraph.
- (2) In setting the criteria, the Lord Chancellor—
- (a) must consider the circumstances in which it is appropriate to make civil legal services available under this Part, and
  - (b) must, in particular, consider the extent to which the criteria ought to reflect the factors in subsection (3)
- (3) Those factors are—
- (a) the likely cost of providing the services and the benefit which may be obtained by the services being provided,
  - (b) the availability of resources to provide the services,
  - (c) the appropriateness of applying those resources to provide the services, having regard to present and likely future demands for the provision of civil legal services under this Part,
  - (d) the importance for the individual of the matters in relation to which the services would be provided,
  - (e) the nature and seriousness of the act, omission, circumstances or other matter in relation to which the services are sought,
  - (f) the availability to the individual of services provided other than under this Part and the likelihood of the individual being able to make use of such services,
  - (g) if the services are sought by the individual in relation to a dispute, the individual's prospects of success in the dispute,
  - (h) the conduct of the individual in connection with services made available under this Part or an application for such services,
  - (i) the conduct of the individual in connection with any legal proceedings or other proceedings for resolving disputes about legal rights or duties, and
  - (j) the public interest.
- (4) In setting the criteria, the Lord Chancellor must seek to secure that, in cases in which more than one form of civil legal service could be provided for an individual, the individual qualifies under this Part for the form of service which in all the circumstances is the most appropriate having regard to the criteria.
- (5) The criteria must reflect the principle that, in many disputes, mediation and other forms of dispute resolution are more appropriate than legal proceedings.

- (6) Regulations under subsection (1)(b) may provide that no criteria apply in relation to a prescribed description of individual or services.

## 12 Determinations

- (1) A determination by the Director that an individual qualifies under this Part for civil legal services must specify—
- the type of services, and
  - the matters in relation to which the services are to be available.
- (2) Regulations may make provision about the making and withdrawal of determinations under sections 9 and 10.
- (3) Regulations under subsection (2) may, in particular, include—
- provision about the form and content of determinations and applications for determinations,
  - provision permitting or requiring applications and determinations to be made and withdrawn in writing, by telephone or by other prescribed means,
  - provision setting time limits for applications and determinations,
  - provision for a determination to be disregarded for the purposes of this Part if made in response to an application that is made otherwise than in accordance with the regulations,
  - provision about conditions which must be satisfied by an applicant before a determination is made,
  - provision about the circumstances in which a determination may or must be withdrawn,
  - provision requiring information and documents to be provided,
  - provision requiring individuals who are the subject of a determination to be informed of the reasons for making or withdrawing the determination, and
  - provision for giving information to individuals who do not qualify for civil legal services under this Part about alternative ways of obtaining or funding civil legal services.
- (4) The circumstances prescribed under subsection (3)(f) may, in particular, relate to whether the individual who is the subject of the determination has complied with requirements imposed by or under this Part.
- (5) Regulations under subsection (2) must make provision establishing procedures for the review of determinations under sections 9 and 10 and of the withdrawal of such determinations.
- (6) Regulations under subsection (2) may make provision for appeals to a court, tribunal or other person against such determinations and against the withdrawal of such determinations.