

2013 No. 2790

LEGAL AID AND ADVICE, ENGLAND AND WALES

**The Criminal Legal Aid (General) (Amendment) Regulations
2013**

Made - - - - - *1st November 2013*

Laid before Parliament *4th November 2013*

Coming into force in accordance with regulation 1

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by sections 15(1), 18(3), 21(2) and 41(1) to (3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(a).

In making these Regulations, in accordance with section 15(3) of that Act, the Lord Chancellor has had regard, in particular, to the interests of justice.

PART 1

GENERAL AND AMENDMENTS

Citation and commencement

1.—(1) These Regulations may be cited as the Criminal Legal Aid (General) (Amendment) Regulations 2013.

(2) Except as provided by paragraph (3), these Regulations come into force on 2nd December 2013.

(3) Regulations 3, 5, 6 and 8 come into force on 27th January 2014.

Interpretation

2. In these Regulations—

“the Act” means the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

“the General Regulations” means the Criminal Legal Aid (General) Regulations 2013(b).

Amendments to the General Regulations

3. In regulation 2 (interpretation), after “criminal legal aid”, insert—

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

(b) S.I. 2013/9.

““Financial Resources Regulations” means the Criminal Legal Aid (Financial Resources) Regulations 2013(a);”.

4.—(1) Regulation 12 (prescribed conditions) of the General Regulations is amended as follows.

(2) For paragraph (2)(d), substitute—

“(d) require advice and assistance regarding—

(i) the application of the provisions in Chapter 6 of Part 12 of the Criminal Justice Act 2003(b) or in Chapter 2 of Part 2 of the Crime (Sentences) Act 1997(c), which determine when a prisoner is either entitled to be released by the Secretary of State or eligible for consideration by the Parole Board(d) for a direction to be released; or

(ii) the application of the provisions in Chapter 2 of Part 5 of the Powers of Criminal Courts (Sentencing) Act 2000(e), which determine when an offender is entitled to be released by the Secretary of State;”.

(3) For paragraph (2)(f) substitute—

“(f) require advice and assistance regarding a disciplinary hearing in a prison or young offender institution where—

(i) the proceedings involve the determination of a criminal charge for the purposes of Article 6(1) of the European Convention on Human Rights; or

(ii) the governor has exercised the governor’s discretion to allow advice and assistance in relation to the hearing;”

(4) In paragraph (2)(g) after “Parole Board”, insert “where the Parole Board has the power to direct that individual’s release”.

(5) Omit paragraph (2)(h).

(6) For paragraph (3), substitute—

“(3) In this regulation—

(a) “governor” includes—

(i) a director approved by the Secretary of State for the purposes of section 85(1)(a) of the Criminal Justice Act 1991(f)(“the 1991 Act”); and

(ii) a controller appointed by the Secretary of State under section 85(1)(b) of the 1991 Act,

where the Secretary of State has entered into a contract for the running of a prison under section 84 of the 1991 Act(g); and

(b) “volunteer” means an individual who, for the purposes of assisting with an investigation, without having been arrested—

(i) attends voluntarily at a police station, customs office or any other place where a constable is present; or

(ii) accompanies a constable to a police station, customs office or any other such place.”.

5.—(1) Regulation 24 (determinations: proceedings in the magistrates’ court) of the General Regulations is amended as follows.

(2) For paragraph (1) substitute—

(a) S.I. 2013/471 as amended by the Criminal Legal Aid (Financial Resources) (Amendment) Regulations 2013 (S.I. 2013/2791).

(b) 2003 c. 44.

(c) 1997 c. 43.

(d) The Parole Board is constituted under section 239 of the Criminal Justice Act 2003 (c. 44).

(e) 2000 c. 6.

(f) 1991 c. 53. Section 85 has been amended but the amendments are not relevant to these Regulations.

(g) Section 84 was substituted by section 96 of the Criminal Justice and Public Order Act 1994 (c. 33).

“(1) Subject to paragraph (2), when the Director makes a determination under section 16 of the Act in accordance with Part 3 of the Financial Resources Regulations that an individual is eligible for representation for proceedings in the magistrates’ court, the Director must also make a determination that the individual is eligible in accordance with Part 4 of the Financial Resources Regulations for representation in the Crown Court in relation to those proceedings.”

6.—(1) Regulation 25 (determinations: certain proceedings in the Crown Court) of the General Regulations is amended as follows.

(2) For paragraph (1) substitute—

“(1) In the circumstances described in paragraph (2), the Director must consider the individual’s application for a determination under section 16 for representation for the purposes of criminal proceedings in the Crown Court in accordance with Part 4 of the Financial Resources Regulations.”

PART 2

TRANSITIONAL PROVISIONS

Prison law

7.—(1) The amendments made by regulation 4 do not apply to an application for advice and assistance under section 15 of the Act (advice and assistance for criminal proceedings) which is made before 2nd December 2013.

(2) For the purpose of this regulation, where the application relates to the individual’s treatment in a prison, young offender institution or secure training centre, an application is made before 2nd December 2013 if the application is—

- (a) in paper form and is—
 - (i) signed and dated by the provider before 2nd December 2013; and
 - (ii) received by the Director by 5:00pm on 2nd January 2014; or
- (b) made over the telephone to the provider and—
 - (i) the telephone call is made before 2nd December 2013; and
 - (ii) the application form is signed and dated by the provider and is received by the Director within 30 days of the telephone call.

(3) To the extent that paragraph (2) does not apply, an application is made before 2nd December 2013 if the application is—

- (a) in paper form and is signed and dated by the individual before 2nd December 2013; or
- (b) made over the telephone to the provider and—
 - (i) the telephone call is made before 2nd December 2013; and
 - (ii) the application form is signed and dated by the individual and is received by the provider within 30 days of the telephone call.

(4) In this regulation, “provider” means a person with whom the Lord Chancellor has made an arrangement under section 2(1) of the Act (arrangements) for the provision of criminal legal aid.

Crown Court eligibility

8.—(1) The amendments made by regulations 5 and 6 do not apply to an application by an individual for a determination under section 16 of the Act in relation to representation in Crown Court proceedings which is made before 27th January 2014.

(2) For the purpose of this regulation, an application is made before 27th January if the application is signed and dated by the individual before 27th January 2014.

Signed by authority of the Lord Chancellor

1st November 2013

Shailesh Vara
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Criminal Legal Aid (General) Regulations 2013 (S.I. 2013/9) (“the General Regulations”), which make provision for determinations in relation to whether an individual qualifies for criminal legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) (“the Act”).

Regulation 4 amends regulation 12 of the General Regulations. Regulation 12(2) of the General Regulations sets out the prescribed conditions that must be met before advice and assistance for criminal proceedings may be made available to an individual under section 15 of the Act. Regulation 4(2) amends the prescribed conditions to restrict the provision of advice and assistance regarding an individual’s sentence to cases that relate to the calculation of the total period of time that the individual must serve in custody before either being entitled to release by the Secretary of State (where the prisoner is automatically released without consideration by the Parole Board), or becoming eligible for consideration by the Parole Board for a direction that the prisoner be released.

Regulation 4(3) amends the prescribed conditions to restrict the provision of advice and assistance in prison law cases to an individual’s disciplinary hearing in a prison or young offender institution where the proceedings engage Article 6(1) of the European Convention on Human Rights, or where the governor has exercised the governor’s discretion to allow advice and assistance in relation to the hearing.

Regulation 4(4) and (5) amends the prescribed conditions to restrict the provision of advice and assistance in proceedings before the Parole Board to those proceedings where the Parole Board has the power to direct the individual’s release.

Regulation 5 substitutes regulation 24 of the General Regulations to provide that where the Director makes a determination that an individual is financially eligible for legal aid in magistrates’ court proceedings the Director must also make a determination that the individual is eligible for legal aid in the Crown Court in relation to those proceedings.

Regulation 6 substitutes regulation 25(1) of the General Regulations to require the Director of Legal Aid Casework to consider the application for legal aid in the Crown Court of an individual determined to be financially ineligible for legal aid in relation to proceedings in the magistrates’ court, where the proceedings continue in the Crown Court other than on appeal.

Regulation 7 provides that the amendments made by regulation 4 do not apply to cases in which an application for advice and assistance is made prior to 2nd December 2013. Regulation 8 provides that the amendments made by regulation 5 and 6 apply to any application for a determination made on or after 27th January 2014.

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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