

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

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

ANNEX C: DETAILED EXPLANATORY NOTE FOR PART 1 OF SCHEDULE 1

Paragraph 1: Care, supervision and protection of children

821. *Paragraph 1* brings within scope civil legal services in relation to certain orders and proceedings relating to the intervention of a local authority in the care, supervision and protection of a child.
822. *Paragraph 1(1)* lists the types of cases involving care, supervision and protection of children that are to be within scope. These include where the local authority is considering commencing, or has commenced, care or supervision proceedings under Part IV of the Children Act 1989 in respect of a child, proceedings for a child assessment order or proceedings for an emergency protection order under Part V of the Children Act 1989, and adoption cases under the Adoption and Children Act 2002. So, for example, legal aid will be available for parents where a local authority is seeking to take their child into care.
823. *Paragraph 1(2)* brings within the scope of civil legal aid services for cases related to those set out at paragraph 1(1); that is, where an order is sought as an alternative to one of those orders, or for proceedings heard together with proceedings relating to such an order. So, for example, an application for a special guardianship order in respect of a child who is the subject of a care order application by a local authority will be in scope, if the two proceedings are to be heard together or the special guardianship order is an alternative to the care order.

Paragraph 2: Special educational needs

824. *Paragraph 2(1)(a)* brings within the scope of civil legal aid matters arising under Part 4 of the Education Act 1996. These are typically challenges relating to a local education authority's assessment of a child's special educational needs.
825. *Paragraph 2(1)(b)* brings within scope civil legal services for cases relating to Learning Difficulty Assessments under sections 139A and 140 of the Learning and Skills Act 2000. This will allow funding for special educational needs cases for persons aged between 16 and 24.
826. *Paragraph 2(2)* applies the exclusions in Part 2 and the advocacy exclusion in Part 3. Legal aid in the form of advocacy may be made available for appeals in the Upper Tribunal on a point of law from decisions made by the First-tier (Special Educational Needs and Disability – SEND) Tribunal or the Special Educational Needs Tribunal for Wales under Part 4 of the Education Act 1996 (see paragraph 17 of Part 3 of Schedule 1).

Paragraph 3: Abuse of child or vulnerable adult

827. This paragraph brings within the scope of civil legal aid services provided in relation to the abuse of an individual that took place when the individual was a child or vulnerable adult. Such services are within the scope of civil legal aid if they are provided to the individual concerned. They are also within the scope of civil legal aid if the individual concerned has died and the services are provided to the individual's personal representative or for the purposes of a claim under the Fatal Accidents Act 1976 for the benefit of the individual's dependants. This will include services provided in relation to claims by individuals who allege abuse in local authority care, and claims against a local authority for failure to take an individual into care. This paragraph will also include claims against the alleged perpetrator of abuse.
828. *Sub-paragraph (2)(a)* applies the exclusions in Part 2 except in relation to personal injury or death, a claim in tort in respect of negligence, a claim in tort in respect of assault, battery or false imprisonment, a claim in tort in respect of breach of statutory duty, and damages claims against a public authority (within the meaning of section 6 of the Human Rights Act 1998) for breach of Convention rights (as defined in that Act)

to the extent the claim is made in reliance on section 7 of that Act. *Sub-paragraph (2)(b)* applies the exclusion in Part 3.

829. *Sub-paragraph (3)* sets out a specific exclusion for services in relation to clinical negligence. *Sub-paragraph (4)* excludes services provided in relation to a matter arising under a family enactment (as defined in paragraph 12 of Part 1 of Schedule 1).

Paragraph 4: Working with children and vulnerable adults

830. *Sub-paragraph (1)(a)* brings within the scope of civil legal aid services provided in relation to the inclusion or removal of an individual from a barred list under section 2 of the Safeguarding Vulnerable Groups Act 2006. A person included in the list under section 2 is barred from regulated activity relating to children and adults. Also within the scope of civil legal aid are services provided in relation to the inclusion or removal of an individual from the lists maintained under section 81 of the Care Standards Act 2000 (individuals considered unsuitable to work with children) and section 1 of the Protection of Children Act 1999 (individuals considered unsuitable to work with vulnerable adults).
831. *Sub-paragraph (1)(b)* brings within scope services provided in relation to a disqualification order imposed under sections 28, 29 or 29A of the Criminal Justice and Court Services Act 2000, the effect of which is to bar the person against whom the order was made from working with children.
832. *Sub-paragraph (1)(c)* brings within scope services in relation to a direction under section 142 of the Education Act 2002, which prohibits an individual from teaching and related activities.
833. *Sub-paragraph (2)* applies the exclusions in Part 2 and Part 3. Under paragraphs 14 and 15 of Part 3, advocacy available includes advocacy in proceedings in the First-tier Tribunal and appeals to the Upper Tribunal under the provisions listed in paragraph 14 of Part 3 concerning appeals and other applications relating to the above lists, orders and directions.

Paragraph 5: Mental health and mental capacity

834. *Sub-paragraph (1)(a)* provides that civil legal services may be made available in relation to matters arising under the Mental Health Act 1983. These include civil procedures under which individuals may be detained in hospital for assessment or treatment for a mental disorder.
835. *Sub-paragraph (1)(b)* provides that legal aid may be made available for applications by a prisoner to a Mental Health Review Tribunal under paragraph 5(2) of the Schedule to the Repatriation of Prisoners Act 1984.
836. *Sub-paragraph (1)(c)* provides that civil legal services may be made available in relation to matters arising under the Mental Capacity Act 2005. Such services may relate to decisions of the Court of Protection made under that Act concerning the property, financial affairs and personal welfare of persons who lack capacity to take those decisions for themselves.
837. *Sub-paragraph (2)* specifies that paragraph 5(1) is subject to the exclusions in Part 2 and Part 3. Advocacy available under Part 3 includes advocacy in proceedings in the First-tier Tribunal (Mental Health) and the Mental Health Review Tribunal for Wales and in appeals to the Upper Tribunal arising out of such proceedings (see paragraphs 9, 10 and 15 of Part 3). Advocacy may be made available for the purposes of proceedings in the Court of Protection to the extent that they concern certain vital interests of the individual concerned, for example, the right to life, liberty or physical safety (see paragraph 4 of Part 3 of Schedule 1).

838. *Paragraph 5(3)* excludes services provided in relation to the creation of lasting powers of attorney or the making of advance decisions under the Mental Capacity Act 2005, but *sub-paragraph (4)* states that this does not exclude services relating to the validity, meaning, effect or applicability of a lasting power of attorney that has been created, or an advance decision that has been made.

Paragraph 6: Community care

839. *Paragraph 6* describes civil legal services provided in relation to community care services. This would include, for example, services provided in order to assist a person to obtain or challenge an assessment for adequate services, to challenge care home closures or to contest a person's involuntary removal from a home by a local authority.
840. *Sub-paragraph (3)* defines community care services as services which a relevant person may provide under a number of listed enactments. The definition of "relevant person" allows other relevant persons to be prescribed.

Paragraph 8: Appeals relating to welfare benefits

841. *Paragraph 8* brings within scope civil legal services in relation to a welfare benefits appeal on a point of law in the Upper Tribunal (including seeking permission from the Upper Tribunal to bring a substantive appeal), the Court of Appeal and the Supreme Court. Advocacy before the Court of Appeal and Supreme Court for these cases is in scope by virtue of paragraphs 1 and 2 of Part 3 of Schedule 1.
842. The paragraph covers appeals on a point of law relating to a benefit, allowance, payment, credit or pension under social security enactments listed at *sub-paragraph 7(3)*, as well as the Vaccine Damage Payments Act 1979 and Part 4 of the Child Maintenance and Other Payments Act 2008. The latter two enactments have been included because appeals concerning vaccine damage payments and payments in relation to diffuse mesothelioma are currently treated as part of the welfare benefits category for the purposes of civil legal aid.
843. *Sub-paragraph (2)* applies the exclusions in Part 2, except for paragraphs 1 and 15. These relate to personal injury and death and civil legal services in relation to a benefit, allowance, payment, credit or pension under certain enactments. *Sub-paragraph (2)(b)* applies the exclusion in Part 3 of Schedule 1.

Paragraph 7: Facilities for disabled persons

844. *Paragraph 7* provides that civil legal services may be made available in relation to Part 1 of the Housing Grants, Construction and Regeneration Act 1996, under which local authority grants may be provided to disabled persons to help them to adapt their homes to help them to live independently.

Paragraph 9: Inherent jurisdiction of High Court in relation to children and vulnerable adults

845. *Paragraph 9* provides that civil legal services may be made available in relation to the inherent jurisdiction of the High Court in relation to children and vulnerable adults. The High Court may exercise its inherent jurisdiction to protect children and vulnerable adults in cases that call for judicial intervention but which fall outside the relevant statutory framework. So, for example, an application for a wardship order or for an injunction to protect a person under the inherent jurisdiction of the court will be in scope.

Paragraph 10: Unlawful removal of children

846. *Paragraph 10(1)* brings within the scope of civil legal aid services provided for an individual in relation to any of a list of specified orders and requirements where the individual is seeking to prevent the unlawful removal from the United Kingdom of a

child to whom the individual is related. It also provides that civil legal services may be made available to an individual who is seeking the return of a related child who has been unlawfully removed to a place within the United Kingdom.

847. A typical situation would be where a child resides with one parent pursuant to a residence order and there are settled arrangements for staying contact with the ‘non-resident’ parent, the child is collected by the ‘non-resident’ parent but is not returned and there is concern they may remove the child from the United Kingdom. Legal aid may be made available for the resident parent in relation to the orders or requirements to prevent the removal which are listed in sub-paragraph (1)(a) to (c). A similar situation within the UK would be where the non-resident parent does not return the child to the resident parent after a period of otherwise agreed contact has ended.
848. *Paragraph 10(2)* brings within the scope of civil legal aid certain services provided to an individual seeking to secure the return of a related child who has been unlawfully removed to a place in the United Kingdom
849. *Sub-paragraph (3)* applies to this category the exclusions in Parts 2 and 3 of the Schedule. *Sub-paragraph (4)* provides that a child is “related” to an individual if the individual is the child’s parent or otherwise has parental responsibility for the child (for example, by way of a residence order). *Sub-paragraph (5)* defines a child as a person under 18, which is in line with the Children Act 1989 although only in exceptional cases would fresh orders be made, or orders varied, for those aged between 16 and 18.

Paragraph 11: Family homes and domestic violence

850. *Paragraph 11* refers to civil legal services for cases where a person is seeking protection from domestic violence.
851. *Sub-paragraphs (1) and (2)* list the types of cases that are to be within scope. They cover cases where a person is seeking a civil remedy specifically to provide protection from domestic violence, in the form of an order under Part 4 of the Family Law Act 1996 (sub-paragraph (1)) or an injunction following assault, battery or false imprisonment or an injunction or other order under the inherent jurisdiction of the High Court (sub-paragraph (2)).
852. *Sub-paragraph (3)* applies the exclusions in Parts 2 and 3 of the Schedule to the services in scope under this paragraph, except for the exclusions for services provided in relation to assault, battery or false imprisonment and in relation to trust law.
853. *Sub-paragraph (4)* defines “family relationship” for the purpose of this paragraph: the definition is a broad one, based on the definition of “associated persons” in the Family Law Act 1996. *Sub-paragraph (5)* gives the Lord Chancellor a power to set out in regulations when circumstances arise out of a family relationship.

Paragraph 12: Victims of domestic violence and family matters

854. *Paragraph 12* refers to civil legal aid for victims of domestic violence in private law family cases arising out of the abusive family relationship. Only services in relation to those private law family matters will be in scope and not services for a claim in tort. For example, financial disputes or disputes about children arising from the breakdown of an abusive relationship will be in scope for victims of domestic violence, but a claim by the victim against the abuser for damages will not.
855. *Sub-paragraph (2)* applies the general exclusions in Part 2 of the Schedule to the services in scope under this paragraph, except for the exclusion for services provided in relation to trust law. *Sub-paragraph (4)* provides that the services in scope under this paragraph will include conveyancing, but only where conveyancing will give effect to a court order made in proceedings for which legal aid has been provided under Part 1 of the Bill. This means that, in these limited circumstances, the general exclusion

for conveyancing set out in Part 2 of the Schedule does not apply. *Sub-paragraph (5)* applies the general exclusion in Part 3 of the Schedule.

856. *Sub-paragraph (6)* applies a specific exclusion which removes from scope under this paragraph services provided in relation to claim in tort in respect of the abuse referred to in *sub-paragraph (1)*.
857. *Sub-paragraph (7)* defines “family relationship” for the purpose of this paragraph in the same broad way as paragraph 11(4). *Sub-paragraph (8)* provides that cases arising out of a family relationship include matters arising under a family enactment (“family enactment” for this purpose being any of those listed in *sub-paragraph (9)*) and gives the Lord Chancellor a power to set out in regulations when matters otherwise arise out of a family relationship. *Sub-paragraph (9)*, in addition to providing the list of family enactments, defines “domestic violence” (covering psychological, physical and emotional abuse) and defines “adult” and “child” as a persons aged 18 or over and under 18 respectively.
858. It is intended that the regulations made under section 11 will be used to ensure that funding under this paragraph is limited to cases where there is appropriately clear evidence of the need for protection. The circumstances that will be accepted as evidence have been described by the Government in Parliament¹.

Paragraph 13: Protection of children and family matters

859. *Paragraph 13* refers to civil legal services where a person is seeking in a private law family case to protect a child from abuse by applying for any of the list of orders and procedures set out in *sub-paragraph (1)*. So, for example, civil legal aid may be made available to a person who is seeking an order under section 8 of the Children Act 1989 to prevent a person who has abused a child from having contact with that child.
860. *Sub-paragraph (2)* applies the exclusions in Parts 2 and 3 of the Schedule to the services in scope under this paragraph. *Sub-paragraph (3)* defines “abuse”, “adult” and “child”.
861. It is intended that the regulations made under section 11 will be used to ensure that funding for services described in this paragraph is limited to cases where there is appropriately clear evidence of the need for protection in a similar way to those services described in paragraph 12.

Paragraph 14: Mediation in family disputes

862. *Paragraph 14* refers to civil legal aid for mediation in relation to family disputes.
863. Under *paragraph 14(1) and (2)* legal aid will be in scope both for mediation and for civil legal services provided in connection with the mediation. It is intended that the regulations made under section 11 will be used to determine what legal services in connection with mediation will be provided as part of legal aid. The type of legal advice to be available is described in the response to the consultation paper *Proposals for the Reform of Legal Aid in England and Wales*.
864. *Sub-paragraph (3)* applies the exclusions in Parts 2 and 3 of the Schedule to the services in scope under this paragraph, except for the exclusions for services provided in relation to trust law. *Sub-paragraph (5)* provides that the services in scope under this paragraph will include conveyancing, where conveyancing is used to give effect to arrangements made in order to resolve a family dispute in relation to which legal aid for services described in paragraph 14 has been provided under Part 1 of the Bill. This means that, in these circumstances, the general exclusion for conveyancing, set out in Part 2 of the Schedule, does not apply.

¹ Hansard, 17 April 2012, Column 222 -<http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120417/debtext/120417-0002.htm#12041733000002>

865. *Sub-paragraph (7)* defines “family dispute” and “family relationship” for the purposes of this paragraph (“family relationship” having the same broad meaning as in paragraph 11). *Sub-paragraph (8)* provides that cases arising out of a family relationship includes matters arising under a family enactment (“family enactment” having by virtue of *sub-paragraph (9)* the same meaning as in paragraph 12), and gives the Lord Chancellor a power to set out in regulations when matters otherwise arise out of a family relationship.

Paragraph 15: Children who are parties to family proceedings

866. *Paragraph 15* refers to civil legal services for children in relation to family proceedings. *Sub-paragraph (1)(a) to (c)* lists the types of instances when civil legal aid may be provided, for example where the child is, or proposes to be the applicant or respondent to the proceedings, or when the child is made a party to proceedings by the court under Rule 16.2 of the Family Procedure Rules 2010.
867. *Sub-paragraph (3)(a)* defines proceedings as family proceedings if they arise out of a family relationship, and *sub-paragraph (3)(b) and (c)* defines “family relationship” (giving it the same broad meaning as in paragraph 11) for the purpose of this paragraph. *Sub-paragraph (4)* provides that cases arising out of a family relationship include proceedings arising under a family enactment (“family enactment” having by virtue of *sub-paragraph (5)* the same meaning as in paragraph 12), and gives the Lord Chancellor a power to set out in regulations when matters arise out of a family relationship.
868. *Sub-paragraph (5)* defines a “child” as a person under the age of 18.

Paragraph 16: Forced marriage

869. *Paragraph 16* refers to civil legal services in relation to forced marriage protection orders, which are made under Part 4A of the Family Law Act 1996. In conjunction with paragraph 11 of the Schedule, this paragraph ensures that cases where an injunction or other order is sought to protect an individual from forced marriage or domestic violence will be within the scope of civil legal aid.

Paragraph 17: EU and International agreements concerning children

870. *Paragraph 17* refers to civil legal services in relation to private family law matters arising under international agreements. Cases are within scope for civil legal aid if following an application being made to the Lord Chancellor under the 1980 European Convention on Child Custody or the 1980 Hague Convention, or upon an application being made for recognition and enforcement under the relevant provisions of the 2003 Brussels Regulation, court proceedings are necessary.
871. *Paragraph 17(1)(a)* refers to civil legal services in relation to cases where an EU court decision relating to the custody of a child is to be recognised and enforced within England and Wales.
872. *Paragraph 17(1)(b)* refers to civil legal services in relation to an application made to the Lord Chancellor under the 1980 Hague Convention in an “incoming” case in relation to a child who is or is believed to be in England and Wales. This works on the principle of returning children who have been wrongfully removed or retained to their country of habitual residence so that any issue relating to the child’s custody can be determined by the courts of the country of habitual residence.
873. *Paragraph 17(1)(c)* refers to civil legal services in relation to the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility under the 2003 Brussels Regulation (known as “Brussels IIa”). These are cases about the recognition and enforcement in a court in England and Wales of a judgment made in a Member State. The judgments concern, for example, rights of

access to children, the return of a child and practical arrangements for the exercise of rights of access.

874. *Paragraph 17(3)* provides full definitions of the Conventions and Regulation referenced in this paragraph and *sub-paragraph (4)* makes provision about when an application is “made to the Lord Chancellor” for the purposes of this paragraph.

Paragraph 18: EU and international agreements concerning maintenance

875. *Paragraph 18* refers to civil legal services in relation to cases where a person is applying to the courts in England and Wales to recognise or enforce a maintenance order from outside the jurisdiction, or, in the case of the EU Maintenance Regulation, is applying from outside the jurisdiction to establish within the jurisdiction a liability to pay maintenance. This would include issues of child maintenance and a former spouse’s maintenance where an order was made outside England and Wales but the person liable to pay the maintenance resides in England or Wales. *Paragraph 18(1)* lists the EU Conventions and Regulation under which applications for recognition and enforcement may be made, with the exception of the EU Maintenance Regulation, in relation to which provision is made by *sub-paragraphs (2) and (3)*.
876. *Paragraph 18(2)* refers to civil legal services provided in relation to the establishment and enforcement of maintenance orders and other decisions on maintenance across EU borders under the EU Maintenance Regulation, where the application is made under Article 56. For example, cases will be in scope where a person within the EU but outside England and Wales applies through his or her home Central Authority², which transmits the application to the appropriate Central Authority in the United Kingdom, for a maintenance decision made in their country of residence to be recognised and enforced through the courts in England and Wales.
877. *Paragraph 18(3)* refers to civil legal aid for recognition, enforceability and enforcement of maintenance decisions in England and Wales where an individual has received legal aid or exemptions from costs or expenses in their Member State of origin. In such a case it is not necessary for the application to have been made via the Central Authority for it to be in scope.
878. *Paragraph 18(4)* applies the exclusions in Parts 2 and 3 of the Schedule to the services in scope under this paragraph, except for the exclusion for services provided in relation to trust law (since in a limited number of cases, matters of trust law may arise in establishing or enforcing a liability).
879. *Paragraph 18(5)* provides full definitions of the Conventions and Regulations referenced in this paragraph.

Paragraph 19: Judicial review

880. *Sub-paragraph (1)* brings within the scope of civil legal aid services provided in relation to judicial review. *Sub-paragraph (2)(a)* applies the exclusions in Part 2 with the exception of personal injury or death, a claim in tort in respect of negligence, a claim in tort in respect of assault, battery or false imprisonment, a claim in tort in respect of trespass to goods, a claim in tort in respect of trespass to land, damage to property, a claim in tort in respect of breach of statutory duty, a claim for damages in respect of a breach of Convention rights where the claim is made in reliance on section 7 of the Human Rights Act 1998, civil legal services in relation to a benefit, allowance, payment, credit or pension under certain enactments, and compensation under the Criminal Injuries Compensation Scheme. *Sub-paragraph (2)(b)* also applies the exclusion in Part 3. Judicial review for the purposes of this paragraph includes any procedure in which a court, tribunal or other person mentioned in Part 3 of Schedule 1 is

² The EU Maintenance Regulation requires each Member State to have a Central Authority for the transmission of applications in relation to maintenance obligations between Member States.

required by an enactment to make a decision applying the principles that are applied by the court on an application for judicial review (see the definition of “judicial review” in *sub-paragraph (10)*). Applications for bail in connection with an application for judicial review are in scope by virtue of paragraph 5(1)(a) of Part 4 of Schedule 1.

881. *Sub-paragraph (3)* excludes services that may be provided in relation to judicial review that do not have the potential to produce real benefits for the applicant, for the applicant’s family or for the environment. This means that civil legal aid may not be made available for representative actions by way of judicial review. However, *sub-paragraph (4)* ensures that if services have been provided in relation to a judicial review then those services do not cease to be available if subsequently the judicial review ceases to have the potential to produce the benefit referred to in *sub-paragraph (3)*.
882. Subject to *sub-paragraphs (7) and (8)*, *sub-paragraph (5)* excludes services provided in relation to judicial review relating to immigration (including issues relating to rights described in paragraph 30 of Part 1 of this Schedule (immigration: rights to enter and remain)) where the same or substantially the same issues have already been the subject of judicial review or an appeal to a tribunal or court within a period of 1 year, starting on the day the previous judicial review or appeal was determined and the prior judicial review or appeal was not determined in the applicant’s or appellant’s favour or by a decision by the UKBA to withdraw its decision.
883. Subject to *sub-paragraphs (7) and (8)*, *sub-paragraph (6)* excludes services provided in relation to judicial review of removal directions, where the directions were given not more than a year after the later of the decision to remove the individual from the United Kingdom by way of removal directions, the refusal of leave to appeal against such a decision or the determination or withdrawal of an appeal against such a decision.
884. *Sub-paragraph (7)* provides that *sub-paragraphs (5) and (6)* do not exclude services provided to an individual in relation to judicial review of a negative decision in relation to an asylum application (within the meaning of the Council Directive [2005/85/EC](#) of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status) where there is no right of appeal to the First-tier Tribunal against the decision or in relation to judicial review of a certificate issued under section 94 or 96 of the Nationality, Immigration and Asylum Act 2002. Section 94 allows the Secretary of State to issue a certificate on a number of different grounds, such as that an asylum claim is clearly unfounded, and the certificate prevents an appeal to the First-tier Tribunal being brought while an individual is in the United Kingdom. Section 96 allows the Secretary of State to issue a certificate preventing an appeal to the First-tier Tribunal on an issue where a person has already had an opportunity to raise the issue in an earlier appeal.
885. *Sub-paragraph (8)* provides that the exclusions at *sub-paragraphs (5) and (6)* do not prevent civil legal services from being provided in relation to judicial review of removal directions in prescribed circumstances. These circumstances would be prescribed in regulations and must relate to the period of notice given of removal and/or the reasons for proposing that period.

Paragraph 20: Habeas corpus

886. *Sub-paragraph (1)* brings within the scope of civil legal aid services in relation to an application for a writ of habeas corpus, a common law remedy enabling an individual to challenge the legality of the individual’s detention. *Sub-paragraph (2)* applies the exclusions in Parts 2 and 3. Applications for bail in connection with an application for habeas corpus are in scope by virtue of paragraph 5(1)(a) of Part 4 of Schedule 1.

Paragraph 21: Abuse of position or powers by public authority

887. *Sub-paragraph (1)* brings within the scope of civil legal aid services in relation to a claim against a public authority for its abuse of position or power. This is in addition to any claim for judicial review or habeas corpus.
888. *Sub-paragraph (2)(a)* applies the exclusions in Part 2 with the exception of those relating to personal injury or death, a claim in tort in respect of negligence, a claim in tort in respect of assault, battery or false imprisonment, a claim in tort in respect of trespass to goods, a claim in tort in respect of trespass to land, damage to property, a claim in tort in respect of breach of statutory duty and a damages claim for breach of Convention rights by a public authority to the extent that the claim is made in reliance on section 7 of the Human Rights Act 1998. For the purposes of this paragraph, *sub-paragraph (4)* defines “public authority” as having the same meaning as in section 6 of the Human Rights Act 1998. *Sub-paragraph (2)(b)* applies the exclusion in Part 3 of Schedule 1. *Sub-paragraph (3)* excludes services provided in relation to clinical negligence.
889. *Sub-paragraph (4)* provides that, in order for an act or omission by a public authority to constitute abuse of its position or powers for the purposes of this paragraph, it must be deliberate or dishonest and result in harm to a person or property that was reasonably foreseeable.

Paragraph 22: Breach of Convention rights by public authority

890. *Sub-paragraph (1)* brings within the scope of civil legal aid services in relation to a claim in tort and other claims for damages in respect of an act or omission by a public authority which involved a significant breach of Convention rights.
891. *Sub-paragraph (2)(a)* applies the exclusions in Part 2 with the exception of those in relation to personal injury or death, a claim in tort in respect of negligence, a claim in tort in respect of assault, battery or false imprisonment, a claim in tort in respect of trespass to goods, a claim in tort in respect of trespass to land, damage to property and a claim in tort in respect of breach of statutory duty. It also provides an exception to the general exclusion in paragraph 12 of Part 2 for a damages claim for breach of Convention rights by a public authority to the extent that the claim is made in reliance on section 7 of the Human Rights Act 1998. *Sub-paragraph (2)(b)* applies the exclusion in Part 3 of Schedule 1.
892. *Sub-paragraph (3)* excludes services provided in relation to clinical negligence.

Paragraph 23: Clinical Negligence and severely disabled infants

893. *Sub-paragraph (1)* brings within the scope of civil legal aid services for damages claims in respect of clinical negligence which has caused a neurological injury as a result of which the child is severely disabled, subject to two conditions being met.
894. Firstly, under *sub-paragraph (2)* the negligence must have occurred while the individual was in the mother’s womb or during birth or before the end of either of the following time periods: (i) where the individual is born before the beginning of the 37th week of pregnancy, eight weeks after the first day of what would have been that week; or (ii) where the individual is born during or after the 37th week of pregnancy, eight weeks after birth.
895. The second condition is set out in *sub-paragraph (3)* and provides that the services are made available to the individual or, where the individual has died, to the individual’s personal representative.
896. *Sub-paragraph (4)* applies the exclusions in Part 2 with the exception of those relating to personal injury or death, a claim in tort in respect of negligence, a claim in tort in respect of assault, battery or false imprisonment and a claim in tort in respect of breach of statutory duty.

Paragraph 24 Special Immigration Appeals Commission

897. *Paragraph 24* brings within the scope of civil legal aid services provided in relation to proceedings before the Special Immigration Appeals Commission.
898. *Sub-paragraph (2)* applies the exclusions and exceptions in Parts 2 and 3 of the Schedule. Advocacy before the Commission is within scope under paragraph 21 of Part 3. Applications for bail in connection with an appeal to the Special Immigration Appeals Commission are in scope by virtue of paragraph 5(1)(a) of Part 4 of Schedule 1.

Paragraph 25 Immigration: detention

899. *Paragraph 25* brings within the scope of civil legal aid services provided in relation to the immigration-related detention powers referred to in *sub-paragraph (1)*.
900. *Sub-paragraph (2)* applies the exclusions and exceptions in Parts 2 and 3 of the Schedule. Applications for bail in connection with immigration-related detention are in scope by virtue of paragraph 5(1)(a) of Part 4 of Schedule 1. Advocacy in the magistrates' court in proceedings in relation to bail under Schedule 2 to the Immigration Act 1971 or arrest under Schedule 2 or 3 to that Act is in scope by virtue of paragraph 8(b) of Part 3 of Schedule 1. Advocacy may be provided for certain proceedings in the First-tier Tribunal and the Upper Tribunal under paragraphs 11 and 15 of Part 3.

Paragraph 26 Immigration: temporary admission

901. *Paragraph 26* brings within the scope of civil legal aid services provided in relation to temporary admission to the United Kingdom under the provisions referred to in *sub-paragraph (1)*. Temporary admission is an alternative to detention under immigration powers.
902. *Sub-paragraph (2)* applies the exclusions in Parts 2 and 3 of the Schedule. Advocacy before the First-tier Tribunal and the Upper Tribunal for these cases is in scope by virtue of paragraphs 11 and 15 of Part 3 of Schedule 1. Advocacy in the magistrates' court in relation to arrest under Schedule 2 to the Immigration Act 1971 is in scope by virtue of paragraph 8(b) of Part 3 of Schedule 1.

Paragraph 27 Immigration: residence etc restrictions

903. *Paragraph 27* brings within the scope of civil legal aid services in relation to restrictions imposed on an individual, such as restrictions on place of residence, under the provisions referred to in *sub-paragraph (1)*. Restrictions are an alternative to detention under immigration powers.
904. *Sub-paragraph (2)* applies the exclusions in Parts 2 and 3 of the Schedule. Advocacy before the First-tier Tribunal and the Upper Tribunal for these cases is in scope by virtue of paragraphs 11 and 15 of Part 3 of Schedule 1. Advocacy in the magistrates' court in relation to arrest under Schedule 2 to the Immigration Act 1971 is in scope by virtue of paragraph 8(b) of Part 3 of Schedule 1.

Paragraph 28 Immigration: victims of domestic violence and indefinite leave to remain

905. *Paragraph 28(1)* brings within the scope of civil legal aid services in relation to an application for indefinite leave to remain on the grounds that an individual has been granted leave to enter or remain in the United Kingdom for a limited period as the partner of someone present or settled in the United Kingdom and the relationship has broken down permanently because the individual was the victim of domestic violence. This means that individuals applying for indefinite leave to remain in the United Kingdom under rules 289A to 289C of the Immigration Rules (indefinite leave to remain in the United Kingdom as the victim of domestic violence) will be within the scope of civil legal aid.

906. *Sub-paragraph (2)* applies the exclusions in Parts 2 and 3 of the Schedule. Advocacy before the First-tier Tribunal and the Upper Tribunal for these cases is in scope by virtue of paragraphs 13 and 15 of Part 3 of Schedule 1. *Sub-paragraph (3)* provides a specific exclusion from this paragraph for attendance at an interview conducted on behalf of the Secretary of State with a view to reaching a decision on the application described in sub-paragraph (1).

Paragraph 29 Immigration: victims of domestic violence and residence cards

907. *Paragraph 29(1)* brings within the scope of civil legal aid services for an individual in relation to a residence card application where, amongst other things, the individual satisfies the condition in regulation 10(5)(d)(iv) of the Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003) on the ground that the individual or a family member of the individual was the victim of domestic violence while the marriage or civil partnership of the qualified person was subsisting.
908. *Sub-paragraph (2)* applies the exclusions in Parts 2 and 3 of the Schedule. Advocacy before the First-tier Tribunal and the Upper Tribunal for these cases is in scope by virtue of paragraphs 13 and 15 of Part 3 of Schedule 1. *Sub-paragraph (3)* provides a specific exclusion from this paragraph for attendance at an interview conducted on behalf of the Secretary of State with a view to reaching a decision on the application described in sub-paragraph (1).
909. *Sub-paragraph (4)* defines, for the purposes of paragraph 29, the meaning of family members, qualified person and residence card applications (amongst other things).

Paragraph 30 Immigration: rights to enter and remain

910. *Paragraph 30* brings within the scope of civil legal aid services in relation to rights to enter and to remain in the United Kingdom under the provisions referred to in *sub-paragraph (1)*. This paragraph allows legal aid to be provided for claims for asylum.
911. *Sub-paragraph (2)* applies the exclusions in Parts 2 and 3 of the Schedule. Advocacy before the First-tier Tribunal and the Upper Tribunal for these cases is in scope by virtue of paragraphs 11 and 15 of Part 3 of Schedule 1.
912. Unless regulations provide otherwise, *sub-paragraph (3)* provides a specific exclusion from this paragraph for attendance at an interview conducted by the Secretary of State with a view to reaching a decision on a claim in respect of a right to enter or remain described in sub-paragraph (1).

Paragraph 31: Immigration: accommodation for asylum seekers

913. *Sub-paragraph (1)* brings within the scope of civil legal aid services in relation to the Secretary of State's powers to provide or arrange for the provision of accommodation for asylum seekers and failed asylum seekers and their dependants under the legislation listed in that paragraph. This includes appeals to the First-tier Tribunal (Asylum Support) under section 103 of the Immigration and Asylum Act 1999 where they concern the refusal or withdrawal of accommodation support. This provision only includes civil legal services where the application or appeal concerns accommodation.
914. *Sub-paragraph (2)* applies the exclusions in Parts 2 and 3 of Schedule 1. Under Part 3 of Schedule 1, advocacy is not available for appeals before the First-tier Tribunal (Asylum Support).

Paragraph 32: Victims of trafficking in human beings

915. *Paragraph 32* brings within the scope of civil legal aid services provided to an individual who is a victim of human trafficking.

916. *Sub-paragraph (1)* brings within the scope of civil legal services provided in relation to an application by that individual for leave to enter or remain in the United Kingdom. Advocacy in relation to appeals in relation to such applications in the First-tier Tribunal and Upper Tribunal is also within scope by virtue of paragraphs 13 and 15 of Part 3 of Schedule 1.
917. *Sub-paragraph (2)* brings within the scope of civil legal aid services provided to such an individual (or their personal representative) in relation to a claim under employment law arising in connection with the individual's exploitation.
918. *Sub-paragraph (3)* brings within the scope of civil legal aid services provided to such an individual (or their personal representative) in relation to a claim for damages arising in connection with the trafficking or exploitation of the individual.
919. *Sub-paragraph (1)* is subject to the exclusions in Parts 2 and 3 of Schedule 1.
920. *Sub-paragraph (2) and (3)* are subject to the exclusions in Part 2 of this Schedule, with the exception of personal injury or death, a claim in tort in respect of negligence, a claim in tort in respect of assault, battery or false imprisonment, a claim in tort in respect of trespass to goods, a claim in tort in respect of trespass to land, damage to property and a claim in tort in respect of breach of statutory duty. *Sub-paragraphs (2) and (3)* are subject to the exclusion in Part 3 of this Schedule.

Paragraph 33: Loss of home

921. *Paragraph 33* relates to cases where an individual is at risk of losing their home.
922. *Sub-paragraph (1)* brings within the scope of legal aid services provided to an individual in relation to court orders for sale or possession of the individual's home or eviction of the individual (or others) from the individual's home. So, for example, legal aid will be available to a person facing the potential immediate loss of their home as result of outstanding mortgage or rent arrears. Legal aid will also, for example, be available for a person who is unlawfully evicted from their home by a landlord.
923. *Sub-paragraph (2)* brings within scope services provided to an individual in relation to certain bankruptcy matters. These are services provided in relation to a bankruptcy order against an individual where that person's estate includes their home and where the bankruptcy proceedings are not brought voluntarily by the person concerned (and includes services provided in relation to a statutory demand). Such proceedings are included within the scope of civil legal aid because they can result in the loss of an individual's home.
924. *Sub-paragraph (3)* applies the exclusions of Part 2 of Schedule 1 except in relation to business matters. *Sub-paragraph (5)* ensures that civil legal services are within the scope of civil legal aid where they relate to proceedings for sale or possession of an individual's home brought by the trustee in bankruptcy under section 14 of the Trusts and Land and Appointment of Trustees Act 1996 in reliance on section 335A of the Insolvency Act 1986. This will cover, for example, legal aid for the former spouse of a bankrupt whose home is at risk as a result of an application for sale brought by the trustee in bankruptcy.
925. *Sub-paragraph (6)* disapplies the Part 2 exclusions relating to a claim in tort in respect of assault, battery or false imprisonment, a claim in tort in respect of trespass to goods, a claim in tort in respect of trespass to land, damage to property and a claim in tort in respect of breach of statutory duty in relation to counterclaims in possession/sale proceedings and in relation to unlawful eviction. This ensures that heads of claim in tort, commonly relied upon in possession proceedings and unlawful eviction cases, are not excluded from the scope of *paragraph 33*. This will include, for example, unlawful eviction claims brought by non-tenant occupiers

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926. *Sub-paragraph (8)* excludes certain matters that, to the extent that they are to be within the scope of civil legal aid, are covered by *paragraph 12* (victims of domestic violence and family matters).
927. *Sub-paragraphs (9) to (13)* ensure that *paragraph 33* does not bring within scope services provided to persons who unarguably are occupying premises as a trespasser and entered the premises as such. This ensures that legal aid is not available to people who are squatting and face proceedings for eviction.

Paragraph 34: Homelessness

928. *Paragraph 34* brings within the scope of civil legal aid services provided in relation to the provision of accommodation and assistance under Parts 6 and 7 of the Housing Act 1996 to persons who are homeless or threatened with homelessness as defined in the 1996 Act.
929. This paragraph is subject to the exclusions in Parts 2 and 3 of Schedule 1.

Paragraph 35: Risk to health or safety in rented home

930. *Paragraph 35* relates to housing disrepair cases where there is a serious risk to the health or safety of the individual or a family member in occupation.
931. *Sub-paragraph (1)* brings within scope of civil legal aid services provided to a person seeking the removal or reduction of a serious risk to their (or a family member's) health and safety where the serious risk arises from a deficiency in the person's rented or leased home and the civil legal services are provided in order to ensure that the landlord acts to address the risk. Consequently, in accordance with the proposals in the response to the consultation paper *Proposals for the Reform of Legal Aid in England and Wales*, it is intended that legal aid will be available for serious disrepair cases where a person is primarily seeking to remedy the disrepair rather than claiming damages
932. *Paragraph 35* is subject to the exclusions in Part 2 of Schedule 1, except the exclusions in respect of damage to property and a claim in tort in respect of breach of statutory duty. It is also subject to the exclusions in Part 3 of the Schedule.

Paragraph 36 Anti-social behaviour

933. *Paragraph 36* brings within the scope of civil legal aid services provided to persons in respect of anti-social behaviour-related matters in the county court. Anti-social behaviour matters dealt with in the magistrates' court fall within the scope of criminal legal aid. *Sub-paragraph (1)* lists the relevant matters, namely orders against an individual under section 1B of the Crime and Disorder Act 1998 (county court orders relating to anti-social behaviour), related interim orders and intervention orders under sections 1D and 1G of that Act and anti-social behaviour injunctions against an individual under section 153A of the Housing Act 1996.
934. This paragraph is subject to the exclusions in Parts 2 and 3 of Schedule 1.

Paragraph 37 Protection from harassment

935. *Sub-paragraph (1)* brings within the scope of civil legal aid services provided in relation to an injunction under section 3 or 3A of the Protection from Harassment Act 1997 and services provided in relation to the variation or discharge of a restraining order under section 5 or 5A of that Act. Sections 3 and 3A of the Protection from Harassment Act 1997 concern the making of injunctions to restrain conduct amounting to harassment. Section 5 of the Protection from Harassment Act 1997 enables a court on sentencing or dealing with a defendant on conviction to make a restraining order to protect a victim or other person from harassment or fear of violence. Section 5A allows a court on acquittal to make a restraining order to protect a person from harassment. Services provided in relation to sections 5 and 5A are within scope only as regards an application to vary

or discharge the restraining order made under those provisions, for example where a victim may feel that they may be at risk of danger or harassment from an ex-partner.

936. *Sub-paragraph (2)* applies the exclusions in Parts 2 and 3 of Schedule 1. Advocacy that may be made available under Part 3 includes advocacy in the Crown Court and a magistrates' court in relation to an application to vary or discharge a restraining order made under section 5 or 5A of the Protection from Harassment Act 1997 (see, respectively, paragraph 6(a) and paragraph 8(c) of Part 3 of Schedule 1). Injunctions under sections 3 and 3A of the Protection from Harassment Act 1997 are made by the High Court or a county court and, under paragraphs 3 and 5 of Part 3 of Schedule 1, advocacy may be available for such proceedings.

Paragraph 38: Gang-related violence

937. *Sub-paragraph (1)* brings within the scope of civil legal aid services provided in relation to injunctions under Part 4 of the Policing and Crime Act 2009. Under Part 4 of that Act, a court may make an injunction if it is satisfied to the civil standard of proof that the respondent has engaged in, encouraged or assisted gang-related violence and if it considers it necessary for an injunction to be granted to prevent the respondent from engaging in, encouraging or assisting gang-related violence and/or to protect the respondent from gang-related violence.
938. *Sub-paragraph (2)* applies the exclusions in Parts 2 and 3 of Schedule 1. Applications under Part 4 of the Policing and Crime Act 2009 are made to the High Court or a county court so, under paragraphs 3 and 5 of Part 3 of Schedule 1, advocacy may be available.

Paragraph 39: Sexual offences

939. *Sub-paragraph (1)* brings within the scope of civil legal aid services provided in relation to a sexual offence, but only where the services are provided to the victim of the offence or, where the victim has died, to the victim's personal representative. This, for example, allows legal aid to be made available for a civil claim against the alleged perpetrator of an offence or against a person that negligently failed to prevent a sexual offence.
940. *Sub-paragraph (2)(a)* applies the exclusions in Part 2 of Schedule 1 except for those in relation to personal injury or death, a claim in tort in respect of negligence, a claim in tort in respect of assault, battery or false imprisonment, a claim in tort in respect of breach of statutory duty and a damages claim for breach of Convention rights by a public authority to the extent that the claim is made in reliance on section 7 of the Human Rights Act 1998. *Sub-paragraph (2)(b)* applies the exclusion in Part 3.
941. *Sub paragraph (4)* ensures that civil legal services are capable of being provided in relation to incitement to commit a sexual offence, encouraging or assisting a sexual offence which the person intended or believed would be committed, conspiracy to commit a sexual offence, and an attempt to commit a sexual offence. *Sub-paragraph (5)* ensures that civil legal services are capable of being provided in relation to conduct which would be a sexual offence under the Sexual Offences Act 2003 or under section 1 of the Protection of Children Act 1978 but for the fact the conduct occurred before those provisions were in force. *Sub-paragraph (6)* ensures that conduct falls within the definition of a sexual offence for the purposes of paragraph 39 whether or not there have been criminal proceedings in relation to the conduct and whatever the outcome of any such proceedings.

Paragraph 40: Proceeds of crime

942. *Sub-paragraph (1)* brings within the scope of civil legal aid services provided to an individual in relation to the confiscation proceedings under the Proceeds of Crime Act 2002 listed in that sub-paragraph. These include, for example, proceedings in relation to the discharge or variation of a disclosure order.

943. *Sub-paragraph (2)* applies the exclusions in Part 2 of Schedule 1, except in relation to business matters. *Sub-paragraph (2)* also applies the exclusion in Part 3 in relation to advocacy. Under paragraphs 6(b) and 8(d) of Part 3 advocacy may be made available for the purposes of proceedings in the Crown Court and a magistrates' court in relation to any of the proceedings under the Proceeds of Crime Act 2002 referred to in paragraph 40(1).
944. *Sub-paragraph (3)* excludes from the scope of civil legal aid services provided for a defendant in relation to directions under section 54(3) of the Proceeds of Crime Act 2002 about distribution of funds in the hands of a receiver or directions under section 67D of that Act about distribution of proceeds of realisation. This is because these directions relate to the application of sums at the end of the confiscation enforcement process and the procedure is primarily intended to enable third parties to have their last opportunity to claim that money or property as theirs.
945. *Sub-paragraph (4)* provides that where a confiscation order has been made against a defendant under Part 2 of the Proceeds of Crime Act 2002 and varied under section 29 of that Act (which allows for variation of confiscation orders made at a time when the defendant had absconded), services for the defendant in relation to any subsequent application for compensation under section 73 of that Act are excluded from scope.

Paragraph 41: Inquests

946. *Sub-paragraph (1)* brings within the scope of civil legal aid services provided for an individual in relation to an inquest into the death of a member of the individual's family.
947. *Sub-paragraph (2)* applies the exclusions in Part 2 of Schedule 1, except in relation to personal injury or death, and applies the exclusion in Part 3.
948. *Sub-paragraph (3)* explains when an individual is a member of another individual's family for the purposes of this paragraph.

Paragraph 42: Environmental pollution

949. *Paragraph 42* refers to civil legal services provided in relation to injunctions for nuisance arising from environmental pollution. *Sub-paragraph (1)* allows the Lord Chancellor to prescribe the types of pollution of the environment that will be covered. The power may be used, for example, to prescribe pollution resulting in particular types of harm.

Paragraph 43: Equality

950. *Sub-paragraph (1)* refers to civil legal services provided in relation to a contravention of the Equality Act 2010 or a previous discrimination enactment. Such services are in scope where they relate to a freestanding cause of action under the Equality Act 2010 or previous discrimination enactments, or where an alleged contravention of the Equality Act 2010 or previous discrimination enactments arises in the course of other proceedings.
951. *Sub-paragraph (2)(a)* applies the exclusions in Part 2 of Schedule 1, except for civil legal services in relation to a benefit, allowance, payment, credit or pension under certain enactments. *Sub-paragraph (2)(b)* applies the exclusion in Part 3 of Schedule 1.

Paragraph 44: Cross-border disputes

952. *Paragraph 44(1)* refers to civil legal services provided in relation to proceedings in circumstances in which the services are required to be provided under Council Directive [2002/8/EC](#) of 27 January 2003 to improve access to justice in cross-border disputes. The Directive sets out minimum common rules relating to legal aid in disputes where the party applying for funding is domiciled or habitually resident in a Member State

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other than the Member State where the court is sitting or the decision is to be enforced. Paragraph 44 is not subject to the exclusions in Part 2 or Part 3 of Schedule 1.

Paragraph 45: Terrorism prevention and investigation measures etc

953. *Paragraph 45* brings within the scope of civil legal aid services provided in relation to Terrorism Prevention and Investigation Measures (TPIM) notices to an individual to whom the notice relates. TPIM notices have replaced control orders. The amendment also brings into scope civil legal services provided in relation to certain control order proceedings that were subject to savings provisions in the Terrorism Prevention and Investigation Measures Act 2011.

Paragraph 46: Connected matters

954. *Paragraph 46* confers power on the Lord Chancellor to make regulations about the circumstances in which civil legal aid may be made available for services not listed in Part 1 of Schedule 1 where they are provided in connection with the provision of services that are listed in Part 1. It may be appropriate for such services to be provided, for example, where a case raises a number of different matters, not all of which will be in scope. Regulations made under this paragraph may prescribe exceptions from the exclusions in Part 2 and Part 3 of Schedule 1 and any other prescribed exclusions.