

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

BACKGROUND

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.