

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 1: Legal Aid

Criminal legal aid

Section 18: Determinations by Director

149. *Section 18* makes provision about the power of the Director to make determinations about representation for the purposes of criminal proceedings and the procedure to be followed.
150. *Subsection (1)* provides that the Director may determine whether an individual is eligible for representation for criminal proceedings unless a court is authorised to do so under section 19. This reverses the default position in the Access to Justice Act 1999 where the decision as to whether to grant legal aid is for the court unless the LSC is given the power to make the decision. However, over recent years, most decision-making powers have transferred in practice to the LSC and there are now only limited circumstances in which the court can make a determination.
151. *Subsection (2)* requires the Director, in the determination, to specify the criminal proceedings in respect of which the individual qualifies for representation. *Subsection (3)* provides that the regulations may make provision about determinations and the withdrawal of determinations. *Subsections (4) to (7)* make further provision about the procedure for determinations under this section.
152. *Subsection (4)* provides that the regulations may include provision about the form and content of applications and determinations and provision that an application or determination must be made and withdrawn in writing, by telephone or by other prescribed means. The regulations may also include provision about time limits, provision about conditions that must be satisfied by an applicant before a determination is made, provision requiring information and documents to be provided, provision about when a determination may or must be withdrawn, and provision requiring applicants to be given reasons for the making or withdrawal of determinations. Provision may also be made about the review of a decision by the Director that the individual does not qualify, or no longer qualifies, for representation on the grounds that the interests of justice are not met.
153. *Subsection (5)* ensures that circumstances in which a determination may or must be withdrawn can relate to compliance by the individual with requirements imposed on the individual under Part 1 of the Act, for example, to provide information or to make a payment under section 23.
154. *Subsection (6)* provides that in cases where representation is refused or withdrawn on the grounds that the interests of justice do not require it, the individual has a right of

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

appeal to a court, tribunal or other person prescribed by regulations. The right of appeal is subject to exceptions specified in regulations under *subsection (7)*.

155. *Subsection (8)* provides that this section does not authorise the Director to make a provisional determination, and as such any reference to a determination in this section does not include a provisional determination. Section 20 makes provision about provisional determinations.