

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 1: Legal Aid

Criminal legal aid

Section 19: Determinations by court

156. *Section 19* makes provision about the power of a court to make determinations about representation for the purposes of criminal proceedings and the procedure to be followed.
157. *Subsection (1)* enables the Lord Chancellor to make regulations providing for a court to determine whether an individual qualifies for representation. Under the current provisions made under the Access to Justice Act 1999, the Crown Court may grant a representation order for contempt proceedings, for proceedings that arise from an alleged failure to comply with an order of the Crown Court where it appears to the court that there is no time to instruct a solicitor and for proceedings where the individual is brought before the court following the issue of a bench warrant. The High Court and the Court of Appeal (Criminal Division) may grant a representation order for proceedings before those courts and the Supreme Court.
158. *Subsection (2)* enables regulations to make provision about the procedure for determinations, including the form of the application to the court and the form of the determination of the court, provision that applications and determinations may or must be made and withdrawn in writing, by telephone or by other prescribed means, and provision about time limits and circumstances in which a determination may or must be withdrawn.
159. *Subsection (3)* ensures that the circumstances in which a determination may or must be withdrawn may relate to whether an individual has complied with requirements imposed on them under Part 1, for example, a requirement to provide documents or to make a payment under section 23.
160. *Subsection (4)* requires the regulations to provide that, subject to prescribed exceptions, in cases where representation is refused on the grounds that the interests of justice do not require it, the individual has a right of appeal to such court, tribunal or other person, as may be prescribed.
161. *Subsection (6)* provides that regulations under this section may not authorise a court 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.