
EXPLANATORY NOTE

(This note is not part of the Regulations)

The Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013 (“the Regulations”) make provision for determinations by a court under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) (“the Act”) in relation to whether an individual qualifies for criminal legal aid, and in relation to the right under section 27(4) of the Act of an individual who qualifies for legal aid to select a representative of their own choice.

Part 2 of the Regulations makes provision in relation to the power of the Crown Court, High Court and Court of Appeal to make a determination under section 16 of the Act as to whether an individual qualifies for representation for criminal proceedings. Part 2 also makes provision about the form and content of applications for a determination, the requirements placed on courts in making such determinations and about the withdrawal of a determination.

Part 3 of the Regulations makes provision about the right of an individual under section 27(4) of the Act to select a representative of their own choice. Regulation 11 makes general provision about when a relevant court may make a determination under Part 3.

Regulations 12 to 15 make provision in relation to the selection of a provider. Regulation 12 specifies the types of provider (persons who have entered into arrangements with the Lord Chancellor to provide legal aid under Part 1 of the Act) that an individual may select to represent them in criminal proceedings. Regulation 13 requires co-defendants to select the same provider unless there is, or is likely to be, a conflict of interest. Regulation 14 specifies the circumstances in which an individual may change providers. Regulation 15 provides that where an individual has a determination withdrawn and there is a subsequent determination in respect of the same proceedings, the individual must select the same provider unless the relevant court considers that there are good reasons not to do so.

Regulations 16 to 23 make provision in relation to the selection of advocates. Regulations 16 and 17 make general provision that an individual in criminal proceedings before the magistrates’ court may not select an advocate, but provide that in certain specified circumstances a Queen’s Counsel or more than one advocate may be selected by the individual. Regulation 18 makes general provision that an individual in criminal proceedings before a court other than the magistrate’s court may only select a single junior advocate, but provides that in specified circumstances the relevant court may permit a Queen’s Counsel or more than one advocate to be selected by the individual.

Regulation 19 specifies which judges sitting in the relevant court may permit an individual to select a Queen’s Counsel or more than one advocate. Regulation 20 provides that an individual may not in any circumstances select more than one Queen’s Counsel. Regulation 21 provides that in determining whether an individual should be able to select a Queen’s Counsel or more than one advocate, the relevant court may require a written opinion about appropriate representation from an advocate already assigned to the case. Regulation 22 provides that in certain limited circumstances the Director may permit an individual to select a Queen’s Counsel or a Queen’s Counsel with one junior advocate. Regulation 23 provides that individuals may not select junior advocates if they can be adequately represented by noting juniors.

Regulation 24 applies Part 3 to legal persons subject to the modifications specified in that regulation.