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## STATUTORY INSTRUMENTS

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# 2013 No. 9

## The Criminal Legal Aid (General) Regulations 2013

### PART 4

#### Advice and assistance for criminal proceedings

##### General

**11.**—(1) This Part makes provision about the making and withdrawal of determinations by the Director under section 15 of the Act (advice and assistance for criminal proceedings).

(2) Prescribed advice and assistance is to be made available to an individual described in section 15(2) of the Act if—

- (a) the conditions prescribed in regulation 12 are met; and
- (b) the Director has determined that the individual qualifies for advice and assistance in accordance with these Regulations (and has not withdrawn the determination).

(3) For the purposes of this regulation “prescribed advice and assistance” means advice and assistance that is available in accordance with the [<sup>F1</sup>2022 Standard Crime Contract].

**F1** Words in reg. 11(3) substituted (1.10.2022) by [The Criminal Legal Aid \(Standard Crime Contract\) \(Amendment\) Regulations 2022 \(S.I. 2022/995\)](#), regs. 1, **3(2)(c)** (with reg. 6)

##### Commencement Information

**II** [Reg. 11](#) in force at 1.4.2013, see [reg. 1](#)

##### Prescribed conditions

**12.**—(1) The conditions set out in paragraph (2) are prescribed for the purposes of section 15(1) of the Act.

(2) The conditions are that an individual must—

- (a) be the subject of an investigation which may lead to criminal proceedings;
- (b) be the subject of criminal proceedings;
- (c) require advice and assistance regarding an appeal or potential appeal against the outcome of any criminal proceedings or an application to vary a sentence;

[<sup>F2</sup>(d) require advice and assistance regarding—

- (i) the application of the provisions in Chapter 6 of Part 12 of the Criminal Justice Act 2003 or in Chapter 2 of Part 2 of the Crime (Sentences) Act 1997, which determine when a prisoner is either entitled to be released by the Secretary of State or eligible for consideration by the Parole Board for a direction to be released; <sup>F3</sup> ...

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- (ii) the application of the provisions in Chapter 2 of Part 5 of the Powers of Criminal Courts (Sentencing) Act 2000, [<sup>F4</sup>or in section 241 of the Sentencing Code,] which determine when an offender is entitled to be released by the Secretary of State;
- [<sup>F5</sup>(iii) a review of a prisoner’s classification pursuant to rule 7 (classification of prisoners) of the Prison Rules as a Category A Prisoner [<sup>F6</sup>or as a Restricted Status Prisoner];
- (iv) the application of rule 46 (close supervision centres) of the Prison Rules, which provides for directions by the Secretary of State in relation to a prisoner’s placement in a close supervision centre of a prison; <sup>F7</sup> ...
- (v) the application of rule 46A (separation centres) of the Prison Rules, which provides for directions by the Secretary of State in relation to a prisoner’s placement in a separation centre within a prison; [<sup>F8</sup>or]]
- [<sup>F9</sup>(vi) a review of an inmate’s classification pursuant to rule 4 (classification of inmates) of the Young Offender Institution Rules 2000 as a Category A Inmate or Restricted Status Inmate;]]
- (e) require advice and assistance regarding an application or potential application to the Criminal Cases Review Commission(1);
- [<sup>F10</sup>(f) require advice and assistance regarding a disciplinary hearing in a prison or young offender institution where—
  - (i) the proceedings involve the determination of a criminal charge for the purposes of Article 6(1) of the European Convention on Human Rights; or
  - (ii) the governor has exercised the governor’s discretion to allow advice and assistance in relation to the hearing;]
- (g) be the subject of proceedings before the Parole Board(2)<sup>F11</sup> ...;
- <sup>F12</sup>(h) .....
- (i) be a witness in criminal proceedings and require advice and assistance regarding self-incrimination;
- (j) be a volunteer; <sup>F13</sup>...
- (k) be detained under Schedule 7 to the Terrorism Act 2000 (3)[<sup>F14</sup>, or
- (l) be detained under Part 1 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019.]
- [<sup>F15</sup>(3) In this regulation—
- [<sup>F16</sup>(za) “the Prison Rules” means the Prison Rules 1999;
- [ “Category A Inmate” means an inmate whose escape would be highly dangerous to the public, the police or national security, and for whom the aim is to make escape impossible;]
- <sup>F17</sup>(zaa) [
- (zb) “Category A Prisoner” means a prisoner whose escape would be highly dangerous to the public, the police or national security, and for whom the aim is to make escape impossible;
- (zc) “close supervision centre” means any cell or other part of a prison designated by the Secretary of State for holding prisoners who are subject to a direction given under rule 46(1) of the Prison Rules;]
- (a) “governor” includes—

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(1) The Criminal Cases Review Commission was established by section 8 of the Criminal Appeal Act 1995 (c. 35).  
 (2) The Parole Board is constituted under section 239 of the Criminal Justice Act 2003 (c. 44).  
 (3) 2000 c. 11.

- (i) a director approved by the Secretary of State for the purposes of section 85(1)(a) of the Criminal Justice Act 1991 (“the 1991 Act”); and
- (ii) a controller appointed by the Secretary of State under section 85(1)(b) of the 1991 Act,

where the Secretary of State has entered into a contract for the running of a prison under section 84 of the 1991 Act; <sup>F18</sup>...

- [<sup>F19</sup>(aza) “inmate” means a person who is required to be detained in a young offender institution;
- (azb) “Restricted Status Inmate” means an inmate whose escape would present a serious risk to the public;
  - (azc) “Restricted Status Prisoner” means a prisoner whose escape would present a serious risk to the public;]
- [<sup>F20</sup>(aa) “separation centre” means any part of a prison for the time being used for holding prisoners who are subject to a direction under rule 46A(1) of the Prison Rules; and]
- (b) “volunteer” means an individual who, for the purposes of assisting with an investigation, without having been arrested—
    - (i) attends voluntarily at a police station, customs office or any other place where a constable is present; or
    - (ii) accompanies a constable to a police station, customs office or any other such place.]

**F2** Reg. 12(2)(d) substituted (2.12.2013) by The Criminal Legal Aid (General) (Amendment) Regulations 2013 (S.I. 2013/2790), regs. 1(2), **4(2)** (with reg. 7)

**F3** Word in reg. 12(2)(d)(i) omitted (21.2.2018) by virtue of The Criminal Legal Aid (Amendment) Regulations 2017 (S.I. 2017/1319), regs. 1, **2(2)** (with reg. 5)

**F4** Words in reg. 12(2)(d)(ii) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 411** (with Sch. 27); S.I. 2020/1236, reg. 2

**F5** Reg. 12(2)(d)(iii)-(v) inserted (21.2.2018) by The Criminal Legal Aid (Amendment) Regulations 2017 (S.I. 2017/1319), regs. 1, **2(3)** (with reg. 5)

**F6** Words in reg. 12(2)(d)(iii) inserted (12.6.2018) by The Criminal Legal Aid (Amendment) Regulations 2018 (S.I. 2018/587), regs. 1, **2(2)** (with reg. 4)

**F7** Word in reg. 12(2)(d)(iv) omitted (12.6.2018) by virtue of The Criminal Legal Aid (Amendment) Regulations 2018 (S.I. 2018/587), regs. 1, **2(3)** (with reg. 4)

**F8** Word in reg. 12(2)(d)(v) inserted (12.6.2018) by The Criminal Legal Aid (Amendment) Regulations 2018 (S.I. 2018/587), regs. 1, **2(4)** (with reg. 4)

**F9** Reg. 12(2)(d)(vi) inserted (12.6.2018) by The Criminal Legal Aid (Amendment) Regulations 2018 (S.I. 2018/587), regs. 1, **2(5)** (with reg. 4)

**F10** Reg. 12(2)(f) substituted (2.12.2013) by The Criminal Legal Aid (General) (Amendment) Regulations 2013 (S.I. 2013/2790), regs. 1(2), **4(3)** (with reg. 7)

**F11** Words in reg. 12(2)(g) omitted (21.2.2018) by virtue of The Criminal Legal Aid (Amendment) Regulations 2017 (S.I. 2017/1319), regs. 1, **2(4)** (with reg. 5)

**F12** Reg. 12(2)(h) omitted (2.12.2013) by virtue of The Criminal Legal Aid (General) (Amendment) Regulations 2013 (S.I. 2013/2790), regs. 1(2), **4(5)** (with reg. 7)

**F13** Word in reg. 12(2)(j) omitted (13.8.2020) by virtue of Counter-Terrorism and Border Security Act 2019 (c. 3), s. 27(2)(d), **Sch. 4 para. 30(1)(a)** (with Sch. 4 para. 30(2)); S.I. 2020/792, reg. 2(i)

**F14** Reg. 12(2)(l) and word inserted (13.8.2020) by Counter-Terrorism and Border Security Act 2019 (c. 3), s. 27(2)(d), **Sch. 4 para. 30(1)(b)** (with Sch. 4 para. 30(2)); S.I. 2020/792, reg. 2(i)

**F15** Reg. 12(3) substituted (2.12.2013) by The Criminal Legal Aid (General) (Amendment) Regulations 2013 (S.I. 2013/2790), regs. 1(2), **4(6)** (with reg. 7)

**F16** Reg. 12(za)-(zc) inserted (21.2.2018) by The Criminal Legal Aid (Amendment) Regulations 2017 (S.I. 2017/1319), regs. 1, **2(5)** (with reg. 5)

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- F17** Reg. 12(3)(zaa) inserted (12.6.2018) by The Criminal Legal Aid (Amendment) Regulations 2018 (S.I. 2018/587), regs. 1, **2(6)** (with reg. 4)
- F18** Word in reg. 12(3)(a) omitted (21.2.2018) by virtue of The Criminal Legal Aid (Amendment) Regulations 2017 (S.I. 2017/1319), regs. 1, **2(6)** (with reg. 5)
- F19** Reg. 12(3)(aza)-(azc) inserted (12.6.2018) by The Criminal Legal Aid (Amendment) Regulations 2018 (S.I. 2018/587), regs. 1, **2(7)** (with reg. 4)
- F20** Reg. 12(3)(aa) inserted (21.2.2018) by The Criminal Legal Aid (Amendment) Regulations 2017 (S.I. 2017/1319), regs. 1, **2(7)** (with reg. 5)

#### Commencement Information

- I2** Reg. 12 in force at 1.4.2013, see **reg. 1**

### Interests of justice

**13.** When making a determination under section 15 of the Act, the Director must have regard, in particular, to the interests of justice.

#### Commencement Information

- I3** Reg. 13 in force at 1.4.2013, see **reg. 1**

### Applications

- 14.** An application for advice and assistance for criminal proceedings must be made—
- in accordance with the requirements of the [F212022 Standard Crime Contract] for the Unit of Work which is the subject of the application; and
  - in a form specified by the Lord Chancellor, in circumstances where the [F212022 Standard Crime Contract] requires an application form to be completed.

- F21** Words in reg. 14 substituted (1.10.2022) by The Criminal Legal Aid (Standard Crime Contract) (Amendment) Regulations 2022 (S.I. 2022/995), regs. 1, **3(2)(d)** (with reg. 6)

#### Commencement Information

- I4** Reg. 14 in force at 1.4.2013, see **reg. 1**

### Determinations

**15.—(1)** The Director must determine whether an individual qualifies under section 15 of the Act for advice and assistance for criminal proceedings in accordance with—

- section 21 of the Act (financial resources) and regulations made under that section(**4**); and
- the qualifying criteria set out in the [F222022 Standard Crime Contract].

(2) A determination that an individual qualifies under section 15 of the Act for advice and assistance for criminal proceedings must specify any limitations and conditions to which the determination is subject.

(4) Paragraph 6 of Schedule 3 to the Act (legal aid for legal persons: financial resources) applies section 21 for the purposes of regulations made under paragraph 4 of that Schedule as if the references to an individual included a legal person.

(3) A determination that an individual qualifies under section 15 of the Act for advice and assistance for criminal proceedings may specify that the determination is to be treated as having effect from a date which is no later than the date on which the application was received.

**F22** Words in [reg. 15\(1\)\(b\)](#) substituted (1.10.2022) by [The Criminal Legal Aid \(Standard Crime Contract\) \(Amendment\) Regulations 2022 \(S.I. 2022/995\)](#), regs. 1, **3(2)(e)** (with [reg. 6](#))

**Commencement Information**

**I5** [Reg. 15](#) in force at 1.4.2013, see [reg. 1](#)

**Withdrawal**

- 16.** The Director may withdraw a determination under section 15 of the Act where—
- (a) the services to which the determination relates have been provided;
  - (b) the proceedings which are the subject of the determination have concluded;
  - (c) the individual consents;
  - (d) the individual has died; or
  - (e) the individual no longer qualifies for the advice and assistance to be made available by the determination in accordance with—
    - (i) section 21 of the Act and regulations made under that section; or
    - (ii) the qualifying criteria set out in the [<sup>F23</sup>2022 Standard Crime Contract].

**F23** Words in [reg. 16\(e\)\(ii\)](#) substituted (1.10.2022) by [The Criminal Legal Aid \(Standard Crime Contract\) \(Amendment\) Regulations 2022 \(S.I. 2022/995\)](#), regs. 1, **3(2)(f)** (with [reg. 6](#))

**Commencement Information**

**I6** [Reg. 16](#) in force at 1.4.2013, see [reg. 1](#)

**Appeal**

- 17.** An individual may appeal to an Independent Funding Adjudicator appointed by the Lord Chancellor under section 2 of the Act (arrangements) against a decision of the Director that—
- (a) the interests of justice do not require advice or assistance to be made available to an individual under these Regulations; or
  - (b) the qualifying criteria set out in the [<sup>F24</sup>2022 Standard Crime Contract] are not met.

**F24** Words in [reg. 17\(b\)](#) substituted (1.10.2022) by [The Criminal Legal Aid \(Standard Crime Contract\) \(Amendment\) Regulations 2022 \(S.I. 2022/995\)](#), regs. 1, **3(2)(g)** (with [reg. 6](#))

**Commencement Information**

**I7** [Reg. 17](#) in force at 1.4.2013, see [reg. 1](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 9(ud) word omitted by [S.I. 2023/150 art. 8\(a\)](#)
- reg. 9(ue)(uf) inserted by [S.I. 2023/150 art. 8\(b\)](#)