
STATUTORY INSTRUMENTS

2013 No. 9

The Criminal Legal Aid (General) Regulations 2013

PART 5

Representation for criminal proceedings

General

18. This Part makes provision about the making and withdrawal of determinations by the Director under section 16 of the Act (representation for criminal proceedings)(**1**), except in circumstances in which a court is authorised to make the determination under regulations made under section 19 of the Act (determinations by court).

Representation for criminal proceedings: proceedings which are to be regarded as incidental proceedings

19.—(1) The proceedings set out in paragraph (2) are to be regarded as incidental to the criminal proceedings from which they arise(**2**).

(2) The proceedings are—

- (a) proceedings in the Crown Court, following committal for sentence by a magistrates' court;
- (b) proceedings to quash an acquittal under section 54 of the Criminal Procedure and Investigations Act 1996(**3**); and
- (c) proceedings for confiscation and forfeiture in connection with criminal proceedings under RSC Order 115 in Schedule 1 to the Civil Procedure Rules 1998(**4**).

Representation for criminal proceedings: proceedings which are not to be regarded as incidental proceedings

20.—(1) The proceedings set out in paragraph (2) are not to be regarded as incidental to the criminal proceedings from which they arise.

(2) The proceedings are—

- (a) proceedings for applications for judicial review or habeas corpus in relation to criminal proceedings; and

(1) Paragraph 5(2) of Schedule 3 to the Act (legal aid for legal persons: representation for criminal proceedings) makes provision for the Director to determine whether a legal person qualifies for representation for criminal proceedings. Paragraph 5(7) of Schedule 3 to the Act provides that subsections (2) to (7) of section 18 of the Act (determinations by Director) apply to a determination under paragraph 5(2) of Schedule 3 as they apply in relation to a determination under section 16.

(2) Paragraph 5(3) of Schedule 3 to the Act (legal aid for legal persons: representation for criminal proceedings) provides that where a legal person qualifies for representation for the purposes of criminal proceedings, representation is also to be available to the legal person for the purposes of any preliminary or incidental proceedings. Paragraph 5(4) of Schedule 3 to the Act applies regulations made under section 16(4) of the Act to legal persons. Section 16(4) provides that regulations may make provision which specifies whether proceedings are or are not to be regarded as preliminary or incidental to the principal proceedings.

(3) 1996 c. 25.

(4) S.I. 1998/3132 (L.17).

- (b) proceedings for dealing with an individual who is alleged to have failed to comply with an order of the magistrates' court or the Crown Court.

Qualifying for representation: interests of justice

21. For the purposes of a determination under section 16 of the Act, making representation available to an individual for the purposes of criminal proceedings is taken to be in the interests of justice when the proceedings are before—

- (a) the Crown Court, to the extent that such proceedings do not relate to an appeal to the Crown Court;
- (b) the High Court;
- (c) the Court of Appeal; or
- (d) the Supreme Court.

Applications

22.—(1) An application for a determination by the Director under section 16 of the Act must be in a form specified by the Lord Chancellor.

(2) Where an individual makes an application for a determination in relation to proceedings in which a determination has previously been withdrawn under this Part, the application must state—

- (a) that a previous determination in relation to those proceedings has been withdrawn; and
- (b) the reasons for the withdrawal.

Determinations

23.—(1) When the Director makes a determination under section 16 of the Act that an individual qualifies for representation for the purposes of criminal proceedings, the Director must—

- (a) issue a representation order recording that determination; and
- (b) send a copy of the representation order to the individual and any provider named in the representation order.

(2) A representation order issued by the Director—

- (a) must record the date from which the determination is to be treated as having effect; and
- (b) 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.

(3) Where the Director makes a determination under section 16 of the Act that an individual does not qualify for representation for the purposes of criminal proceedings, the Director must provide to that individual—

- (a) written reasons for the making of such a determination; and
- (b) details of any review or appeal available to that individual in respect of the determination.

(4) A determination which is made in relation to an individual in any criminal proceedings includes representation in any incidental proceedings.

Determinations: proceedings in the magistrates' court

24.—(1) Subject to paragraph (2), a determination which is made in relation to an individual for proceedings in the magistrates' court includes representation in the Crown Court in relation to those proceedings.

(2) A determination to which paragraph (1) applies does not include representation for any appeal to the Crown Court in the proceedings to which the determination relates.

Determinations: certain proceedings in the Crown Court

25.—(1) The Director must make a determination under section 16 that an individual qualifies for representation for the purposes of criminal proceedings in relation to an individual for proceedings in the Crown Court in the circumstances described in paragraph (2).

(2) The circumstances are that—

- (a) the individual has made an application for a determination in proceedings in the magistrates' court and (should the proceedings continue there) in the Crown Court;
- (b) the Director has determined that the individual does not qualify for representation in the magistrates' court either because—
 - (i) the requirements of section 21 (financial resources) and regulations made under that section are not met; or
 - (ii) the interests of justice do not require representation to be made available to the individual; and
- (c) the proceedings continue to the Crown Court other than on appeal.

Withdrawal

26.—(1) The Director must withdraw a determination under section 16 of the Act if the Director is satisfied that the interests of justice no longer require representation.

(2) The Director may withdraw a determination where—

- (a) the individual declines to accept the determination in the terms which are offered;
- (b) the individual requests that the determination is withdrawn; or
- (c) the provider named in the representation order which recorded the original determination declines to continue to represent the individual.

(3) Where the Director withdraws a determination, the Director must provide written notification of the withdrawal to—

- (a) the individual in whose favour the original determination was made;
- (b) any provider named in the representation order which records the determination; and
- (c) any advocate instructed in proceedings.

(4) In this regulation “advocate” means a person who is an authorised person for the purposes of section 18 of the Legal Services Act 2007(5) in relation to the exercise of a right of audience.

Review

27.—(1) An individual may apply for a review by the Director of—

- (a) a determination under section 16 of the Act that the interests of justice do not require representation to be made available to an individual for the purposes of criminal proceedings; and
- (b) the withdrawal of a determination in the circumstances specified in regulation 26(1).

(2) An application for a review must be made in a form specified by the Lord Chancellor and must include any written representations supporting the application.

(5) 2007 c. 29.

- (3) The individual must provide such further information and documents as the Director may request in relation to the review within fourteen days of the Director making such a request.
- (4) A review may be conducted without a hearing unless the Director directs otherwise.
- (5) The Director must consider the application and any written representations and may—
 - (a) confirm or amend the determination which is the subject of the review;
 - (b) confirm the withdrawal which is the subject of the review; or
 - (c) substitute a new determination.
- (6) Where the Director amends or substitutes a determination—
 - (a) the determination following the review takes effect (unless the Director directs otherwise) as if the original determination or withdrawal had not been made;
 - (b) the Director must issue a representation order to reflect the determination following the review; and
 - (c) the date of any representation order issued in accordance with sub-paragraph (b) must be the date on which the original application for a determination was received.
- (7) The Director must notify the individual and the provider identified in the individual's application of—
 - (a) the determination or withdrawal following the review; and
 - (b) the written reasons for that decision.

Appeal

28. Where an individual remains dissatisfied following a review under regulation 27, that individual may appeal to a court in accordance with regulations 29 and 30 against the decision that the interests of justice do not require, or no longer require, representation to be made available.

Appeal: magistrates' court

29.—(1) In relation to a determination by the Director under section 16 of the Act that the interests of justice do not require, or no longer require, representation to be made available before the magistrates' court, the appeal lies to the magistrates' court.

- (2) The court must either—
 - (a) affirm the determination; or
 - (b) decide that the interests of justice require representation to be made available, or to continue to be made available, to an individual for the purposes of criminal proceedings.
- (3) Where the court makes a decision under paragraph (2)(b), the individual may apply to the Director for a determination.
- (4) Where an individual applies to the Director under paragraph (3)—
 - (a) if the individual states in writing, verified by a statement of truth, that the individual's financial resources have not changed since the date of the individual's original application for a determination, so as to make the individual financially ineligible for representation under section 21 of the Act (financial resources) and regulations made under that section, the Director must make a determination that the individual qualifies for representation; or
 - (b) if the individual's financial resources may have so changed since the date of the individual's original application, the Director—
 - (i) must determine whether the individual qualifies for representation in accordance with section 21 of the Act and regulations made under that section; and

(ii) if the individual does so qualify, must make the determination accordingly.

(5) In this regulation—

“magistrates’ court” means the magistrates’ court in which the proceedings in respect of which an individual is seeking a determination under section 16 of the Act are taking place, or are to take place, and includes a single justice and a District Judge (magistrates’ court); and

“statement of truth” means a declaration provided in accordance with regulations made under section 21 of the Act (financial resources).

Appeal: Crown Court

30.—(1) In relation to a determination by the Director that the interests of justice do not require, or no longer require, representation to be made available in a case in the Crown Court, the appeal lies to an officer of the Crown Court (“the officer”).

(2) The officer may refer the appeal to a judge of the Crown Court.

(3) The officer or the judge may—

(a) affirm the determination; or

(b) decide that the interests of justice require representation to be made available, or to continue to be made available, to an individual for the purposes of criminal proceedings.

(4) Where the officer or a judge makes a decision under paragraph (3)(b), the Director must make a determination reflecting that decision and record the determination in a representation order.