

**EXPLANATORY MEMORANDUM TO**  
**THE CRIMINAL LEGAL AID (GENERAL) REGULATIONS 2013**

**2013 No. 9**

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The Criminal Legal Aid (General) Regulations 2013 make provision about the making and withdrawal of determinations that an individual qualifies for criminal legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the Act”).

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Context**

4.1 This is one of a number of statutory instruments which implement Part 1 of the Act. These instruments will be laid in time to come into force on 1 April 2013.

**5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

**6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**7. Policy background**

7.1 The Act gives effect to the Government’s policy position on Legal Aid. The Government considers that those who are accused of criminal offences should be able to benefit from publicly funded legal advice, assistance or representation when they cannot afford to pay for their own advice, assistance or representation, if the interests of justice require it. Therefore the policy intention for criminal legal aid is unchanged from that set out in the Access to Justice Act 1999. These Regulations substantially replicate the effect of the secondary legislation made under the Access to Justice Act 1999.

7.2 Part 1 of the Regulations allows for the delegation of the functions of the Director under the Regulations (generally delegation will be to providers) and the functions of the Lord Chancellor (generally to the Director or the Legal Aid Agency); a

reporting duty requiring providers to report misrepresentation by individuals receiving criminal legal aid and provision for the transfer of documents from lower courts to higher courts.

7.3 Part 2 sets out the process for making an application for advice and assistance at the police station. All applications (whether made by the appropriate adult or by the individual making a request to the custody officer) must be made to the Defence Solicitor Call Centre.

7.4 Part 3 sets out civil proceedings prescribed as criminal for the purposes of legal aid; these are included due to the gravity of the potential sentence. The proceedings mirror those prescribed under the current criminal legal aid scheme with one addition: proceedings that involve the determination of a criminal charge for the purposes of Article 6(1) of the European Convention on Human Rights (ECHR<sup>1</sup>) (regulation 9(v)). These proceedings have been added because it is considered that civil proceedings where the gravity of the potential sentence is sufficient to engage the right to a fair trial under Article 6 are more suitable for criminal legal aid than civil legal aid.

7.5 Part 4 sets out the provisions for making and withdrawing determinations about advice and assistance for criminal proceedings. These Regulations require the Director to have regard to the interests of justice when making a determination that an individual qualifies for advice and assistance for criminal proceedings. Part 4 makes provision about making applications and determinations, withdrawal of determinations and appeals to an Independent Funding Adjudicator. It is only possible to appeal to an Independent Funding Adjudicator following a determination that an individual does not qualify for advice and assistance for criminal proceedings.

7.6 Part 5 makes provision for making and withdrawing determinations about representation for criminal proceedings. The Regulations set out the circumstances in which making representation available to an individual is in the interests of justice: namely for proceedings in the Crown Court (apart from on appeal to the Crown Court), the High Court, Court of Appeal and Supreme Court. Provision is made about the process for making applications and determinations and about withdrawals, reviews and appeals.

7.7 Part 6 makes provision for applications by legal persons.

## **8. Consultation outcome**

8.1 The consultation ‘Proposals for the reform of legal aid in England and Wales’ was published on 15 November 2010 and closed on 14 February 2011. The Government concluded that: “those who are accused of criminal offences should be able to benefit from publicly funded legal assistance when they cannot afford to pay for their own representation, if the interests of justice require it. We do not therefore consider that it is appropriate to restrict further legal aid in criminal cases.”

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<sup>1</sup> First identified in the case of *Han and another v Customs and Excise Commissioners* [2001] EWCA Civ 1040.

8.2 The proposals consulted on as part of this exercise were therefore largely aimed at reforming civil legal aid. The only reform proposals in respect of criminal legal aid were changes to remuneration, which were implemented in October 2011. A detailed Government response to this consultation exercise is available on the MoJ Website at [www.justice.gov.uk/consultations/legal-aid-reform](http://www.justice.gov.uk/consultations/legal-aid-reform).

8.3 We have not consulted on the Criminal Legal Aid (General) Regulations 2013.

## **9. Guidance**

9.1 Guidance is not being prepared specifically for this instrument. A programme of training and guidance is being prepared by the Legal Services Commission to support the transition to the new arrangements. This will be made available to legal aid providers ahead of the commencement of the Act on 1 April 2013.

## **10. Impact**

10.1 The impacts of the Government's programme of legal aid reform are set out in an Impact Assessment, which was updated following the Act receiving Royal Assent. This is available at <http://www.justice.gov.uk/legislation/bills-and-acts/acts/legal-aid-and-sentencing-act/laspo-background-information>. An Impact Assessment has not been prepared specifically for this instrument.

10.2 There is no impact on business, charities or voluntary bodies.

10.3 There is no impact on the public sector arising from this instrument beyond those accounted for in the Royal Assent Impact Assessment.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The Ministry of Justice will conduct a post-implementation review of the Act between three to five years after implementation. This review will also consider the operation of the secondary legislation.

## **13. Contact**

Simon Denison at the Ministry of Justice (Tel: 020 3334 5618 or email: [simon.denison@justice.gsi.gov.uk](mailto:simon.denison@justice.gsi.gov.uk)) can answer any queries regarding the instrument.