



# Legal Aid, Sentencing and Punishment of Offenders Act 2012

## 2012 CHAPTER 10

### PART 1 **E+W+N.I.**

#### LEGAL AID

##### *Provision of legal aid*

### 1 **Lord Chancellor's functions** **E+W**

- (1) The Lord Chancellor must secure that legal aid is made available in accordance with this Part.
- (2) In this Part “legal aid” means—
  - (a) civil legal services required to be made available under section 9 or 10 or paragraph 3 of Schedule 3 (civil legal aid), and
  - (b) services consisting of advice, assistance and representation required to be made available under section 13, 15 or 16 or paragraph 4 or 5 of Schedule 3 (criminal legal aid).
- (3) The Lord Chancellor may secure the provision of—
  - (a) general information about the law and the legal system, and
  - (b) information about the availability of advice about, and assistance in connection with, the law and the legal system.
- (4) The Lord Chancellor may do anything which is calculated to facilitate, or is incidental or conducive to, the carrying out of the Lord Chancellor's functions under this Part.
- (5) Nothing in this Part affects the powers that the Lord Chancellor has otherwise than under this Part.

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## 2 Arrangements **E+W**

- (1) The Lord Chancellor may make such arrangements as the Lord Chancellor considers appropriate for the purposes of carrying out the Lord Chancellor's functions under this Part.
- (2) The Lord Chancellor may, in particular, make arrangements by—
  - (a) making grants or loans to enable persons to provide services or facilitate the provision of services,
  - (b) making grants or loans to individuals to enable them to obtain services, and
  - (c) establishing and maintaining a body to provide services or facilitate the provision of services.
- (3) The Lord Chancellor may by regulations make provision about the payment of remuneration by the Lord Chancellor to persons who provide services under arrangements made for the purposes of this Part.
- (4) If the Lord Chancellor makes arrangements for the purposes of this Part that provide for a court, tribunal or other person to assess remuneration payable by the Lord Chancellor, the court, tribunal or person must assess the remuneration in accordance with the arrangements and, if relevant, with regulations under subsection (3).
- (5) The Lord Chancellor may make different arrangements, in particular, in relation to—
  - (a) different areas in England and Wales,
  - (b) different descriptions of case, and
  - (c) different classes of person.

## 3 Standards of service **E+W**

- (1) The Lord Chancellor may set and monitor standards in relation to services made available under this Part.
- (2) The Lord Chancellor may, in particular, make arrangements for the accreditation of persons providing, or wishing to provide, such services by—
  - (a) the Lord Chancellor, or
  - (b) persons authorised by the Lord Chancellor.
- (3) Arrangements for accreditation must include—
  - (a) arrangements for monitoring services provided by accredited persons, and
  - (b) arrangements for withdrawing accreditation where the services provided are unsatisfactory.
- (4) The Lord Chancellor may impose charges in connection with—
  - (a) accreditation,
  - (b) monitoring services provided by accredited persons, and
  - (c) authorising accreditation by others.
- (5) Persons authorised by the Lord Chancellor may, in accordance with the terms of their authorisation, impose charges in connection with—
  - (a) accreditation, and
  - (b) monitoring services provided by accredited persons.

#### **4 Director of Legal Aid Casework** **E+W**

- (1) The Lord Chancellor must designate a civil servant as the Director of Legal Aid Casework (“the Director”).
- (2) The Lord Chancellor must make arrangements for the provision to the Director by civil servants or other persons (or both) of such assistance as the Lord Chancellor considers appropriate.
- (3) The Director must—
  - (a) comply with directions given by the Lord Chancellor about the carrying out of the Director's functions under this Part, and
  - (b) have regard to guidance given by the Lord Chancellor about the carrying out of those functions.
- (4) But the Lord Chancellor—
  - (a) must not give a direction or guidance about the carrying out of those functions in relation to an individual case, and
  - (b) must ensure that the Director acts independently of the Lord Chancellor when applying a direction or guidance under subsection (3) in relation to an individual case.
- (5) The Lord Chancellor must publish any directions and guidance given under this section.
- (6) Directions and guidance under this section may be revised or withdrawn from time to time.

#### **5 Delegation** **E+W**

- (1) The following functions of the Lord Chancellor may be exercised by, or by employees of, a person authorised by the Lord Chancellor for that purpose—
  - (a) securing the provision of information under section 1(3), and
  - (b) setting and monitoring standards under section 3.
- (2) Regulations may provide for a function of the Lord Chancellor under regulations made under this Part to be exercisable by, or by employees of, a person authorised by the Lord Chancellor for that purpose.
- (3) The functions conferred on the Director by this Part may be exercised by, or by employees of, a person authorised by the Director for that purpose.
- (4) Regulations may provide for a function of the Director under regulations made under this Part to be exercisable by, or by employees of, a person authorised by the Director for that purpose.
- (5) A direction given by the Lord Chancellor under section 4 about the carrying out of the Director's functions may, in particular, require the Director—
  - (a) to authorise, or not to authorise, a person to carry out a function specified in the direction, or
  - (b) to authorise, or not to authorise, a person specified, or of a description specified, in the direction to carry out such a function.
- (6) Regulations under subsection (2) or (4) may provide that a function may be exercised—

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- (a) wholly or to a limited extent;
  - (b) generally or in particular cases or areas;
  - (c) unconditionally or subject to conditions.
- (7) An authorisation given for the purposes of this section or regulations under this section may provide that a function may be exercised—
- (a) wholly or to a limited extent;
  - (b) generally or in particular cases or areas;
  - (c) unconditionally or subject to conditions.
- (8) In the case of an authorisation given for the purposes of regulations under this section, subsection (7) is subject to the provisions of the regulations.

## 6 Authorisations **E+W**

- (1) An authorisation given for the purposes of section 5 or regulations under that section—
- (a) may specify its duration,
  - (b) may specify or describe the authorised person,
  - (c) may be varied or revoked at any time by the person who gave it, and
  - (d) does not prevent the Lord Chancellor, the Director or another person from exercising the function to which the authorisation relates.
- (2) Anything done or omitted to be done by or in relation to a person authorised under section 5(1) or regulations under section 5(2) (or an employee of such a person) in, or in connection with, the exercise or purported exercise of the function concerned is to be treated for all purposes as done or omitted to be done by the Lord Chancellor.
- (3) Anything done or omitted to be done by or in relation to a person authorised under section 5(3) or regulations under section 5(4) (or an employee of such a person) in, or in connection with, the exercise or purported exercise of the function concerned is to be treated for all purposes as done or omitted to be done by the Director.
- (4) Subsections (2) and (3)—
- (a) do not affect the rights and liabilities of the authorised person or the Lord Chancellor under any arrangements made between them,
  - (b) do not prevent any civil proceedings which could otherwise be brought by or against the authorised person (or an employee of that person) from being brought,
  - (c) do not apply for the purposes of criminal proceedings brought in respect of anything done or omitted to be done by the authorised person (or an employee of that person), and
  - (d) do not make the Lord Chancellor or the Director liable under section 6 of the Human Rights Act 1998 in respect of any act or omission of an authorised person if the act or omission is of a private nature.
- (5) Where—
- (a) an authorisation given for the purposes of section 5 or regulations under that section is revoked, and
  - (b) at the time of the revocation so much of any contract made between the authorised person and the Lord Chancellor as relates to the exercise of the function is subsisting,

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the authorised person is entitled to treat the contract as repudiated by the Lord Chancellor (and not as frustrated by reason of the revocation).

- (6) In this section “authorised person” means a person authorised for the purposes of section 5 or regulations under that section.

## 7 Annual report **E+W**

- (1) As soon as reasonably practicable after the end of each financial year, the Director must prepare an annual report for the financial year.
- (2) The annual report must state how the Director has carried out the functions of the office in the financial year.
- (3) The Director must send a copy of the report to the Lord Chancellor.
- (4) The Lord Chancellor must—
- (a) lay the copy of the report before Parliament, and
  - (b) arrange for it to be published.
- (5) In this section “financial year” means—
- (a) the period beginning on the day on which section 4 comes into force and ending on the following 31 March, and
  - (b) each successive period of 12 months.

### *Civil legal aid*

## 8 Civil legal services **E+W**

- (1) In this Part “legal services” means the following types of services—
- (a) providing advice as to how the law applies in particular circumstances,
  - (b) providing advice and assistance in relation to legal proceedings,
  - (c) providing other advice and assistance in relation to the prevention of disputes about legal rights or duties (“legal disputes”) or the settlement or other resolution of legal disputes, and
  - (d) providing advice and assistance in relation to the enforcement of decisions in legal proceedings or other decisions by which legal disputes are resolved.
- (2) The services described in subsection (1) include, in particular, advice and assistance in the form of—
- (a) representation, and
  - (b) mediation and other forms of dispute resolution.
- (3) In this Part “civil legal services” means any legal services other than the types of advice, assistance and representation that are required to be made available under sections 13, 15 and 16 (criminal legal aid).

## 9 General cases **E+W**

- (1) Civil legal services are to be available to an individual under this Part if—
- (a) they are civil legal services described in Part 1 of Schedule 1, and

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- (b) the Director has determined that the individual qualifies for the services in accordance with this Part (and has not withdrawn the determination).
- (2) The Lord Chancellor may by order—
  - (a) add services to Part 1 of Schedule 1, or
  - (b) vary or omit services described in that Part,
 (whether by modifying that Part or Part 2, 3 or 4 of the Schedule).

## 10 Exceptional cases **E+W**

- (1) Civil legal services other than services described in Part 1 of Schedule 1 are to be available to an individual under this Part if subsection (2) or (4) is satisfied.
- (2) This subsection is satisfied where the Director—
  - (a) has made an exceptional case determination in relation to the individual and the services, and
  - (b) has determined that the individual qualifies for the services in accordance with this Part,
 (and has not withdrawn either determination).
- (3) For the purposes of subsection (2), an exceptional case determination is a determination—
  - (a) that it is necessary to make the services available to the individual under this Part because failure to do so would be a breach of—
    - (i) the individual's Convention rights (within the meaning of the Human Rights Act 1998), or
    - (ii) any rights of the individual to the provision of legal services that are enforceable EU rights, or
  - (b) that it is appropriate to do so, in the particular circumstances of the case, having regard to any risk that failure to do so would be such a breach.
- (4) This subsection is satisfied where—
  - (a) the services consist of advocacy in proceedings at an inquest under the Coroners Act 1988 into the death of a member of the individual's family,
  - (b) the Director has made a wider public interest determination in relation to the individual and the inquest, and
  - (c) the Director has determined that the individual qualifies for the services in accordance with this Part,
 (and neither determination has been withdrawn).
- (5) For the purposes of subsection (4), a wider public interest determination is a determination that, in the particular circumstances of the case, the provision of advocacy under this Part for the individual for the purposes of the inquest is likely to produce significant benefits for a class of person, other than the individual and the members of the individual's family.
- (6) For the purposes of this section an individual is a member of another individual's family if—
  - (a) they are relatives (whether of the full blood or half blood or by marriage or civil partnership),
  - (b) they are cohabitants (as defined in Part 4 of the Family Law Act 1996), or

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- (c) one has parental responsibility for the other.

## 11 Qualifying for civil legal aid **E+W**

- (1) The Director must determine whether an individual qualifies under this Part for civil legal services in accordance with—
  - (a) section 21 (financial resources) and regulations under that section, and
  - (b) criteria set out in regulations made under this paragraph.
- (2) In setting the criteria, the Lord Chancellor—
  - (a) must consider the circumstances in which it is appropriate to make civil legal services available under this Part, and
  - (b) must, in particular, consider the extent to which the criteria ought to reflect the factors in subsection (3).
- (3) Those factors are—
  - (a) the likely cost of providing the services and the benefit which may be obtained by the services being provided,
  - (b) the availability of resources to provide the services,
  - (c) the appropriateness of applying those resources to provide the services, having regard to present and likely future demands for the provision of civil legal services under this Part,
  - (d) the importance for the individual of the matters in relation to which the services would be provided,
  - (e) the nature and seriousness of the act, omission, circumstances or other matter in relation to which the services are sought,
  - (f) the availability to the individual of services provided other than under this Part and the likelihood of the individual being able to make use of such services,
  - (g) if the services are sought by the individual in relation to a dispute, the individual's prospects of success in the dispute,
  - (h) the conduct of the individual in connection with services made available under this Part or an application for such services,
  - (i) the conduct of the individual in connection with any legal proceedings or other proceedings for resolving disputes about legal rights or duties, and
  - (j) the public interest.
- (4) In setting the criteria, the Lord Chancellor must seek to secure that, in cases in which more than one form of civil legal service could be provided for an individual, the individual qualifies under this Part for the form of service which in all the circumstances is the most appropriate having regard to the criteria.
- (5) The criteria must reflect the principle that, in many disputes, mediation and other forms of dispute resolution are more appropriate than legal proceedings.
- (6) Regulations under subsection (1)(b) may provide that no criteria apply in relation to a prescribed description of individual or services.

## 12 Determinations **E+W**

- (1) A determination by the Director that an individual qualifies under this Part for civil legal services must specify—

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- (a) the type of services, and
  - (b) the matters in relation to which the services are to be available.
- (2) Regulations may make provision about the making and withdrawal of determinations under sections 9 and 10.
- (3) Regulations under subsection (2) may, in particular, include—
- (a) provision about the form and content of determinations and applications for determinations,
  - (b) provision permitting or requiring applications and determinations to be made and withdrawn in writing, by telephone or by other prescribed means,
  - (c) provision setting time limits for applications and determinations,
  - (d) provision for a determination to be disregarded for the purposes of this Part if made in response to an application that is made otherwise than in accordance with the regulations,
  - (e) provision about conditions which must be satisfied by an applicant before a determination is made,
  - (f) provision about the circumstances in which a determination may or must be withdrawn,
  - (g) provision requiring information and documents to be provided,
  - (h) provision requiring individuals who are the subject of a determination to be informed of the reasons for making or withdrawing the determination, and
  - (i) provision for giving information to individuals who do not qualify for civil legal services under this Part about alternative ways of obtaining or funding civil legal services.
- (4) The circumstances prescribed under subsection (3)(f) may, in particular, relate to whether the individual who is the subject of the determination has complied with requirements imposed by or under this Part.
- (5) Regulations under subsection (2) must make provision establishing procedures for the review of determinations under sections 9 and 10 and of the withdrawal of such determinations.
- (6) Regulations under subsection (2) may make provision for appeals to a court, tribunal or other person against such determinations and against the withdrawal of such determinations.

### *Criminal legal aid*

## **13 Advice and assistance for individuals in custody E+W**

- (1) Initial advice and initial assistance are to be available under this Part to an individual who is arrested and held in custody at a police station or other premises if the Director has determined that the individual qualifies for such advice and assistance in accordance with this Part (and has not withdrawn the determination).
- (2) The Director must make a determination under this section having regard, in particular, to the interests of justice.
- (3) A determination under this section must specify the type of advice or assistance (or both) to be available under this Part.



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- (4) Regulations may make provision about the making and withdrawal of determinations under this section.
- (5) Regulations under subsection (4) may, in particular, include—
- (a) provision about the form and content of determinations and applications for determinations,
  - (b) provision permitting or requiring applications and determinations to be made and withdrawn in writing, by telephone or by other prescribed means,
  - (c) provision setting time limits for applications and determinations,
  - (d) provision for a determination to be disregarded for the purposes of this Part if made in response to an application that is made otherwise than in accordance with the regulations,
  - (e) provision about conditions which must be satisfied by an applicant before a determination is made,
  - (f) provision about the circumstances in which a determination may or must be withdrawn,
  - (g) provision requiring information and documents to be provided, and
  - (h) provision requiring individuals who are the subject of a determination to be informed of the reasons for making or withdrawing the determination.
- (6) The circumstances prescribed under subsection (5)(f) may, in particular, relate to whether the individual who is the subject of the determination has complied with requirements imposed by or under this Part.
- (7) For the purposes of this section, in relation to an individual who is in custody—
- “initial advice” means advice as to how the law in relation to a matter relevant to the individual's arrest applies in particular circumstances and as to the steps that might be taken having regard to how it applies;
  - “initial assistance” means assistance in taking any of those steps which the individual might reasonably take while in custody, including assistance in the form of advocacy.
- (8) The Lord Chancellor may by regulations provide that prescribed advice or assistance is not initial advice or initial assistance for the purposes of this section.

## 14 Criminal proceedings **E+W**

In this Part “criminal proceedings” means—

- (a) proceedings before a court for dealing with an individual accused of an offence,
- (b) proceedings before a court for dealing with an individual convicted of an offence, including proceedings in respect of a sentence or order,
- (c) proceedings for dealing with an individual under the Extradition Act 2003,
- (d) proceedings for binding an individual over to keep the peace or to be of good behaviour under section 115 of the Magistrates' Courts Act 1980 and for dealing with an individual who fails to comply with an order under that section,
- (e) proceedings on an appeal brought by an individual under section 44A of the Criminal Appeal Act 1968 (appeal in case of death of appellant),
- (f) proceedings on a reference under section 36 of the Criminal Justice Act 1972 on a point of law following the acquittal of an individual on indictment,

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- (g) proceedings for contempt committed, or alleged to have been committed, by an individual in the face of a court, and
- (h) such other proceedings, before any court, tribunal or other person, as may be prescribed.

## 15 Advice and assistance for criminal proceedings E+W

- (1) Regulations may provide that prescribed advice and assistance is to be available under this Part to an individual described in subsection (2) if—
  - (a) prescribed conditions are met, and
  - (b) the Director has determined that the individual qualifies for such advice and assistance in accordance with the regulations (and has not withdrawn the determination).
- (2) Those individuals are—
  - (a) individuals who are involved in investigations which may lead to criminal proceedings (other than individuals arrested and held in custody at a police station or other premises),
  - (b) individuals who are before a court, tribunal or other person in criminal proceedings, and
  - (c) individuals who have been the subject of criminal proceedings.
- (3) When making the regulations, the Lord Chancellor must have regard, in particular, to the interests of justice.
- (4) The regulations must require the Director to make determinations under the regulations having regard, in particular, to the interests of justice.
- (5) The regulations may require the Director to make such determinations in accordance with—
  - (a) section 21 (financial resources) and regulations under that section, and
  - (b) criteria set out in the regulations.
- (6) The regulations may make provision about the making and withdrawal of determinations under the regulations.
- (7) The regulations may, in particular, include—
  - (a) provision about the form and content of determinations and applications for determinations,
  - (b) provision permitting or requiring applications and determinations to be made and withdrawn in writing, by telephone or by other prescribed means,
  - (c) provision setting time limits for applications and determinations,
  - (d) provision for a determination to be disregarded for the purposes of this Part if made in response to an application that is made otherwise than in accordance with the regulations,
  - (e) provision about conditions which must be satisfied by an applicant before a determination is made,
  - (f) provision about the circumstances in which a determination may or must be withdrawn,
  - (g) provision requiring information and documents to be provided, and
  - (h) provision requiring individuals who are the subject of a determination to be informed of the reasons for making or withdrawing the determination.

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- (8) The circumstances prescribed under subsection (7)(f) may, in particular, relate to whether the individual who is the subject of the determination has complied with requirements imposed by or under this Part.
- (9) The regulations may provide for the review of, or appeals to a court, tribunal or other person against, a decision by the Director—
  - (a) that the interests of justice do not require advice or assistance to be made available to an individual under the regulations, or
  - (b) that criteria prescribed under subsection (5)(b) are not met.
- (10) In this section “assistance” includes, in particular, assistance in the form of advocacy.

## 16 Representation for criminal proceedings **E+W**

- (1) Representation for the purposes of criminal proceedings is to be available under this Part to an individual if—
  - (a) the individual is a specified individual in relation to the proceedings, and
  - (b) the relevant authority has determined (provisionally or otherwise) that the individual qualifies for such representation in accordance with this Part (and has not withdrawn the determination).
- (2) Representation for the purposes of criminal proceedings is to be available under this Part to an individual if—
  - (a) the proceedings involve the individual resisting an appeal to the Crown Court otherwise than in an official capacity, and
  - (b) the relevant authority has determined (provisionally or otherwise) that the individual qualifies for such representation in accordance with this Part (and has not withdrawn the determination).
- (3) Where an individual qualifies under this Part for representation for the purposes of criminal proceedings (“the principal proceedings”), representation is also to be available to the individual for the purposes of—
  - (a) any related bail proceedings, and
  - (b) any preliminary or incidental proceedings.
- (4) Regulations may—
  - (a) make provision specifying whether proceedings are or are not to be regarded as preliminary or incidental for the purposes of subsection (3), and
  - (b) make provision for exceptions from subsection (3).
- (5) Regulations under subsection (4)(b) may, in particular, make exceptions for proceedings taking place more than a prescribed period of time before or after the principal proceedings.
- (6) In this section—
  - “the relevant authority”, in relation to a specified individual and criminal proceedings, means the person who is authorised by or under section 18, 19 or 20 to determine (provisionally or otherwise) whether the individual qualifies under this Part for representation for the purposes of the proceedings;
  - “specified individual” means—

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- (a) in relation to criminal proceedings mentioned in any of paragraphs (a) to (g) of section 14, an individual mentioned in that paragraph in relation to those proceedings, and
- (b) in relation to criminal proceedings prescribed by regulations under section 14(h), a description of individual specified in the regulations in relation to those proceedings.

## 17 Qualifying for representation **E+W**

- (1) The relevant authority must determine whether an individual qualifies under this Part for representation for the purposes of criminal proceedings (whether provisionally or otherwise) in accordance with—
  - (a) section 21 (financial resources) and regulations under that section, and
  - (b) the interests of justice.
- (2) In deciding what the interests of justice consist of for the purposes of such a determination, the following factors must be taken into account—
  - (a) whether, if any matter arising in the proceedings is decided against the individual, the individual would be likely to lose his or her liberty or livelihood or to suffer serious damage to his or her reputation,
  - (b) whether the determination of any matter arising in the proceedings may involve consideration of a substantial question of law,
  - (c) whether the individual may be unable to understand the proceedings or to state his or her own case,
  - (d) whether the proceedings may involve the tracing, interviewing or expert cross-examination of witnesses on behalf of the individual, and
  - (e) whether it is in the interests of another person that the individual be represented.
- (3) The Lord Chancellor may by order amend subsection (2) by adding or varying a factor.
- (4) Regulations may prescribe circumstances in which making representation available to an individual for the purposes of criminal proceedings is to be taken to be in the interests of justice for the purposes of a determination under section 16.
- (5) In this section “the relevant authority”, in relation to an individual and criminal proceedings, means the person who is authorised by or under section 18, 19 or 20 to determine (provisionally or otherwise) whether the individual qualifies under this Part for representation for the purposes of the proceedings.

## 18 Determinations by Director **E+W**

- (1) The Director is authorised to determine whether an individual qualifies under this Part for representation for the purposes of criminal proceedings, except in circumstances in which a court is authorised to make the determination under regulations under section 19.
- (2) A determination by the Director under section 16 must specify the criminal proceedings.
- (3) Regulations may make provision about the making and withdrawal of determinations by the Director under that section.

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- (4) Regulations under subsection (3) may, in particular, include—
- (a) provision about the form and content of determinations and applications for determinations,
  - (b) provision permitting or requiring applications and determinations to be made and withdrawn in writing, by telephone or by other prescribed means,
  - (c) provision setting time limits for applications and determinations,
  - (d) provision for a determination to be disregarded for the purposes of this Part if made in response to an application that is made otherwise than in accordance with the regulations,
  - (e) provision about conditions which must be satisfied by an applicant before a determination is made,
  - (f) provision about the circumstances in which a determination may or must be withdrawn,
  - (g) provision requiring information and documents to be provided,
  - (h) provision requiring individuals who are the subject of a determination to be informed of the reasons for making or withdrawing the determination, and
  - (i) provision for the review of a decision by the Director that the interests of justice do not require representation to be made available, or to continue to be made available, to an individual under this Part for the purposes of criminal proceedings.
- (5) The circumstances prescribed under subsection (4)(f) may, in particular, relate to whether the individual who is the subject of the determination has complied with requirements imposed by or under this Part.
- (6) An appeal lies to such court, tribunal or other person as may be prescribed against a decision by the Director that the interests of justice do not require representation to be made available, or to continue to be made available, to an individual under this Part for the purposes of criminal proceedings, subject to subsection (7).
- (7) Regulations may provide for exceptions from subsection (6).
- (8) This section does not authorise the Director to make a provisional determination and accordingly—
- (a) references in this section to a determination do not include a provisional determination, and
  - (b) references in this section to a decision do not include a decision made as part of such a determination.

## 19 Determinations by court **E+W**

- (1) Regulations may—
- (a) provide that a court before which criminal proceedings take place, or are to take place, is authorised to determine whether an individual qualifies under this Part for representation for the purposes of criminal proceedings of a prescribed description, and
  - (b) make provision about the making and withdrawal of such determinations by a court.
- (2) The regulations may, in particular, include—

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- (a) provision about the form and content of determinations and applications for determinations,
  - (b) provision permitting or requiring applications and determinations to be made and withdrawn in writing, by telephone or by other prescribed means,
  - (c) provision setting time limits for applications and determinations,
  - (d) provision enabling a court to determine that an individual qualifies under this Part for representation for the purposes of criminal proceedings before another court,
  - (e) provision for the powers of a magistrates' court of any area under the regulations to be exercised by a single justice of the peace for the area, and
  - (f) provision about the circumstances in which a determination may or must be withdrawn.
- (3) The circumstances prescribed under subsection (2)(f) may, in particular, relate to whether the individual who is the subject of the determination has complied with requirements imposed by or under this Part.
- (4) The regulations must provide that, subject to prescribed exceptions, an appeal lies to such court, tribunal or other person as may be prescribed against a decision by a court that the interests of justice do not require representation to be made available, or to continue to be made available, to an individual under this Part for the purposes of criminal proceedings.
- (5) The regulations may include consequential provision modifying an Act or instrument.
- (6) Regulations under this section may not authorise a court to make a provisional determination and accordingly—
- (a) references in this section to a determination do not include a provisional determination, and
  - (b) references in this section to a decision do not include a decision made as part of such a determination.

## 20 **Provisional determinations** E+W

- (1) Regulations may provide that the Director or a court may make a provisional determination that an individual qualifies under this Part for representation for the purposes of criminal proceedings where—
- (a) the individual is involved in an investigation which may result in criminal proceedings,
  - (b) the determination is made for the purposes of criminal proceedings that may result from the investigation, and
  - (c) any prescribed conditions are met.
- (2) The regulations may, in particular, include—
- (a) provision about the stage in an investigation at which a provisional determination may be made,
  - (b) provision about the making and withdrawal of provisional determinations, including provision equivalent to that described in section 18(4)(a) to (i) and (5),
  - (c) provision about the circumstances in which a provisional determination is to cease to be provisional, and

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- (d) provision about the circumstances in which a provisional determination is to be treated as if it were a determination made by the Director or a court in reliance on section 18 or 19.
- (3) In this Part, as it applies in connection with a provisional determination made under regulations under this section as to whether an individual qualifies for representation for the purposes of criminal proceedings, references to proceedings include criminal proceedings that may result from the investigation concerned.

### *Financial resources*

## **21 Financial resources** **E+W**

- (1) A person may not make a relevant determination that an individual qualifies under this Part for services unless the person has determined that the individual's financial resources are such that the individual is eligible for the services (and has not withdrawn the determination).
- (2) Regulations may—
  - (a) make provision about when an individual's financial resources are such that the individual is eligible under this Part for services, and
  - (b) make provision for exceptions from subsection (1).
- (3) Regulations may provide that an individual is to be treated, for the purposes of regulations under subsection (2), as having or not having financial resources of a prescribed description.
- (4) Regulations under subsection (3) may, in particular, provide that the individual is to be treated as having prescribed financial resources of a person of a prescribed description.
- (5) Regulations may make provision about the making and withdrawal of determinations under this section.
- (6) Regulations under subsection (5) may, in particular, include—
  - (a) provision about the form and content of determinations,
  - (b) provision permitting or requiring determinations to be made and withdrawn in writing, by telephone or by other prescribed means,
  - (c) provision setting time limits for determinations,
  - (d) provision about conditions which must be satisfied before a determination is made,
  - (e) provision about the circumstances in which a determination may or must be withdrawn,
  - (f) provision requiring information and documents to be provided,
  - (g) provision requiring individuals who are the subject of a determination to be informed of the reasons for making or withdrawing the determination, and
  - (h) provision for the review of a determination in respect of an individual's financial resources.
- (7) The circumstances prescribed under subsection (6)(e) may, in particular, relate to whether the individual who is the subject of the determination has complied with requirements imposed by or under this Part.

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- (8) In this section “relevant determination” means a determination that is required to be carried out in accordance with this section by—
- (a) section 11 or 17, or
  - (b) regulations under section 15 or paragraph 4 of Schedule 3.

## 22 Information about financial resources **E+W+N.I.**

- (1) The relevant authority may make an information request to—
- (a) the Secretary of State,
  - (b) a relevant Northern Ireland Department, or
  - (c) the Commissioners for Her Majesty's Revenue and Customs (“the Commissioners”).
- (2) An information request may be made only for the purposes of facilitating a determination about an individual's financial resources for the purposes of this Part.
- (3) An information request made to the Secretary of State or a relevant Northern Ireland Department under this section may request the disclosure of some or all of the following information—
- (a) a relevant individual's full name and any previous names;
  - (b) a relevant individual's address and any previous addresses;
  - (c) a relevant individual's date of birth;
  - (d) a relevant individual's national insurance number;
  - (e) a relevant individual's benefit status at a time specified in the request;
  - (f) information of a prescribed description.
- (4) An information request made to the Commissioners under this section may request the disclosure of some or all of the following information—
- (a) whether or not a relevant individual is employed or was employed at a time specified in the request;
  - (b) the name and address of the employer;
  - (c) whether or not a relevant individual is carrying on a business, trade or profession or was doing so at a time specified in the request;
  - (d) the name under which it is or was carried on;
  - (e) the address of any premises used for the purposes of carrying it on;
  - (f) a relevant individual's national insurance number;
  - (g) a relevant individual's benefit status at a time specified in the request;
  - (h) information of a prescribed description.
- (5) The information that may be prescribed under subsections (3)(f) and (4)(h) includes, in particular, information relating to—
- (a) prescribed income of a relevant individual for a prescribed period, and
  - (b) prescribed capital of a relevant individual.
- (6) Information may not be prescribed under subsection (4)(h) without the Commissioners' consent.
- (7) The Secretary of State, the relevant Northern Ireland Departments and the Commissioners may disclose to the relevant authority information specified in an information request made under this section.



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(8) In this section—

“benefit status”, in relation to an individual, means whether or not the individual is in receipt of a prescribed benefit or benefits and, if so—

- (a) which benefit or benefits the individual is receiving,
- (b) whether the individual is entitled to the benefit or benefits alone or jointly,
- (c) in prescribed cases, the amount the individual is receiving by way of the benefit (or each of the benefits) (“the benefit amount”), and
- (d) in prescribed cases, where the benefit consists of a number of elements, what those elements are and the amount included in respect of each element in calculating the benefit amount;

“the relevant authority” means—

- (a) a prescribed person, or
- (b) in relation to circumstances for which no person is prescribed, the Director;

“a relevant individual”, in relation to an information request for the purposes of a determination about an individual's financial resources, means—

- (a) that individual, and
- (b) any other individual whose financial resources are or may be relevant for the purposes of the determination;

“relevant Northern Ireland Department” means the Department for Social Development in Northern Ireland or the Department of Finance and Personnel in Northern Ireland.

#### *Contributions and costs*

### **23 Payment for services** **E+W**

- (1) An individual to whom services are made available under this Part is not to be required to make a payment in connection with the provision of the services, except where regulations provide otherwise.
- (2) The regulations may, in particular, provide that in prescribed circumstances an individual must do one or more of the following—
  - (a) pay the cost of the services;
  - (b) pay a contribution in respect of the cost of the services of a prescribed amount;
  - (c) pay a prescribed amount in respect of administration costs.
- (3) The regulations may, in particular, provide that where—
  - (a) civil legal services are provided to an individual under this Part in relation to a dispute, and
  - (b) prescribed conditions are met,the individual must pay a prescribed amount which may exceed the cost of the civil legal services provided.
- (4) The regulations may, in particular, make provision about the determination of the cost of services for the purposes of the regulations.
- (5) The regulations may, in particular—

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- (a) provide for an individual's liability under the regulations to make a payment to change or cease in prescribed circumstances,
  - (b) provide for an individual's liability under the regulations to arise on a determination by a prescribed person,
  - (c) provide for such a determination to be varied or withdrawn by a prescribed person, and
  - (d) provide for the review of such a determination in respect of an individual's liability to make a payment.
- (6) The regulations may, in particular, provide that an individual is to be treated, for the purposes of the regulations, as having or not having financial resources of a prescribed description.
- (7) Regulations under subsection (6) may, in particular, provide that the individual is to be treated as having prescribed financial resources of a person of a prescribed description.
- (8) The regulations may, in particular, include provision for an amount to be payable entirely or partly—
- (a) by periodical payments;
  - (b) by one or more lump sums;
  - (c) out of income;
  - (d) out of capital.
- (9) The regulations may, in particular, include—
- (a) provision requiring information and documents to be provided,
  - (b) provision about the time and manner in which payments must be made,
  - (c) provision about the person to whom payments must be made, and
  - (d) provision about what that person must do with the payments.
- (10) The regulations may, in particular, make provision for the payment by an individual of interest, on such terms as may be prescribed, in respect of—
- (a) a loan made to the individual under this Part,
  - (b) a payment in connection with the provision of services which is not required by the regulations to be made by the individual until after the time when the services are provided, and
  - (c) so much of a payment as remains unpaid after the time when it is required by the regulations to be made by the individual.
- (11) The regulations—
- (a) must make provision for the repayment to an individual of any amount in excess of the individual's liability under the regulations or under section 24, and
  - (b) may make provision for the payment of interest on the excess.
- (12) In this section—
- “administration costs” means costs in connection with the administration of legal aid, including the administration of charges arising under section 25;
  - “prescribed amount” includes an amount calculated in a prescribed manner.

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## 24 Enforcement **E+W**

- (1) Regulations may make provision about the enforcement of an obligation to make a payment imposed under section 23.
- (2) The regulations may, in particular, make provision for costs incurred in connection with the enforcement of an individual's obligation to make a payment to be recovered from the individual.
- (3) Regulations under this section may, in particular—
  - (a) provide that overdue amounts are recoverable summarily as a civil debt;
  - (b) provide that overdue amounts are recoverable as if they were payable under an order of the High Court or a county court, if the court in question so orders on the application of the person to whom the amounts are due.
- (4) Regulations under this section may include provision requiring information and documents to be provided.
- (5) Schedule 2 (criminal legal aid: motor vehicle orders) has effect.

## 25 Charges on property in connection with civil legal services **E+W**

- (1) Where civil legal services are made available to an individual under this Part, the amounts described in subsection (2) are to constitute a first charge on—
  - (a) any property recovered or preserved by the individual in proceedings, or in any compromise or settlement of a dispute, in connection with which the services were provided (whether the property is recovered or preserved for the individual or another person), and
  - (b) any costs payable to the individual by another person in connection with such proceedings or such a dispute.
- (2) Those amounts are—
  - (a) amounts expended by the Lord Chancellor in securing the provision of the services (except to the extent that they are recovered by other means), and
  - (b) other amounts payable by the individual in connection with the services under section 23 or 24.
- (3) Regulations may make provision for exceptions from subsection (1).
- (4) Regulations may make provision about the charge under subsection (1) including, in particular—
  - (a) provision as to whether the charge is in favour of the Lord Chancellor or a person by whom the services were made available,
  - (b) provision modifying the charge for the purposes of its application in prescribed cases or circumstances, and
  - (c) provision about the enforcement of the charge.
- (5) Regulations under subsection (4)(c) may, in particular, include—
  - (a) provision requiring amounts recovered by the individual in proceedings or as part of a compromise or settlement of a dispute, and costs payable to the individual, to be paid to the Lord Chancellor or a person by whom the services were made available,
  - (b) provision about the time and manner in which the amounts must be paid,

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- (c) provision about what the Lord Chancellor or the person by whom the services were made available must do with the amounts,
  - (d) provision for the payment of interest on all or part of the amounts,
  - (e) provision for the payment to the individual concerned of any amount in excess of the amounts described in subsection (2), and
  - (f) provision for the enforcement of requirements described in paragraph (a).
- (6) Regulations under this section may include provision requiring information and documents to be provided.

## 26 Costs in civil proceedings **E+W**

- (1) Costs ordered against an individual in relevant civil proceedings must not exceed the amount (if any) which it is reasonable for the individual to pay having regard to all the circumstances, including—
- (a) the financial resources of all of the parties to the proceedings, and
  - (b) their conduct in connection with the dispute to which the proceedings relate.
- (2) In subsection (1) “relevant civil proceedings”, in relation to an individual, means—
- (a) proceedings for the purposes of which civil legal services are made available to the individual under this Part, or
  - (b) if such services are made available to the individual under this Part for the purposes of only part of proceedings, that part of the proceedings.
- (3) Regulations may make provision for exceptions from subsection (1).
- (4) In assessing for the purposes of subsection (1) the financial resources of an individual to whom civil legal services are made available, the following must not be taken into account, except so far as prescribed—
- (a) the individual's clothes and household furniture, and
  - (b) the implements of the individual's trade.
- (5) Subject to subsections (1) to (4), regulations may make provision about costs in relation to proceedings for the purposes of which civil legal services are made available under this Part.
- (6) Regulations under subsection (5) may, in particular, make provision—
- (a) specifying the principles to be applied in determining the amount of any costs which may be awarded against a party to whom civil legal services are made available under this Part,
  - (b) limiting the circumstances in which, or the extent to which, an order for costs may be enforced against such a party,
  - (c) as to the cases in which, and the extent to which, such a party may be required to give security for costs and the manner in which it is to be given,
  - (d) requiring the payment by the Lord Chancellor of the whole or part of any costs incurred by a party to whom civil legal services are not made available under this Part,
  - (e) specifying the principles to be applied in determining the amount of costs which may be awarded to a party to whom civil legal services are made available under this Part,
  - (f) as to the court, tribunal or other person by whom the amount of any costs is to be determined, and

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- (g) as to the extent to which any determination of that amount is to be final.
- (7) Regulations may provide that an individual is to be treated, for the purposes of subsection (1) or regulations under subsection (3) or (5), as having or not having financial resources of a prescribed description (but such regulations have effect subject to subsection (4)).
- (8) Regulations under subsection (7) may, in particular, provide that the individual is to be treated as having prescribed financial resources of a person of a prescribed description.
- (9) Regulations under this section may include provision requiring information and documents to be provided.

*Providers of services etc*

**27 Choice of provider of services etc E+W**

- (1) The Lord Chancellor's duty under section 1(1) does not include a duty to secure that, where services are made available to an individual under this Part, they are made available by the means selected by the individual.
- (2) The Lord Chancellor may discharge that duty, in particular, by arranging for the services to be provided by telephone or by other electronic means.
- (3) The Lord Chancellor's duty under section 1(1) does not include a duty to secure that, where services are made available to an individual under this Part, they are made available by a person selected by the individual, subject to subsections (4) to (10).
- (4) An individual who qualifies under this Part for representation for the purposes of criminal proceedings by virtue of a determination under section 16 may select any representative or representatives willing to act for the individual, subject to regulations under subsection (6).
- (5) Where an individual exercises that right, representation by the selected representative or representatives is to be available under this Part for the purposes of the proceedings.
- (6) Regulations may provide that in prescribed circumstances—
- (a) the right conferred by subsection (4) is not to apply in cases of prescribed descriptions,
  - (b) an individual who has been provided with advice or assistance in accordance with section 13 or regulations under section 15 by a person selected by the individual is to be taken to have selected that person under subsection (4),
  - (c) the right conferred by subsection (4) is not to include a right to select a representative of a prescribed description,
  - (d) that right is to select only a representative located in a prescribed area or of a prescribed description,
  - (e) that right is to select not more than a prescribed number of representatives to act at any one time, and
  - (f) that right is not to include a right to select a representative in place of a representative previously selected.
- (7) Regulations under subsection (6)(b) may prescribe circumstances in which an individual is to be taken to have selected a person to provide advice or assistance.

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- (8) Regulations may provide that in prescribed circumstances the Lord Chancellor is not required to make available representation for an individual by a prescribed representative.
- (9) Provision made under subsection (8) does not prejudice any right of the individual to select another representative.
- (10) The circumstances which may be prescribed under this section include that a determination has been made by a prescribed person.

## 28 Position of providers of services **E+W**

- (1) The fact that services provided for an individual are or could be provided under arrangements made for the purposes of this Part does not affect—
  - (a) the relationship between the individual and the person by whom the services are provided,
  - (b) any privilege arising out of that relationship, or
  - (c) any right which the individual may have to be indemnified by another person in respect of expenses incurred by the individual,
 except to the extent that regulations provide otherwise.
- (2) A person who provides services under arrangements made for the purposes of this Part must not take any payment in respect of the services apart from—
  - (a) payment made in accordance with the arrangements, and
  - (b) payment authorised by the Lord Chancellor to be taken.
- (3) Regulations may provide that the withdrawal of a determination that an individual qualifies for prescribed services under this Part does not affect the right of any person who has provided such services to the individual under arrangements made for the purposes of this Part to remuneration for work done before the date of the withdrawal.

## 29 Code of conduct **E+W**

- (1) The Lord Chancellor must publish a code of conduct to be observed by the following persons when providing services to an individual under arrangements made for the purposes of this Part—
  - (a) civil servants, and
  - (b) employees of a body established and maintained by the Lord Chancellor.
- (2) The code must include—
  - (a) duties to avoid discrimination,
  - (b) duties to protect the interests of the individuals for whom services are provided,
  - (c) duties to courts and tribunals,
  - (d) duties to avoid conflicts of interest,
  - (e) duties of confidentiality, and
  - (f) duties on persons who are members of a professional body to comply with the rules of the body.
- (3) The Lord Chancellor must lay the code, and any revision of the code, before Parliament.

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- (4) The persons described in subsection (1)(a) and (b) are not subject to the direction of the Lord Chancellor when providing services to an individual under arrangements made for the purposes of this Part.

### **30 Position of other parties, courts and tribunals** **E+W**

- (1) Except as expressly provided by regulations, any rights conferred by or under this Part on an individual for whom services are provided under this Part for the purposes of proceedings do not affect—
- (a) the rights or liabilities of other parties to the proceedings, or
  - (b) the principles on which the discretion of a court or tribunal is normally exercised.
- (2) Regulations may make provision about the procedure of a court or tribunal in relation to services made available under this Part.
- (3) Regulations under subsection (2) may, in particular, authorise the exercise of the functions of a court or tribunal by—
- (a) a member or officer of that court or tribunal, or
  - (b) another court or tribunal.

#### *Supplementary*

### **31 Legal aid for legal persons** **E+W**

Schedule 3 (legal aid for legal persons) has effect.

### **32 Foreign law** **E+W**

- (1) The civil legal services described in Part 1 of Schedule 1 do not include services relating to any law other than the law of England and Wales, except—
- (a) where express provision to the contrary is made by or under Part 1 of Schedule 1;
  - (b) where such law is relevant for determining any issue relating to the law of England and Wales;
  - (c) in other circumstances specified by the Lord Chancellor by order.
- (2) A determination by the Director or a court under section 13, 15 or 16 that an individual qualifies for advice, assistance or representation under this Part does not impose a duty on the Lord Chancellor to secure that services relating to any law other than the law of England and Wales are made available, except—
- (a) where such law is relevant for determining any issue relating to the law of England and Wales;
  - (b) in other circumstances specified by the Lord Chancellor by order.
- (3) The Lord Chancellor may not make an order under subsection (1) or (2) unless the Lord Chancellor considers—
- (a) that it is necessary to make the order because failure to do so would result in a breach of—
    - (i) an individual's Convention rights (within the meaning of the Human Rights Act 1998), or

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- (ii) any rights of an individual to the provision of legal services that are enforceable EU rights, or
- (b) that it is appropriate to make the order having regard to any risk that failure to do so would result in such a breach.

### 33 **Restriction on disclosure of information about financial resources** E+W+N.I.

- (1) A person to whom information is disclosed under section 22 or this subsection may disclose the information to any person to whom its disclosure is necessary or expedient in connection with facilitating a determination in respect of an individual's financial resources that is required under section 21.
- (2) A person to whom such information is disclosed must not—
  - (a) disclose the information other than in accordance with subsection (1), or
  - (b) use the information other than for the purpose of facilitating a determination described in subsection (1).
- (3) Subsection (2) does not prevent—
  - (a) the disclosure of information in accordance with an enactment or an order of a court,
  - (b) the disclosure of information for the purposes of the investigation or prosecution of an offence (or suspected offence) under the law of England and Wales or Northern Ireland or any other jurisdiction, except where regulations otherwise provide,
  - (c) the disclosure of information for the purposes of instituting, or otherwise for the purposes of, proceedings before a court, or
  - (d) the disclosure of information which has previously been lawfully disclosed to the public.
- (4) A person who discloses or uses information in contravention of this section is guilty of an offence and liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both);
  - (b) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both), and
    - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both).
- (5) It is a defence for a person charged with an offence under this section to prove that the person reasonably believed that the disclosure or use was lawful.
- (6) In this section “enactment” includes—
  - (a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978), and
  - (b) an enactment contained in, or in an instrument made under, an Act or Measure of the National Assembly for Wales or Northern Ireland legislation.
- (7) In relation to an offence under this section committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (4)(b)(i) to 12 months has effect as if it were a reference to 6 months.



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### **34 Restriction on disclosure of other information** **E+W**

- (1) This section applies to information that is provided—
  - (a) to the Lord Chancellor, the Director, a court, a tribunal or any other person on whom functions are imposed or conferred by or under this Part, and
  - (b) in connection with the case of an individual seeking or receiving services provided under arrangements made for the purposes of this Part.
- (2) Such information must not be disclosed, subject to the exceptions in section 35.
- (3) A person who discloses information in contravention of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) It is a defence for a person charged with an offence under this section to prove that the person reasonably believed that the disclosure was lawful.
- (5) Proceedings for an offence under this section may not be brought without the consent of the Director of Public Prosecutions.
- (6) Nothing in this section applies to information if—
  - (a) it is provided to a person providing services under arrangements made for the purposes of this Part, and
  - (b) it is provided by or on behalf of an individual seeking or receiving the services.
- (7) Nothing in this section applies to information to which section 33 applies.

### **35 Exceptions from restriction under section 34** **E+W**

- (1) Section 34(2) does not prevent the disclosure of information—
  - (a) for the purpose of enabling or assisting the Lord Chancellor or the Secretary of State for Justice to carry out their functions (whether conferred or imposed by an Act or otherwise),
  - (b) for the purpose of enabling or assisting the Director to carry out functions imposed or conferred on the Director by or under this Part, or
  - (c) for the purpose of enabling or assisting a court, tribunal or other person on whom functions are imposed or conferred by or under this Part to carry out those functions.
- (2) Section 34(2) does not prevent—
  - (a) the disclosure of information in accordance with the law of England and Wales or an order of a court,
  - (b) the disclosure of information for the purposes of the investigation or prosecution of an offence (or suspected offence) under the law of England and Wales or any other jurisdiction, except where regulations otherwise provide,
  - (c) the disclosure of information for the purposes of instituting, or otherwise for the purposes of, proceedings before a court,
  - (d) the disclosure of information which has previously been lawfully disclosed to the public, or
  - (e) the disclosure of information for the purpose of facilitating the proper performance by a tribunal of disciplinary functions.
- (3) Section 34(2) does not prevent the disclosure of—

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- (a) information in the form of a summary or collection of information that is framed so that information relating to an individual cannot be ascertained from it, or
  - (b) information about the amount of any grant, loan or other payment made to a person by the Lord Chancellor under arrangements made for the purposes of this Part.
- (4) Section 34(2) does not prevent the disclosure of information for any purpose—
- (a) with the consent of the individual in connection with whose case it was provided, and
  - (b) if the information was provided other than by that individual, with the consent of the person who provided the information.
- (5) Section 34(2) does not prevent the disclosure of information after the end of the restricted period if—
- (a) the disclosure is by a person who is a public authority for the purposes of the Freedom of Information Act 2000 or who is acting on behalf of such a person, and
  - (b) the information is not held by the public authority on behalf of another person.
- (6) The restricted period is the period of 100 years beginning with the end of the calendar year in which a record containing the information was first created by a person to whom the information was provided in connection with a case described in section 34(1)(b).

### 36 Misrepresentation **E+W**

- (1) This section applies where a person—
- (a) intentionally fails to comply with a requirement imposed by or under this Part to provide documents or information, or
  - (b) in providing documents or information in accordance with such a requirement, makes a statement or representation knowing or believing it to be false.
- (2) The person is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (3) Proceedings in respect of an offence under this section may (despite anything in the Magistrates' Courts Act 1980) be brought at any time within the period of 6 months beginning with the date on which evidence sufficient in the opinion of the prosecutor to justify a prosecution comes to the prosecutor's knowledge.
- (4) Subsection (3) does not authorise the commencement of proceedings for an offence more than 2 years after the date on which the offence was committed.
- (5) A county court is to have jurisdiction to hear and determine an action brought by the Lord Chancellor to recover loss sustained by reason of—
- (a) the failure by a person to comply with a requirement imposed by or under this Part to provide documents or information, or
  - (b) a false statement or false representation made by a person in providing documents or information in accordance with such a requirement.

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### **37 Status of Director and Lord Chancellor** **E+W**

- (1) The Director is to carry out the functions of the office on behalf of the Crown.
- (2) Service as the Director is service in the civil service of the State.
- (3) The Lord Chancellor is to be treated as a corporation sole—
  - (a) for all purposes relating to the acquisition, holding, management and disposal of property and interests in property under this Part, and
  - (b) for all other purposes relating to the Lord Chancellor's functions in connection with legal aid and other functions under this Part.
- (4) An instrument in connection with the acquisition, holding, management or disposal by the Lord Chancellor of property or an interest in property under this Part or for a purpose mentioned in subsection (3)(b) may be executed on the Lord Chancellor's behalf by a person authorised by the Lord Chancellor for that purpose.
- (5) Any such instrument purporting to have been executed by the Lord Chancellor or on the Lord Chancellor's behalf is to be received in evidence and, unless the contrary is proved, to be treated as having been so executed.

### **38 Abolition of Legal Services Commission** **E+W**

- (1) The Legal Services Commission ceases to exist.
- (2) Schedule 4 (transfer of employees and property etc of Legal Services Commission) has effect.
- (3) The Lord Chancellor must, as soon as practicable after subsection (1) comes into force—
  - (a) prepare a report on how the Legal Services Commission has carried out its functions in the final period,
  - (b) lay a copy of the report before Parliament, and
  - (c) once it has been laid, publish the report.
- (4) The Lord Chancellor must, as soon as practicable after subsection (1) comes into force—
  - (a) prepare a statement of accounts for the Legal Services Commission for the final period, and
  - (b) send a copy of the statement to the Comptroller and Auditor General.
- (5) The Comptroller and Auditor General must—
  - (a) examine, certify and report on the statement, and
  - (b) arrange for a copy of the statement and the report to be laid before Parliament.
- (6) In this section—
  - “the final period” means the period—
    - (a) beginning with end of the last financial year for which the Legal Services Commission produced a report and accounts in accordance with paragraphs 14 and 16 of Schedule 1 to the Access to Justice Act 1999, and
    - (b) ending immediately before the day on which subsection (1) comes into force;
  - “financial year” means a period of 12 months ending with 31 March.

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#### Commencement Information

- II** S. 38 wholly in force at 1.4.2013; s. 38 not in force at Royal Assent, see s, 151(1); s. 38(2) in force at 4.3.2013 and s. 38(1)(3)-(6) in force at 1.4.2013 by S.I. 2013/453, arts. 2(a), 3(a)

### 39 Consequential and transitional provision **E+W**

- (1) Schedule 5 (legal aid: consequential amendments) has effect.
- (2) Where the Lord Chancellor considers it appropriate as part of the arrangements for effecting the transition from the operation of Part 1 of the Access to Justice Act 1999 to the operation of this Part of this Act, the Lord Chancellor may by regulations make provision requiring or enabling prescribed 1999 Act services to be made available to individuals or other persons under this Part for a period specified or described in the regulations.
- (3) In subsection (2) “1999 Act services” means services which, immediately before the day on which the first regulations under that subsection come into force, may be funded under Part 1 of the Access to Justice Act 1999.
- (4) Where the Lord Chancellor considers it appropriate for the Legal Services Commission to cease to exist before this Part is brought fully into force, the Lord Chancellor may by regulations make provision for the purpose of requiring or enabling the Lord Chancellor and the Director, or persons authorised by the Lord Chancellor or the Director, to carry out LSC functions for a period specified or described in the regulations.
- (5) In subsection (4) “LSC functions” means functions conferred or imposed on the Legal Services Commission by or under Part 1 of the Access to Justice Act 1999.
- (6) Regulations under subsection (4) may not include provision requiring or enabling the Lord Chancellor—
  - (a) to take decisions about whether services should be funded in individual cases, or
  - (b) to give directions or guidance about the carrying out of functions under Part 1 of the Access to Justice Act 1999 in relation to individual cases.
- (7) Regulations under this section—
  - (a) may amend, repeal, revoke or otherwise modify Part 1 of the Access to Justice Act 1999, this Part of this Act, any other Act and any instrument made under an Act;
  - (b) may describe a period, in particular, by reference to the coming into force of a provision of this Part of this Act or the repeal of a provision of Part 1 of the Access to Justice Act 1999.
- (8) The requirement for regulations under this section to specify or describe a period does not prevent the making of further regulations under this section.
- (9) The powers to make regulations under this section are without prejudice to the generality of the powers to make regulations under the other provisions of this Part and under section 149.
- (10) In this section “Act” includes an Act or Measure of the National Assembly for Wales.

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#### **40 Northern Ireland: information about financial resources** **E+W+N.I.**

Schedule 6 (Northern Ireland: information about financial resources) has effect.

#### **41 Orders, regulations and directions** **E+W+N.I.**

- (1) Orders, regulations and directions under this Part—
  - (a) may make different provision for different cases, circumstances or areas,
  - (b) may make provision generally or only for specified cases, circumstances or areas, and
  - (c) may make provision having effect for a period specified or described in the order, regulations or direction.
- (2) They may, in particular, make provision by reference to—
  - (a) services provided for the purposes of proceedings before a particular court, tribunal or other person,
  - (b) services provided for a particular class of individual, or
  - (c) services provided for individuals selected by reference to particular criteria or on a sampling basis.
- (3) Orders and regulations under this Part—
  - (a) may provide for a person to exercise a discretion in dealing with any matter,
  - (b) may make provision by reference to a document produced by any person, and
  - (c) may make consequential, supplementary, incidental, transitional or saving provision.
- (4) Orders and regulations under this Part are to be made by statutory instrument.
- (5) A statutory instrument containing an order or regulations under this Part is subject to annulment in pursuance of a resolution of either House of Parliament, unless it is an instrument described in subsection (6) or (9).
- (6) A statutory instrument containing an order or regulations listed in subsection (7) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (7) Those orders and regulations are—
  - (a) orders under section 9;
  - (b) regulations under section 11(1)(b), other than regulations in respect of which the Lord Chancellor has made an urgency statement;
  - (c) regulations under section 13(8);
  - (d) orders under section 17(3);
  - (e) regulations under section 18(7);
  - (f) regulations under section 19;
  - (g) regulations under section 20;
  - (h) regulations under section 22;
  - (i) regulations under section 26(3) or (6)(b) or (d);
  - (j) regulations under section 27(6)(a) or (8);
  - (k) regulations under section 39 that amend or repeal a provision of an Act (as defined in that section), other than regulations revoking such regulations

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- or inserting or repealing provision previously repealed or inserted by such regulations;
- (l) regulations under paragraph 5(9) of Schedule 3;
  - (m) regulations under paragraph 11 of Schedule 4 that amend or repeal a provision of an Act (as defined in that Schedule).
- (8) An urgency statement is a statement that the Lord Chancellor considers that it is desirable for the regulations to come into force without delay for the reasons given in the statement.
- (9) Where a statutory instrument contains regulations under section 11(1)(b) in respect of which the Lord Chancellor has made an urgency statement—
- (a) the regulations may not come into force before the instrument and the statement are laid before Parliament, and
  - (b) the regulations cease to have effect at the end of the period of 120 days beginning with the day on which the instrument is made unless the instrument is approved by a resolution of each House of Parliament before the end of that period.
- (10) In reckoning the period of 120 days no account is to be taken of any time—
- (a) during which Parliament is dissolved or prorogued, or
  - (b) during which both Houses are adjourned for more than 4 days.
- (11) Where regulations cease to have effect under subsection (9) that does not affect—
- (a) anything previously done in reliance on the regulations, or
  - (b) the making of further regulations.

## 42 Interpretation **E+W+N.I.**

- (1) In this Part—

“advocacy” means the exercise of a right of audience before a court, tribunal or other person;

“civil legal services” has the meaning given in section 8;

“civil servant” means an individual employed in the civil service of the State;

“criminal proceedings” has the meaning given in section 14;

“the Director” means the Director of Legal Aid Casework;

“functions” includes powers and duties;

“legal aid” has the meaning given in section 1;

“legal proceedings” means proceedings before a court or tribunal;

“legal services” has the meaning given in section 8;

“modify”, in relation to an Act or instrument, includes amend, repeal or revoke and related terms are to be interpreted accordingly;

“prescribed” means prescribed by regulations (except in Schedule 6) and related terms are to be interpreted accordingly;

“regulations” means regulations made by the Lord Chancellor (except in Schedule 6);

“remuneration” includes disbursements;

“representation” means representation for the purposes of proceedings and includes—

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- (a) the advice and assistance which is usually given by a representative in the steps preliminary or incidental to proceedings, and
  - (b) subject to any time limits which may be prescribed, advice and assistance as to any appeal.
- (2) In this Part references to proceedings are to be interpreted in accordance with section 20(3).

**43 Crown application** **E+W+N.I.**

This Part binds the Crown.

**Status:**

Point in time view as at 01/04/2013.

**Changes to legislation:**

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