

STATUTORY INSTRUMENTS

2013 No. 614

The Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013

PART 3 **E+W**

Choice of representative

Selection of representatives **E+W**

10. This Part makes provision in relation to the right, conferred by section 27(4) of the Act (choice of provider of services etc), of an individual who qualifies for representation for the purposes of criminal proceedings by virtue of a determination under section 16 of the Act (representation for criminal proceedings), in accordance with Part 2 of these Regulations or Part 5 of the General Regulations, to select a representative.

Determinations by the relevant court under this Part **E+W**

11.—(1) The relevant court may make a determination under this Part ^{M1} only if it has considered an application made in accordance with paragraph (2).

(2) For the purposes of paragraph (1), an application must—

- (a) be made by the individual seeking the determination;
- (b) be in writing; and
- (c) specify what the relevant court is being asked to determine and the grounds upon which it is being asked to do so.

(3) When it makes a determination under this Part, the relevant court must give reasons.

Marginal Citations

M1 Section 27(10) of the Act provides that the circumstances which may be prescribed in regulations made under section 27 include the making of a determination by a prescribed person.

Representation by a provider in criminal proceedings **E+W**

12. In relation to any criminal proceedings described in section 14(a) to (f) and (h) of the Act (criminal proceedings), the right of an individual conferred by section 27(4) of the Act does not include the right to select a provider unless the provider—

- (a) is employed by the Lord Chancellor to provide criminal legal aid;
- (b) is permitted to provide criminal legal aid to the individual under the arrangements the Lord Chancellor has made with the provider ^{M2}; or
- (c) is representing the individual before the Court of Appeal in an appeal against a decision of the Upper Tribunal in proceedings in respect of a decision of—

- [^{F1}(i) a decision of the Financial Conduct Authority;
- (ia) a decision of the Prudential Regulation Authority;]
- (ii) the Bank of England; or
- (iii) a person in relation to the assessment of any compensation or consideration under the Banking (Special Provisions) Act 2008 ^{M3} or the Banking Act 2009 ^{M4}.

Textual Amendments

- F1** Reg. 12(c)(i)(ia) substituted for reg. 12(c)(i) (1.9.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) \(No. 3\) Order 2013 \(S.I. 2013/1765\)](#), arts. 1, 12

Marginal Citations

- M2** Under section 2(1) of the Act 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 Part 1 of the Act.
- M3** 2008 c. 2.
- M4** 2009 c. 1.

Selection of a provider by co-defendants **E+W**

13.—(1) Subject to paragraph (2), in relation to any criminal proceedings involving co-defendants, the right of an individual conferred by section 27(4) of the Act does not include the right to select a provider who is not also instructed by the individual's co-defendant (or by one of the individual's co-defendants, if there are more than one) unless the relevant court or the Director determines that—

- (a) there is a conflict of interest between the individual and that co-defendant; or
- (b) there is likely to be a conflict of interest between the individual and that co-defendant.
- (2) Paragraph (1) does not apply where the provider selected by the individual is an advocate.
- (3) In this regulation “co-defendants” means defendants whose cases are to be heard together.

Change of provider **E+W**

14.—(1) Subject to paragraph (2), where an individual has selected a provider in criminal proceedings, the right conferred by section 27(4) of the Act does not include a right to select a provider in place of the original provider.

(2) The relevant court may determine that the individual can select a provider in place of the original provider in the circumstances set out in paragraphs (3) or (4).

- (3) The circumstances are that the relevant court determines that—
- (a) there has been a breakdown in the relationship between the individual and the original provider such that effective representation can no longer be provided by the original provider; or
- (b) there is some other compelling reason why effective representation can no longer be provided by the original provider.
- (4) The circumstances are that the relevant court determines that—
- (a) the original provider—

- (i) considers there to be a duty to withdraw from the case in accordance with the provider's professional rules of conduct; or
 - (ii) is no longer able to represent the individual through circumstances outside the provider's control; and
- (b) the original provider has supplied the relevant court with details as to—
- (i) the nature of any such duty to withdraw from the case; or
 - (ii) the particular circumstances that render the provider unable to represent the individual.

Choice of provider following withdrawal of a determination E+W

15.—(1) Paragraph (2) applies where, in relation to an individual—

- (a) a determination is withdrawn in accordance with regulation 26 of the General Regulations or regulation 9 of these Regulations; and
- (b) a subsequent determination under section 16 of the Act that the individual qualifies for representation is made in respect of the same proceedings.

(2) Subject to paragraph (3), the right of an individual conferred by section 27(4) of the Act does not include a right to select a provider other than the provider named in the original representation order.

(3) The relevant court may determine that the individual can select a provider other than the provider named in the original representation order if that court determines that there are good reasons why a different provider should be selected.

Criminal proceedings before a magistrates' court E+W

16.—(1) Subject to paragraph (2), in relation to any criminal proceedings before a magistrates' court, the right of an individual conferred by section 27(4) of the Act does not include a right to select an advocate.

- (2) The relevant court may determine that the individual can select an advocate if—
- (a) the proceedings relate to an extradition hearing under the Extradition Act 2003 ^{M5} or an indictable offence; and
 - (b) the relevant court determines that because there are circumstances which make the proceedings unusually grave or difficult, representation by an advocate would be desirable.

Marginal Citations

M5 2003 c. 41.

Criminal proceedings before a magistrates' court: Queen's Counsel or more than one advocate E+W

17.—(1) Subject to paragraph (2), where an individual is entitled to select an advocate in accordance with regulation 16, the right of an individual conferred by section 27(4) of the Act does not include a right to select a Queen's Counsel or more than one advocate.

(2) The relevant court may determine that the individual can select a Queen's Counsel or more than one advocate if the individual is—

- (a) the subject of an extradition hearing under the Extradition Act 2003; and

- (b) the relevant court determines that the individual could not be adequately represented except by a Queen's Counsel or more than one advocate.

Criminal proceedings other than before a magistrates' court E+W

18.—(1) Subject to paragraphs (2) to (6), in relation to any criminal proceedings that are not before a magistrates' court, the right of an individual conferred by section 27(4) of the Act does not include a right to select a Queen's Counsel or more than one advocate.

(2) The relevant court may determine that an individual can select a Queen's Counsel if that individual's case involves substantial novel or complex issues of law or fact which could not be adequately presented except by a Queen's Counsel, and either—

- (a) the exceptional condition is met; or
(b) the counsel condition is met.

(3) The relevant court may determine that an individual can select two junior advocates if that individual's case involves substantial novel or complex issues of law or fact which could not be adequately presented by a single advocate, including a Queen's Counsel alone, and either—

- (a) the exceptional condition is met; or
(b) the prosecution condition is met.

(4) The relevant court may determine that an individual can select a Queen's Counsel and a junior advocate if that individual's case involves substantial novel or complex issues of law or fact which could not be adequately presented except by a Queen's Counsel assisted by a junior advocate and either—

- (a) the exceptional condition is met; or
(b) the counsel condition and the prosecution condition are met.

(5) The relevant court may determine that an individual can select three advocates if the proceedings relate to a prosecution brought by the Serious Fraud Office and the relevant court determines that three advocates are required to represent the individual.

(6) If the proceedings described in paragraph (5) are in the Crown Court, that court must also determine that the individual's case involves substantial novel or complex issues of law or fact which could not be adequately presented by two junior advocates, or by a Queen's Counsel assisted by a junior advocate, and either—

- (a) the exceptional condition is met; or
(b) the prosecution condition is met.

(7) In this regulation—

“the counsel condition” means, in relation to particular criminal proceedings, that a Queen's Counsel or senior Treasury Counsel has been instructed on behalf of the prosecution;

“the exceptional condition” means, in relation to particular criminal proceedings, that the individual's case is exceptional compared with the generality of cases involving similar offences;

“the prosecution condition” means, in relation to particular criminal proceedings, any of the following circumstances—

- (a) two or more advocates have been instructed on behalf of the prosecution [^{F2}and the relevant court is satisfied that the individual will be, or will be likely to be, prejudiced if they too are not represented by two or more advocates];
(b) the number of prosecution witnesses exceeds 80;
(c) the number of pages of prosecution evidence exceeds 1000; and

“prosecution evidence” means all witness statements, documentary and pictorial exhibits and records of interview with the individual and with any other defendants which form part of the ^{F3} ... served prosecution documents or are included in any notice of additional evidence.

Textual Amendments

- F2** Words in reg. 18(7) inserted (2.12.2013) by [The Criminal Legal Aid \(Determinations by a Court and Choice of Representative\) \(Amendment\) Regulations 2013 \(S.I. 2013/2814\)](#), regs. 1(1), **2(2)** (with reg. 1(2))
- F3** Words in reg. 18(7) omitted (5.10.2015) by virtue of [The Civil and Criminal Legal Aid \(Amendment\) \(No.2\) Regulations 2015 \(S.I. 2015/1678\)](#), regs. 1(2)(a), **8(2)** (with reg. 10(1))

[^{F4}Selection of a Queen’s Counsel or multiple advocates **E+W**

19.—(1) A determination that an individual is entitled to select a Queen’s Counsel or more than one advocate under regulation 18 may only be made by the following judges—

- (a) subject to paragraph (2), in the course of a trial or a preliminary hearing, pre-trial review or plea and directions hearing, the judge who has been assigned as the trial judge;
- (b) where a trial judge has not been assigned, by—
 - (i) a High Court judge; or
 - (ii) subject to paragraph (2), a resident judge of the Crown Court or, in the absence of a resident judge, a judge nominated by a resident judge of the Crown Court for the purpose of making such a determination; or
- (c) where the proceedings are in the Court of Appeal, by the Registrar of Criminal Appeals, a High Court judge or a judge of the Court of Appeal.

(2) A determination made by a judge referred to in paragraph (1)(a) or (b)(ii) does not take effect unless it is approved by a presiding judge of the circuit or by a judge nominated by a presiding judge of the circuit for the purpose of giving such approval.]

Textual Amendments

- F4** [Reg. 19](#) substituted (2.12.2013) by [The Criminal Legal Aid \(Determinations by a Court and Choice of Representative\) \(Amendment\) Regulations 2013 \(S.I. 2013/2814\)](#), regs. 1(1), **2(3)** (with reg. 1(2))

Prohibition on the selection of more than one Queen's Counsel **E+W**

20. Nothing in regulation 18 permits an individual to select more than one Queen's Counsel.

Written opinions **E+W**

21. For the purposes of making a determination under regulation 18, the relevant court may require from any advocate already assigned to the individual a written opinion on the representation needed to adequately present the case.

Determinations by the Director in certain cases in the Crown Court **E+W**

22.—(1) The Director may, upon the ^{F5}... sending for trial of an individual, determine that the individual can select a Queen's Counsel without a junior advocate if the proceedings are a trial for murder.

(2) The Director may, upon receipt of a notice ^{F6}... of an individual's case under [^{F7}section 51B of the Crime and Disorder Act 1998], determine that the individual can select a Queen's Counsel with one junior advocate if the prosecution is brought by the Serious Fraud Office.

Textual Amendments

- F5** Words in reg. 22(1) omitted (5.10.2015) by virtue of *The Civil and Criminal Legal Aid (Amendment) (No.2) Regulations 2015 (S.I. 2015/1678)*, regs. 1(2)(a), **8(3)(a)** (with reg. 10(1))
- F6** Words in reg. 22(2) omitted (5.10.2015) by virtue of *The Civil and Criminal Legal Aid (Amendment) (No.2) Regulations 2015 (S.I. 2015/1678)*, regs. 1(2)(a), **8(3)(b)(i)** (with reg. 10(1))
- F7** Words in reg. 22(2) substituted (5.10.2015) by *The Civil and Criminal Legal Aid (Amendment) (No.2) Regulations 2015 (S.I. 2015/1678)*, regs. 1(2)(a), **8(3)(b)(ii)** (with reg. 10(1))

Noting juniors **E+W**

23.—(1) The right of an individual conferred by section 27(4) of the Act does not include a right to select—

- (a) two junior advocates, unless the relevant court determines that the individual could not be adequately represented by a junior advocate and a noting junior;
- (b) a Queen's Counsel assisted by a junior advocate, unless the relevant court determines that the individual could not be adequately represented by a Queen's Counsel assisted by a noting junior;
- (c) three junior advocates, unless the relevant court determines that the individual could not be adequately represented by two junior advocates and a noting junior;
- (d) two junior advocates and a noting junior, unless the relevant court determines that the individual could not be adequately represented by a junior advocate and two noting juniors;
- (e) a Queen's Counsel assisted by two junior advocates, unless the relevant court determines that the individual could not be adequately represented by a Queen's Counsel assisted by a junior advocate and a noting junior; or
- (f) a Queen's Counsel assisted by a junior advocate and a noting junior, unless the relevant court determines that the individual could not be adequately represented by a Queen's Counsel assisted by two noting juniors.

(2) In this regulation “noting junior” means a junior advocate whose instructions include (but are not limited to) taking a note of the proceedings.

Legal persons **E+W**

24.—(1) This Part applies to legal persons ^{M6} subject to the modifications in paragraphs (2) and (3).

- (2) For “an individual” substitute “ a legal person ”.
- (3) For “the individual” substitute “ the legal person ”.

Marginal Citations

- M6** Paragraph 9(1) of Schedule 3 to the Act (legal aid for legal persons) provides that section 27 of the Act (choice of provider of services) applies in relation to the provision of services to a legal person, as it applies in relation to the provision of services to an individual.

Changes to legislation:

There are currently no known outstanding effects for the The Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013, PART 3.