

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) (“the Act”). Part 1 of Schedule 1 to the Act describes the matters on which civil legal aid is generally available (subject to merits and means tests). Part 2 of Schedule 1 lists services that are not to be available, even where they might otherwise fall within the descriptions of services in Part 1 of Schedule 1.

Article 2 of this Order adds to Part 2 of Schedule 1 a new general exclusion for civil legal services provided to individuals who do not satisfy the residence test (new paragraph 19 of Part 2 of Schedule 1). In general, the residence test requires an individual to be lawfully resident in the United Kingdom, the Channel Islands, the Isle of Man or a British overseas territory at the time of applying for civil legal services, and to have been lawfully resident in such a place for at least 12 months in the past. The effect of the new exclusion in paragraph 19 of Part 2 of Schedule 1 is that the services listed in Part 1 of Schedule 1 are only to be available to those individuals who satisfy the residence test. However, exceptions are provided for asylum seekers, resettled refugees and members of Her Majesty’s United Kingdom forces and their immediate families, who are not required to meet the residence test.

While the residence test will generally apply to all services described in Part 1 of Schedule 1 to the Act, Article 3 of this Order amends that Part of the Schedule to provide that the residence test does not apply in relation to certain services.

Article 4 provides that the amendments made by articles 2 and 3 to Schedule 1 to the Act do not apply to pre-commencement applications for civil legal services. Articles 5 to 7 define a “pre-commencement application”.

A full impact assessment of the effect of the policy implemented by this instrument on the costs of business and the voluntary sector was produced with the Government’s response to consultation, Transforming Legal Aid: Next Steps, and is available at <https://consult.justice.gov.uk/>.