

Status: Point in time view as at 03/11/2008.

Changes to legislation: There are currently no known outstanding effects for the Access to Justice Act 1999, SCHEDULE 3. (See end of Document for details)

SCHEDULES

SCHEDULE 3

Section 14.

CRIMINAL DEFENCE SERVICE: RIGHT TO REPRESENTATION

Individuals to whom right may be granted

- 1 (1) A right to representation for the purposes of any kind of criminal proceedings before a court may be granted to an individual such as is mentioned in relation to that kind of proceedings in section 12(2).
- (2) A right to representation for the purposes of criminal proceedings may also be granted to an individual to enable him to resist an appeal to the Crown Court otherwise than in an official capacity.
- (3) In this Schedule “court” includes any body before which criminal proceedings take place.

[^{F1}Individuals to whom right may be provisionally granted

Textual Amendments

- F1** Sch. 3 para. 1A inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 56(6), 153; S.I. 2008/1586, art. 2, Sch. 1

- 1A (1) Regulations may provide that, in prescribed circumstances, and subject to any prescribed conditions, a right to representation may be provisionally granted to an individual where—
- (a) the individual is involved in an investigation which may result in criminal proceedings, and
- (b) the right is so granted for the purposes of criminal proceedings that may result from the investigation.
- (2) Regulations under sub-paragraph (1) may, in particular, make provision about—
- (a) the stage in an investigation at which a right to representation may be provisionally granted;
- (b) the circumstances in which a right which has been so granted—
- (i) is to become, or be treated as if it were, a right to representation under paragraph 1, or
- (ii) is to be, or may be, withdrawn.]

Grant of right by court

- 2 (1) A court before which any criminal proceedings take place, or are to take place, has power to grant a right to representation in respect of those proceedings [^{F2}subject to sub-paragraph (1A)].

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- [^{F3}(1A) The power under sub-paragraph (1) shall not be exercisable—
 - (a) in relation to proceedings in respect of which the Commission has power to grant a right to representation under paragraph 2A, unless regulations otherwise provide, or
 - (b) in such other circumstances as may be prescribed.]
- (2) Where a right to representation is granted for the purposes of criminal proceedings it includes the right to representation for the purposes of any related bail proceedings and any preliminary or incidental proceedings; and regulations may make provision specifying whether any proceedings are or are not to be regarded as preliminary or incidental.
- (3) A court also has power to grant a right to representation for the purposes of criminal proceedings before another court in such circumstances as may be prescribed.
- (4) The form of the application for a grant of a right to representation under this paragraph, and the form of the grant of such a right, shall be such as may be prescribed.
- (5) [^{F4}Subject to sub-paragraph (5A),] a right to representation in respect of proceedings may be withdrawn by any court before which the proceedings take place; and a court must consider whether to withdraw a right to representation in such circumstances as may be prescribed.
- [^{F5}(5A) Sub-paragraph (5) does not apply where the Commission has power to withdraw the right to representation in respect of the proceedings.]
- (6) The powers of a magistrates’ court for any area under this paragraph may be exercised by a single justice of the peace for the area.
- (7) ^{F6}

Textual Amendments	
F2	Words in Sch. 3 para. 2(1) substituted (2.10.2006) by Criminal Defence Service Act 2006 (c. 9), ss. 1(2), 5(2) ; S.I. 2006/2491, art. 2
F3	Sch. 3 para. 2(1A) inserted (2.10.2006) by Criminal Defence Service Act 2006 (c. 9), ss. 1(3), 5(2) ; S.I. 2006/2491, art. 2
F4	Words in Sch. 3 para. 2(5) inserted (2.10.2006) by Criminal Defence Service Act 2006 (c. 9), ss. 1(4), 5(2) ; S.I. 2006/2491, art. 2
F5	Sch. 3 para. 2(5A) inserted (2.10.2006) by Criminal Defence Service Act 2006 (c. 9), ss. 1(5), 5(2) ; S.I. 2006/2491, art. 2
F6	Sch. 3 para. 2(7) omitted (1.9.2004) by virtue of The Courts Act 2003 (Consequential Amendments) Order 2004 (S.I. 2004/2035), arts. 2, 3, Sch. para. 38

Grant of right by commission

- [^{F7}2A (1) Regulations may—
 - (a) provide that the Commission shall have power to grant rights to representation in respect of criminal proceedings of a prescribed description;
 - (b) provide that the Commission shall, except in such circumstances as may be prescribed, have power to withdraw any rights to representation granted in respect of proceedings of a description prescribed under paragraph (a).

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[provide that any provisional grant of a right to representation, or any ^{F8}(c) withdrawal of a right so granted, in accordance with regulations under paragraph 1A is to be made by the Commission.]

- (2) In sub-paragraph (1)(a), the reference to criminal proceedings does not include proceedings prescribed under section 12(2)(g).
- (3) Regulations under sub-paragraph (1) may make such consequential amendment or repeal of any enactment, including an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978), as the Lord Chancellor may consider appropriate.]

Textual Amendments

- F7** Sch. 3 para. 2A inserted (2.10.2006) by [Criminal Defence Service Act 2006 \(c. 9\)](#), **ss. 1(6)**, 5(2); S.I. 2006/2491, **art. 2**
- F8** Sch. 3 para. 2A(1)(c) inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), **ss. 56(7)**, 153; S.I. 2008/1586, **art. 2**, Sch. 1

- 3 (1) Regulations may provide that the Commission shall have power to grant rights to representation in respect of any one or more of the descriptions of proceedings prescribed under section 12(2)(g), and to withdraw any rights to representation granted by it.

^{F9}(2)

Textual Amendments

- F9** Sch. 3 para. 3A substituted (2.10.2006) for Sch. 3 para. 3(2)(3) by [Criminal Defence Service Act 2006 \(c. 9\)](#), **ss. 1(7)**, 5(2); S.I. 2006/2491, **art. 2**

[^{F10}3A(1) The form of the grant [^{F11}, or provisional grant,] of a right to representation under paragraph 2A or 3 shall be such as may be prescribed.

- (2) Regulations under paragraph 2A or 3 may make such transitional provision as the Lord Chancellor may consider appropriate.]

Textual Amendments

- F10** Sch. 3 para. 3A substituted (2.10.2006) for Sch. 3 para. 3(2)(3) by [Criminal Defence Service Act 2006 \(c. 9\)](#), **ss. 1(7)**, 5(2); S.I. 2006/2491, **art. 2**
- F11** Words in Sch. 3 para. 3A(1) inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), **ss. 56(8)**, 153; S.I. 2008/1586, **art. 2**, Sch. 1

[^{F12}Financial eligibility

Textual Amendments

- F12** Sch. 3 para. 3B and heading inserted (2.10.2006) by [Criminal Defence Service Act 2006 \(c. 9\)](#), **ss. 2(2)**, 5(2); S.I. 2006/2491, **art. 2**

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- 3B (1) Power under this Schedule to grant [^{F13}, or provisionally grant,] a right to representation may only be exercised in relation to an individual whose financial resources appear to the relevant authority to be such that, under regulations, he is eligible to be granted [^{F14}, or provisionally granted,] such a right.
- (2) Power under this Schedule to withdraw a right to representation shall be exercised in relation to an individual if it appears to the relevant authority—
- (a) that his financial resources are not such that, under regulations, he is eligible to be granted [^{F15}, or provisionally granted,] such a right, or
 - (b) that he has failed, in relation to the right, to comply with regulations under this paragraph about the furnishing of information.
- (3) Regulations may make provision for exceptions from sub-paragraph (1) or (2).
- (4) Regulations under this paragraph may include—
- (a) provision requiring the furnishing of information;
 - (b) provision for the notification of decisions about the application of—
 - (i) sub-paragraph (1) or (2), or
 - (ii) regulations under sub-paragraph (3);
 - (c) provision for the review of such decisions;
 - (d) such transitional provision as the Lord Chancellor may consider appropriate.
- (5) The provision which may be made under sub-paragraph (4)(c) includes provision prescribing circumstances in which the person or body reviewing a decision may refer a question to the High Court for its decision.
- (6) Section 16 of the Supreme Court Act 1981 (appeals from the High Court) shall not apply to decisions of the High Court on a reference under regulations under this paragraph.]

Textual Amendments

- F13** Words in Sch. 3 para. 3B(1) inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\), ss. 56\(9\)\(a\), 153; S.I. 2008/1586, art. 2, Sch. 1](#)
- F14** Words in Sch. 3 para. 3B(1) inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\), ss. 56\(9\)\(a\), 153; S.I. 2008/1586, art. 2, Sch. 1](#)
- F15** Words in Sch. 3 para. 3B(2)(a) inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\), ss. 56\(9\)\(b\), 153; S.I. 2008/1586, art. 2, Sch. 1](#)

Appeals

- 4 Except where regulations otherwise provide, an appeal shall lie to such court or other person or body as may be prescribed against a decision to refuse to grant a right to representation or to withdraw a right to representation.^[F16] This paragraph does not apply in relation to any right to representation granted in accordance with paragraph 1A.]

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Textual Amendments

F16 Words in Sch. 3 para. 4 inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 56(10), 153; S.I. 2008/1586, art. 2, Sch. 1

Criteria for grant of right

- 5 (1) Any question as to whether [^{F17}power to grant [^{F18}, or provisionally grant,] a right to representation should be exercised] shall be determined according to the interests of justice.
- (2) In deciding what the interests of justice consist of in relation to any individual, the following factors must be taken into account—
- (a) whether the individual would, if any matter arising in the proceedings is decided against him, be likely to lose his liberty or livelihood or suffer serious damage to his 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 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.
- [^{F19}(2A) For the purposes of sub-paragraph (2), “proceedings” includes, in the context of a provisional grant of a right to representation, proceedings that may result from the investigation in which the individual is involved.]
- (3) The [^{F20}Lord Chancellor] may by order amend sub-paragraph (2) by adding new factors or varying any factor.
- [^{F21}(4) Regulations may prescribe circumstances in which the grant [^{F22}, or provisional grant,] of a right to representation shall be taken to be in the interests of justice.]

Textual Amendments

- F17** Words in Sch. 3 para. 5(1) substituted (2.10.2006) by Criminal Defence Service Act 2006 (c. 9), ss. 2(3), 5(2); S.I. 2006/2491, art. 2
- F18** Words in Sch. 3 para. 5(1) inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 56(11)(a), 153; S.I. 2008/1586, art. 2, Sch. 1
- F19** Sch. 3 para. 5(2A) inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 56(11)(b), 153; S.I. 2008/1586, art. 2, Sch. 1
- F20** Words in Sch. 3 substituted (12.1.2006) by The Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429), art. 8, Sch. para. 4(d)
- F21** Sch. 3 para. 5(4) substituted (2.10.2006) by Criminal Defence Service Act 2006 (c. 9), ss. 2(4), 5(2); S.I. 2006/2491, art. 2
- F22** Words in Sch. 3 para. 5(4) inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 56(11)(c), 153; S.I. 2008/1586, art. 2, Sch. 1

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[^{F23}Information requests

Textual Amendments

F23 Sch. 3 paras. 6-8 inserted (14.7.2008) by *Criminal Justice and Immigration Act 2008 (c. 4), ss. 57(3), 153; S.I. 2008/1586, art. 2, Sch. 1*

- 6 (1) The relevant authority may make an information request to—
- (a) the Secretary of State, or
 - (b) the Commissioners,
- for the purpose of facilitating the making of a decision by the authority about the application of paragraph 3B(1) or (2), or regulations under paragraph 3B(3), in relation to an individual.
- (2) An information request made to the Secretary of State is a request for the disclosure of some or all of the following information—
- (a) the individual's full name;
 - (b) the individual's address;
 - (c) the individual's date of birth;
 - (d) the individual's national insurance number;
 - (e) the individual's benefit status;
 - (f) information of any description specified in regulations.
- (3) An information request made to the Commissioners is a request for the disclosure of some or all of the following information—
- (a) whether or not the individual is employed;
 - (b) the name and address of the employer (if the individual is employed);
 - (c) the individual's national insurance number;
 - (d) information of any description specified in regulations made with the agreement of the Commissioners.
- (4) The information that may be specified under subsection (3)(d) includes, in particular, information relating to the individual's income (as defined in the regulations) for a period so specified.
- (5) On receiving an information request, the Secretary of State or (as the case may be) the Commissioners may disclose the information requested to the relevant authority.

Restrictions on disclosure

- 7 (1) A person to whom information is disclosed under paragraph 6(5), or this subparagraph, may disclose the information to any person to whom its disclosure is necessary or expedient in connection with facilitating the making of a decision by the relevant authority about the application of paragraph 3B(1) or (2), or regulations under paragraph 3B(3), in relation to an individual.
- (2) A person to whom such information is disclosed commits an offence if the person—
- (a) discloses or uses the information, and

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- (b) the disclosure is not authorised by sub-paragraph (1) or (as the case may be) the use is not for the purpose of facilitating the making of such a decision as is mentioned in that sub-paragraph.
- (3) But it is not an offence under sub-paragraph (2)—
 - (a) to disclose any information in accordance with any enactment or order of a court or for the purposes of any proceedings before a court; or
 - (b) to disclose any information which has previously been lawfully disclosed to the public.
- (4) It is a defence for a person charged with an offence under sub-paragraph (2) to prove that the person reasonably believed that the disclosure or use was lawful.
- (5) A person guilty of an offence under sub-paragraph (2) is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both.
- (6) In sub-paragraph (5)(b) the reference to 12 months is to be read as a reference to 6 months in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003.
- (7) Nothing in section 20 applies in relation to the disclosure of information to which sub-paragraph (1) applies.

Paragraphs 6 and 7: supplementary

- 8
- (1) This paragraph applies for the purposes of paragraphs 6 and 7.
 - (2) “Benefit status”, in relation to an individual, means whether or not the individual is in direct or indirect receipt of any prescribed benefit or benefits and, if so (in the case of each benefit)—
 - (a) which benefit the individual is so receiving, and
 - (b) (in prescribed cases) the amount the individual is so receiving by way of the benefit.
 - (3) “The Commissioners” means the Commissioners for Her Majesty's Revenue and Customs.
 - (4) “Information” means information held in any form.
 - (5) Nothing in paragraph 6 or 7 authorises the making of a disclosure which contravenes the Data Protection Act 1998.]

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