

# LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY

#### Part 1: Legal Aid

##### Financial resources

##### *Section 21: Financial resources*

165. **Section 21** relates to financial eligibility for legal aid services. In the Access to Justice Act 1999 separate provision is made in respect of financial eligibility for different types of legal aid (in section 7, in respect of civil legal aid and in paragraph 3B of Schedule 3, in respect of criminal legal aid in the form of representation). This section contains provisions on financial eligibility that are applicable to both civil and criminal legal aid.
166. *Subsection (1)* specifies the basic rule, applicable to both civil and criminal aid, that legal aid will only be granted to an individual who is determined to be financially eligible for the services. As under the Access to Justice Act 1999, the financial eligibility rules will be contained in regulations made by the Lord Chancellor (see *subsection (2)*). The basic rule in *subsection (1)* applies to decisions on granting civil legal aid and decisions on granting criminal legal aid for representation in criminal proceedings. It also applies to decisions on granting criminal legal aid for advice and assistance for criminal proceedings, if regulations under section 15 provide for that (see the definition of a “relevant determination” in *subsection (8)*).
167. *Subsection (2)(b)* makes clear that regulations may provide for exceptions from the basic rule, so that an individual may receive certain services regardless of their financial means.
168. *Subsections (3) and (4)* enable regulations to provide that an individual is to be treated as having or not having particular financial resources, including providing that an individual is to be treated as having financial resources of a person of a specified description. This allows, for example, for regulations on financial eligibility to provide that the resources of the partner of a legal aid applicant are to be treated as the resources of the applicant.
169. *Subsections (5) and (6)* enable regulations to make provision about making and withdrawing financial eligibility determinations. *Subsection (6)* is a non-exhaustive list of matters that such regulations may contain, including provision requiring information and documents to be provided and provision establishing procedures for the review of financial eligibility determinations.

##### *Section 22: Information about financial resources*

170. **Section 22** provides a gateway for the disclosure of information to the Director (or other prescribed person) by the Secretary of State (in practice, the Secretary of State

*These notes refer to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) which received Royal Assent on 1 May 2012*

for Work and Pensions), the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners"), the Department for Social Development in Northern Ireland or the Department of Finance and Personnel in Northern Ireland (a "relevant Northern Ireland Department").

171. *Subsection (1)* enables the Director (or other prescribed person) to make a request for certain information to the Secretary of State, a relevant Northern Ireland Department or the Commissioners. *Subsection (2)* provides that such a request may only be made for the purpose of facilitating a determination about an individual's means, that is, for the purpose of finding out whether they are financially eligible for legal aid.
172. *Subsection (3)* lists the categories of information which may be requested from the Secretary of State or the relevant Northern Ireland Department. It includes a power to add further categories of information by secondary legislation.
173. *Subsection (4)* sets out the categories of information which may be requested from the Commissioners. It includes a power to add further categories of information by secondary legislation, with the Commissioners' consent (see *subsection (6)*).
174. *Subsection (7)* provides that the Secretary of State, the relevant Northern Ireland Department and the Commissioners may disclose to the Director (or other prescribed person) information specified in an information request made under this section.