Draft Regulations laid before Parliament under section 41(6) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No.

LEGAL AID AND ADVICE, ENGLAND AND WALES

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

Made - - - -	*xxxx*
Coming into force - -	*1st April 2013*

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by sections 5(2) and (4), 19(1) and (2), 27(6) and (10), 30(2) and (3), 41(1), (2) and (3) of, and paragraph 9 of Schedule 3 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**1**).

In accordance with section 41(6) of that Act, a draft of this instrument has been laid before and approved by a resolution of each House of Parliament.

PART 1

Interpretation and General

Citation and commencement

1. These Regulations may be cited as the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013 and come into force on 1st April 2013.

Interpretation

2. In these Regulations—

"the Act" means the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

"advocate" means a person who is an authorised person for the purposes of section 18 of the Legal Services Act 2007(**2**) in relation to the exercise of a right of audience;

(**1**) 2012 c. 10. Section 42(1) provides that in Part 1 of the Act "regulations" means regulations made by the Lord Chancellor.
(**2**) 2007 c. 29.

"criminal legal aid" means advice, assistance and representation made available under sections 13, 15 and 16 of the Act;

"the General Regulations" means the Criminal Legal Aid (General) Regulations 2013(**3**);

"junior advocate" means any advocate who is not a Queen's Counsel;

"provider" means a person who has entered into an arrangement with the Lord Chancellor under section 2(1) of the Act (arrangements) to provide criminal legal aid under Part 1 of the Act;

"relevant court" means the court before which the criminal proceedings are taking place or are to take place; and

"representation order" means a document which records a determination made under section 16 of the Act (representation for criminal proceedings).

Delegation

3. A function of the Lord Chancellor or Director under these Regulations may be exercised by, or by an employee of, a person authorised for that purpose by the Lord Chancellor or Director respectively(**4**).

PART 2

Determinations by a Court under section 16 of the Act

Applications

4.—(1) An application for a determination under section 16 of the Act (representation for criminal proceedings) made to the Crown Court must be made orally to the court.

(2) An application for a determination under section 16 of the Act made to the High Court or the Court of Appeal must be made—

(a) orally to the court; or

(b) in writing to an officer of the court.

(3) An application for a determination made in accordance with paragraph (2)(b) must be made in a form specified by the Lord Chancellor.

General

5.—(1) When the court makes a determination under section 16 of the Act in accordance with any of regulations 6 to 8, the court must—

(a) issue a representation order recording that determination; and

(b) send a copy of the representation order to the individual and any provider named in the representation order.

(2) Where these Regulations provide that a court is authorised to make a determination under section 16 of the Act, the power to make a determination may be exercised by the court or an officer of the court.

(**3**) S.I. 2013/9.
(**4**) Section 6 of the Act (authorisations) makes provision for authorisations given for the purpose of section 5 of the Act (delegation) or regulations under that section.

Determinations by the Crown Court

6. On the application of an individual, the Crown Court may make a determination under section 16 of the Act as to whether an individual qualifies for representation for the purposes of criminal proceedings before the Crown Court—

(a) which are described in section 14(g) of the Act (criminal proceedings);

(b) which arise out of an alleged failure to comply with an order of the Crown Court and it appears to the court that there is no time to instruct a provider; or

(c) where the individual is brought before the court under section 81 of the Senior Courts Act 1981(**5**) in pursuance of a warrant issued by the Crown Court.

Determinations by the High Court

7.—(1) On the application of an individual, the High Court may make a determination under section 16 of the Act as to whether an individual qualifies for representation for the purposes of criminal proceedings before the High Court in relation to an appeal by way of case stated from a decision of the magistrates' court or the Crown Court.

(2) On the application of an individual, or of its own motion, the High Court may make a determination under section 16 of the Act as to whether an individual qualifies for representation for the purposes of proceedings before the High Court, or proceedings before the Supreme Court on appeal from the High Court, described in—

(a) section 14(a) to (g) of the Act, other than proceedings under paragraph (1); or

(b) regulation 9(r) of the General Regulations.

Determinations by the Court of Appeal

8.—(1) On the application of an individual, or of its own motion, the Court of Appeal may make a determination under section 16 of the Act as to whether an individual qualifies for representation for the purposes of any criminal proceedings before the Court of Appeal, or criminal proceedings before the Supreme Court on appeal from the Court of Appeal.

(2) A determination made in accordance with paragraph (1)—

(a) must not be made until service of an appeal notice in respect of the proceedings has taken place; and

(b) may specify the stage of the proceedings at which the determination is to take effect.

Withdrawal of determinations by the court

9.—(1) The court before which any criminal proceedings other than those listed in regulation 9(a), (b) and (d) to (i) of the General Regulations are taking place may withdraw a determination under section 16 of the Act that an individual qualifies for representation where—

(a) the individual declines to accept the determination in the terms which are offered;

(b) the individual requests that the determination is withdrawn; or

(c) the provider named in the representation order which recorded the original determination declines to continue to represent the individual.

(2) Where the court withdraws a determination—

(**5**) 1981 c. 54.

(a) the court must provide written notification of the withdrawal to the individual in whose favour the original determination was made and to the provider named in the representation order which records the determination; and

(b) the Director must provide written notification of the withdrawal to any advocate instructed in the proceedings.

PART 3

Choice of representative

Selection of representatives

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

11.—(1) The relevant court may make a determination under this Part(**6**) 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.

Representation by a provider in criminal proceedings

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(**7**); 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—

(i) the Financial Services 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(**8**) or the Banking Act 2009(**9**).

(**6**) 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.
(**7**) 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.
(**8**) 2008 c. 2.
(**9**) 2009 c. 1.

Selection of a provider by co-defendants

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

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

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.