

2013 No. 748

LEGAL AID AND ADVICE, ENGLAND AND WALES

**The Legal Aid, Sentencing and Punishment of Offenders Act
2012 (Amendment of Schedule 1) Order 2013**

Made - - - - - *27th March 2013*

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

The Lord Chancellor makes the following Order in exercise of the powers conferred by sections 9(2)(a) and 41(1)(a) and (b) and (2)(a) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(b).

In accordance with section 41(6) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, a draft of this instrument was laid before Parliament and approved by resolution of each House of Parliament.

Citation, commencement and interpretation

1. This Order may be cited as the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2013 and comes into force on 1st April 2013.

2. In this Order “the Act” means the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Civil legal services: Appeals relating to council tax reduction schemes

3. In Part 1 of Schedule 1 to the Act (services), after paragraph 8 (appeals relating to welfare benefits) insert—

“Appeals relating to council tax reduction schemes

8A (1) Civil legal services provided in relation to an appeal on a point of law to the High Court, the Court of Appeal or the Supreme Court relating to a council tax reduction scheme.

General exclusions

(2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

Specific exclusion

(3) The services described in sub-paragraph (1) do not include advocacy in proceedings in the High Court.

(a) Section 9(2) enables the Lord Chancellor to modify Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Section 42(1) of the Act provides that in Part 1 of the Act, “modify”, in relation to an Act or instrument, includes amend, repeal or revoke and related terms are to be interpreted accordingly.

(b) 2012 c. 10.

Definitions

(4) In this paragraph “council tax reduction scheme” has the same meaning as in Part 1 of the Local Government Finance Act 1992 (council tax: England and Wales) (see section 13A(9) of that Act)(a).”

Civil legal services: Definition of domestic violence

4.—(1) In paragraph 12 of Part 1 of Schedule 1 to the Act (victims of domestic violence and family matters), in sub-paragraph (9) for the definition of “domestic violence” substitute—

““domestic violence” means any incident, or pattern of incidents, of controlling, coercive or threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between individuals who are associated with each other;”.

(2) In paragraph 28 of Part 1 of Schedule 1 to the Act (immigration: victims of domestic violence and indefinite leave to remain) in sub-paragraph (5) for the definition of “domestic violence” substitute—

““domestic violence” means any incident, or pattern of incidents, of controlling, coercive or threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between individuals who are associated with each other (within the meaning of section 62 of the Family Law Act 1996(b));”.

(3) In paragraph 29 of Part 1 of Schedule 1 to the Act (immigration: victims of domestic violence and residence cards), in sub-paragraph (4) for the definition of “domestic violence” substitute—

““domestic violence” means any incident, or pattern of incidents, of controlling, coercive or threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between individuals who are associated with each other (within the meaning of section 62 of the Family Law Act 1996);”.

Civil legal services: EU and international agreements concerning maintenance

5.—(1) Paragraph 18 of Part 1 of Schedule 1 to the Act (EU and international agreements concerning maintenance) is amended as follows.

(2) After sub-paragraph (3) insert—

“(3A) Civil legal services provided in relation to an application under Article 10 of the 2007 Hague Convention (applications relating to maintenance decisions).

(3B) Civil legal services provided to an individual in relation to proceedings in England and Wales relating to the recognition or enforcement of a maintenance decision in circumstances in which—

(a) Article 17(b) of the 2007 Hague Convention (free legal assistance for persons who benefited from such assistance in State of origin) applies to the proceedings by virtue of Article 37(2) of that Convention (direct request to competent authority of Contracting State), and

(b) the individual falls within Article 17(b) as so applied.”

(3) In sub-paragraph (4), for “(3)” substitute “(3B)”.

(4) In sub-paragraph (5), after the definition of “the 2000 Brussels Regulation” insert—

(a) 1992 c. 14. Section 13A of the Local Government Finance Act 1992 was substituted by section 10(1) of the Local Government Finance Act 2012 (c. 17).

(b) 1996 c. 27. Section 62 was amended by section 82 of, and paragraph 13(1), (3) and (4) of Part 1 of Schedule 9 to, the Civil Partnership Act 2004 (c. 33); section 4 of the Domestic Violence, Crime and Victims Act 2004 (c. 28); section 139 of, and paragraphs 85, 86(b) and 87 of Schedule 3 to, the Adoption and Children Act 2002 (c. 38); and S.I. 2011/1740.

““the 2007 Hague Convention” means the Convention on the international recovery of child support and other forms of family maintenance concluded at The Hague on 23 November 2007(a);”.

Civil legal services: Judicial review

6. In paragraph 19 of Part 1 of Schedule 1 to the Act (judicial review), in sub-paragraph (2)(a) for “15 and 16” substitute “15, 16 and 18”.

Excluded services: Judicial review

7. In Part 2 of Schedule 1 to the Act (excluded services), after paragraph 17 insert—

“18 (1) Civil legal services provided in relation to judicial review of an enactment, decision, act or omission.

(2) In this paragraph “judicial review” means—

- (a) the procedure on an application for judicial review (see section 31 of the Senior Courts Act 1981(b)), but not including the procedure after the application is treated under rules of court as if it were not such an application, and
- (b) any procedure in which a court, tribunal or other person mentioned in Part 3 of this Schedule is required by an enactment to make a decision applying the principles that are applied by the court on an application for judicial review.”

Signed by authority of the Lord Chancellor

27th March 2013

McNally
Minister of State
Ministry of Justice

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”), which sets out the scope of civil legal aid.

Article 3 adds a new paragraph 8A to Part 1 of Schedule 1 to the Act to provide that civil legal services are available in relation to an appeal on a point of law to the High Court, the Court of Appeal and Supreme Court relating to a council tax reduction scheme. This new paragraph is subject to the exclusions in Part 2 of Schedule 1 of the Act. Advocacy before the Court of Appeal and Supreme Court for these cases is in scope by virtue of paragraphs 1 and 2 of Part 3 of Schedule 1, but advocacy before the High Court is excluded for these cases.

Article 4 amends the definition of domestic violence in paragraphs 12, 28 and 29 of Part 1 of Schedule 1 to the Act, to cover incidents, or patterns of incidents, of controlling and coercive behaviour.

Article 5 amends paragraph 18 of Part 1 of Schedule 1 to the Act to provide that civil legal services are available in relation to an application under Article 10 of the Convention on the international recovery of child support and other forms of family maintenance concluded at The Hague on 23 November 2007, for the recognition, enforcement or establishment of a decision in relation to maintenance. Civil legal services will also be available to an individual for proceedings

(a) OJ No L 192, 22.7.11, p 51-70.

(b) 1981 c. 54; section 31 was amended by S.I. 2004/1033 and the Tribunals, Courts and Enforcement Act 2007 (c. 15), section 141.

in England and Wales in relation to recognition and enforcement of a maintenance decision where the individual makes a request directly to a competent authority for recognition and enforcement of the decision. Legal aid will only be available in these circumstances if the individual previously received legal aid in the State of origin.

Articles 6 and 7 amend Schedule 1 to the Act in respect of civil legal services provided in relation to judicial review. Article 7 adds to Part 2 of Schedule 1 a new exclusion for civil legal services provided in relation to judicial review of an enactment, decision, act or omission. Article 6 provides an exception to this exclusion in paragraph 19(2) of Part 1 of Schedule 1. This ensures that legal aid is available for judicial review only as set out in paragraph 19 of Part 1 of Schedule 1 to the Act, which continues to be subject to a number of general and specific exclusions.

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