

2013 No. 77 (C. 4)

LEGAL SERVICES, ENGLAND AND WALES

**The Legal Aid, Sentencing and Punishment of Offenders Act
2012 (Commencement No. 5 and Saving Provision) Order 2013**

Made - - - -

18th January 2013

The Secretary of State makes the following Order in exercise of the powers conferred by section 151(1) and (5) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(a).

Citation and interpretation

1.—(1) This Order may be cited as the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 5 and Saving Provision) Order 2013.

(2) In this Order—

“the 1986 Act” means the Insolvency Act 1986(b);

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

“company” means a company within the meaning of section 1 of the Companies Act 2006(c) or a company which may be wound up under Part V of the 1986 Act;

“diffuse mesothelioma” has the same meaning as in section 48(2) of the 2012 Act;

“news publisher” means a person who publishes a newspaper, magazine or website containing news or information about or comment on current affairs;

“proceedings” has the same meaning as in section 58A(4) of the Courts and Legal Services Act 1990(d);

“publication and privacy proceedings” means proceedings for—

- (a) defamation;
- (b) malicious falsehood;
- (c) breach of confidence involving publication to the general public;
- (d) misuse of private information; or
- (e) harassment, where the defendant is a news publisher.

Provisions coming into force on 19th January 2013

2.—(1) Subject to article 4, the following provisions of the 2012 Act come into force on 19th January 2013 for the purpose only of exercising any power to make orders, regulations or rules of court—

(a) 2012 c.10.
(b) 1986 c.45, to which there have been amendments not relevant to this Order.
(c) 2006 c.46.
(d) 1990 c.41.

- (a) section 44 (conditional fee agreements: success fees)(a);
- (b) section 45 (damages-based agreements)(b), in so far as it is not already in force for that purpose; and
- (c) section 46 (recovery of insurance premiums).

(2) Section 48 (sections 44 and 46 and diffuse mesothelioma proceedings) of the 2012 Act comes into force on 19th January 2013.

Provisions coming into force on 1st April 2013

3. Subject to article 4, the following provisions come into force, in so far as they are not already in force, on 1st April 2013—

- (a) section 44;
- (b) section 45;
- (c) section 46; and
- (d) section 47 (recovery where a body undertakes to meet costs liabilities).

Saving provision

4. Article 2(1)(a) and (c) and article 3(a) and (c) do not apply to—

- (a) proceedings relating to a claim for damages in respect of diffuse mesothelioma;
- (b) publication and privacy proceedings;
- (c) proceedings in England and Wales brought by a person acting in the capacity of—
 - (i) a liquidator of a company which is being wound up in England and Wales or Scotland under Parts IV or V of the 1986 Act; or
 - (ii) a trustee of a bankrupt’s estate under Part IX of the 1986 Act;
- (d) proceedings brought by a person acting in the capacity of an administrator appointed pursuant to the provisions of Part II of the 1986 Act;
- (e) proceedings in England and Wales brought by a company which is being wound up in England and Wales or Scotland under Parts IV or V of the 1986 Act; or
- (f) proceedings brought by a company which has entered administration under Part II of the 1986 Act.

Signed by the authority of the Secretary of State

18th January 2013

Damian Green
Minister of State
Ministry of Justice

(a) Section 44 of the 2012 Act amends sections 58 and 58A of the Courts and Legal Services Act 1990. Section 58 was substituted, and section 58A was inserted, by section 27(1) of the Access to Justice Act 1999 (c.22) and was amended by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429). Section 58A was amended by section 139 of, and Schedule 3 to, the Adoption and Children Act 2002 (c.38), section 261 of, and Schedules 27 and 30 to, the Civil Partnership Act 2004 (c.33), the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 and section 3 of, and Schedule 2 to, the Forced Marriage (Civil Protection) Act 2007 (c.20).

(b) Section 45 of the 2012 Act amends section 58AA of the Courts and Legal Services Act 1990, which was inserted by section 154 of the Coroners and Justices Act 2009 (c.25).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is the fifth commencement order made under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) (“the 2012 Act”).

Article 2(1) brings into force on 19th January 2013, for the purpose only of exercising any power to make orders, regulations and rules of court, the following provisions of the 2012 Act—

- section 44 (conditional fee agreements: success fees), which amends sections 58 and 58A of the Courts and Legal Services Act 1990 (c.41) (“the 1990 Act”);
- section 45 (damages-based agreements), in so far as it is not already in force for that purpose, which amends section 58AA of the 1990 Act; and
- section 46 (recovery of insurance premiums by way of costs), which repeals section 29 of the Access to Justice Act 1999 (c.22) and inserts new section 58C in the 1990 Act.

Article 2(2) brings into force on 19th January 2013 section 48 (sections 44 and 46 and diffuse mesothelioma proceedings) of the 2012 Act. Section 48 provides that sections 44 and 46 may not be commenced in respect of proceedings relating to claims for damages for diffuse mesothelioma until the Lord Chancellor has reviewed the likely impact of those sections on such claims and has published a report on the review’s conclusions.

Article 3 brings into force on 1st April 2013, in so far as not already in force, the following provisions of the 2012 Act—

- sections 44, 46, and 45 (partly in force by virtue of article 2); and
- section 47 (recovery where a body undertakes to meet costs liabilities), which repeals section 30 of the 1999 Act.

Commencement under articles 2 and 3 of sections 44 and 46 is subject to the saving provision in article 4, the effect of which is to exclude from the commencement of those sections—

- proceedings relating to a claim for damages in respect of diffuse mesothelioma;
- publication and privacy proceedings; and
- proceedings in respect of, and relating to, insolvency.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 45(1) and (8)	1st October 2012	2012/2412
Section 55	1st October 2012	2012/2412
Section 61	1st October 2012	2012/2412
Section 62	1st October 2012	2012/2412
Section 67(2)(a) and (5)(a)	3 rd December 2012	2012/2906
Section 76	3 rd December 2012	2012/2906
Section 77	3 rd December 2012	2012/2906
Section 78(3) (so far as it relates to alcohol abstinence and monitoring requirements)	3 rd December 2012	2012/2906
Section 85	3 rd December 2012	2012/2906
Section 86	3 rd December 2012	2012/2906
Section 87	3 rd December 2012	2012/2906
Section 88	3 rd December 2012	2012/2906
Chapter 2 of Part 3	3 rd December 2012	2012/2906
Chapter 3 of Part 3	3 rd December 2012	2012/2906

Chapter 4 of Part 3	3 rd December 2012	2012/2906
Chapter 5 of Part 3	3 rd December 2012	2012/2906
Chapter 6 of Part 3	3 rd December 2012	2012/2906
Section 140	1st October 2012	2012/2412
Section 141(7) and (9) to (12)	1st October 2012	2012/2412
Section 142	3rd December 2012	2012/2770
Section 143	3rd December 2012	2012/2770
Section 144	1st September 2012	2012/1956
Section 145	3rd December 2012	2012/2770
Section 146	3rd December 2012	2012/2770
Section 147	3 rd December 2012	2012/2770
Schedule 7	1st October 2012	2012/2412
Schedule 8	1st October 2012	2012/2412
Schedule 9	3rd December 2012	2012/2906
Schedule 10	3rd December 2012	2012/2906
Schedule 11	3rd December 2012	2012/2906
Schedule 12	3rd December 2012	2012/2906
Schedule 13	3rd December 2012	2012/2906
Schedule 14	3rd December 2012	2012/2906
Schedule 15	3rd December 2012	2012/2906
Schedule 16	3rd December 2012	2012/2906
Schedule 17	3rd December 2012	2012/2906
Schedule 18	3rd December 2012	2012/2906
Schedule 19	3rd December 2012	2012/2906
Schedule 20	3rd December 2012	2012/2906
Schedule 21	3rd December 2012	2012/2906
Schedule 22	3rd December 2012	2012/2906
Schedule 26	3rd December 2012	2012/2770
Schedule 27	3rd December 2012	2012/2770

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£4.00

E5545 01/2013 135545T 19585

ISBN 978-0-11-153341-3

