

Access to Justice Act 1999 as amended:

Abridged to include Parts I, II and VII of the Act;

Schedules 1–4 and Schedule 14 parts I and II;

Schedule 15 part I.

Access to Justice Act 1999

(1999 c.22)

- 1A-001** An Act to establish the Legal Services Commission, the Community Legal Service and the Criminal Defence Service; to amend the law of legal aid in Scotland; to make further provision about legal services; to make provision about appeals, courts, judges and court proceedings; to amend the law about magistrates and magistrates' courts; and to make provision about immunity from action and costs and indemnities for certain officials exercising judicial functions.

[27th July 1999]

Arrangement of Sections

Part I

Legal Services Commission

Commission

Section

- | | | |
|----|---------------------------------------------|--------|
| 1. | Legal Services Commission | 1A-002 |
| 2. | Power to replace Commission with two bodies | 1A-003 |
| 3. | Powers to Commission | 1A-004 |

Community Legal Service

- | | | |
|-----|---------------------------------------------|--------|
| 4. | Community Legal Service | 1A-005 |
| 5. | Funding of services | 1A-006 |
| 6. | Services which may be funded | 1A-007 |
| 7. | Individuals for whom services may be funded | 1A-008 |
| 8. | Code about provision of funded services | 1A-009 |
| 9. | Procedure relating to funding code | 1A-010 |
| 10. | Terms of provision of funded services | 1A-011 |
| 11. | Costs in funded cases | 1A-012 |

Criminal Defence Service

- | | | |
|------|---------------------------------------|----------|
| 12. | Criminal Defence service | 1A-013 |
| 13. | Advice and assistance | 1A-014 |
| 14. | Representation | 1A-015 |
| 15. | Selection of representative | 1A-016 |
| 16. | Code of conduct | 1A-017 |
| 17. | Terms of provision of funded services | 1A-018 |
| 17A. | Contribution Orders | 1A-018.1 |
| 18. | Funding | 1A-019 |

Supplementary

- | | | |
|-----|-----------------------------------------------------|--------|
| 19. | Foreign law | 1A-020 |
| 20. | Restriction of disclosure of information | 1A-021 |
| 21. | Misrepresentation etc | 1A-022 |
| 22. | Position of service providers and other parties etc | 1A-023 |

23. Guidance	1A-024
24. Consequential amendments	1A-025
25. Orders, regulations and directions	1A-026
26. Interpretation	1A-027

Part II

Other Funding of Legal Services

Conditional fee and litigation funding agreements

27. Conditional fee agreements	1A-028
28. Litigation funding agreements	1A-029

Costs

29. Recovery of insurance premiums by way of costs	1A-030
30. Recovery of where body undertakes to meet costs liabilities	1A-031
31. Rules as to costs	1A-032

Legal aid in Scotland

32. Regulations about financial limits in certain proceedings	1A-033
33. Recipients of disabled person's tax credit	1A-034
34. References by Scottish Criminal Cases Review Commission	1A-035

Part VII

Supplementary

105. Transitional provisions and savings	1A-036
106. Repeals and revocations	1A-037
107. Crown application	1A-038
108. Commencement	1A-039
109. Extent	1A-040
110. Short title	1A-041
Schedule 1 Legal Services Commission	1A-042
Schedule 2 Community Legal Service Excluded Services	1A-054
Schedule 3 Criminal Defence Service: Right to Representation	1A-055
Schedule 4 Amendments Consequential on Part I	1A-060
Schedule 14 Transitional Provisions and Savings	1A-090
Part I General	
Part II Legal Services Commission	
Schedule 15 Repeals and Revocations	1A-091
Part I Legal Services Commission	

Commission

1A-002 Legal Services Commission

1.—(1) There shall be a body known as the Legal Services Commission (in this Part referred to as “the Commission”).

(2) The Commission shall have the functions relating to—

- (a) the Community Legal Service, and
- (b) the Criminal Defence Service,

which are conferred or imposed on it by the provisions of this Act or any other enactment.

(3) The Commission shall consist of—

- (a) not fewer than seven members, and
- (b) not more than twelve members;

but the [Lord Chancellor]¹ may by order substitute for either or both of the numbers for the time being specified in paragraphs (a) and (b) such other number or numbers as he thinks appropriate.

(4) The members of the Commission shall be appointed by the [Lord Chancellor]¹; and the [Lord Chancellor]¹ shall appoint one of the members to chair the Commission.

(5) In appointing persons to be members of the Commission the [Lord Chancellor]¹ shall have regard to the desirability of securing that the Commission includes members who (between them) have experience in or knowledge of—

- (a) the provision of services which the Commission can fund as part of the Community Legal Service or Criminal Defence Service,
- (b) the work of the courts,
- (c) consumer affairs,
- (d) social conditions, and
- (e) management.

(6) Schedule 1 (which makes further provision about the Commission) has effect.

NOTES

¹ Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

1A-003 Power to replace Commission with two bodies

2.—(1) The [Lord Chancellor]¹ may by order establish in place of the Commission two bodies—

- (a) one to have functions relating to the Community Legal Service, and
- (b) the other to have functions relating to the Criminal Defence Service.

(2) The order may make any consequential, incidental, supplementary or transitional provisions, and any savings, which appear to the [Lord Chancellor]¹ to be appropriate.

(3) The order shall include amendments of—

- (a) any provisions of, or amended by, this Part which refer to the Commission, and
- (b) any other enactments which so refer,
to replace references to the Commission with references to either or both of the bodies established by the order.

NOTES

¹ Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

Powers of Commission**1A-004**

3.—(1) Subject to the provisions of this Part, the Commission may do anything which it considers—

- (a) is necessary or appropriate for, or for facilitating, the discharge of its functions, or
- (b) is incidental or conducive to the discharge of its functions.

(2) In particular, the Commission shall have power—

- (a) to enter into any contract,
- (b) to make grants (with or without conditions),
- (c) to make loans,
- (d) to invest money,
- (e) to promote or assist in the promotion of publicity relating to its functions,
- (f) to undertake any inquiry or investigation which it may consider appropriate in relation to the discharge of any of its functions, and
- (g) to give the [Lord Chancellor]¹ any advice which it may consider appropriate in relation to matters concerning any of its functions.

(3) Subsections (1) and (2) do not confer on the Commission power to borrow money.

(4) The Commission may make such arrangements as it considers appropriate for the discharge of its functions, including the delegation of any of its functions.

(5) The [Lord Chancellor]¹ may by order require the Commission—

- (a) to delegate any function specified in the order or to delegate any function so specified to a person (or person of a description) so specified,
- (b) not to delegate any function so specified or not to delegate any function so specified to a person (or person of a description) so specified, or
- (c) to make arrangements such as are specified in the order in relation to the delegation of any function so specified.

NOTES

¹ Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

*Community Legal Service***Community Legal Service****1A-005**

4.—(1) The Commission shall establish, maintain and develop a service known as the Community Legal Service for the purpose of promoting the availability to individuals of services of the descriptions specified in subsection (2) and, in particular, for securing (within the resources made available, and priorities set, in accordance with this Part) that individuals have access to services that effectively meet their needs.

(2) The descriptions of services referred to in subsection (1) are—

- (a) the provision of general information about the law and legal system and the availability of legal services,
- (b) the provision of help by the giving of advice as to how the law applies in particular circumstances,
- (c) the provision of help in preventing, or settling or otherwise resolving, disputes about legal rights and duties,
- (d) the provision of help in enforcing decisions by which such disputes are resolved, and
- (e) the provision of help in relation to legal proceedings not relating to disputes.

(3) Services which the Commission is required to fund as part of the Criminal Defence Service do not fall within subsection (2).

(4) Every person who exercises any function relating to the Community Legal Service shall have regard to the desirability of exercising it, so far as is reasonably practicable, so as to—

- (a) promote improvements in the range and quality of services provided as part of the Community Legal Service and in the ways in which they are made accessible to those who need them,
 - (b) secure that the services provided in relation to any matter are appropriate having regard to its nature and importance, and
 - (c) achieve the swift and fair resolution of disputes without unnecessary or unduly protracted proceedings in court.
- (5) The Commission shall fund services of the descriptions specified in subsection (2) as part of the Community Legal Service in accordance with the following sections.
- (6) The Commission shall also inform itself about the need for, and the provision of, services of the descriptions specified in subsection (2) and about the quality of the services provided and, in co-operation with such authorities and other bodies and persons as it considers appropriate—
- (a) plan what can be done towards meeting that need by the performance by the Commission of its functions, and
 - (b) facilitate the planning by other authorities, bodies and persons of what can be done by them to meet that need by the use of any resources available to them;
- and the Commission shall notify the [Lord Chancellor]¹ of what it has done under this subsection.
- (7) The Commission may set and monitor standards in relation to services of the descriptions specified in subsection (2).
- (8) In particular, the Commission may accredit, or authorise others to accredit, persons or bodies providing services of the descriptions specified in subsection (2); and any system of accreditation shall include provision for the monitoring of the services provided by accredited persons and bodies and for the withdrawal of accreditation from any providing services of unsatisfactory quality.
- (9) The Commission may charge—
- (a) for accreditation,
 - (b) for monitoring the services provided by accredited persons and bodies, and
 - (c) for authorising accreditation by others;
- and persons or bodies authorised to accredit may charge for accreditation, and for such monitoring, in accordance with the terms of their authorisation.
- (10) The [Lord Chancellor]¹ may by order require the Commission to discharge the functions in subsections (6) to (9) in accordance with the order.

NOTES

¹ Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

1A-006 Funding of services

5.—(1) The Commission shall establish and maintain a fund known as the Community Legal Service Fund from which it shall fund services as part of the Community Legal Service.

(2) The [Lord Chancellor]¹—

- (a) shall pay to the Commission the sums which he determines are appropriate for the funding of services by the Commission as part of the Community Legal Service, and
- (b) may determine the manner in which and times at which the sums are to be paid to the Commission and may impose conditions on the payment of the sums.

(3) In making any determination under subsection (2) the [Lord Chancellor]¹ shall take into account (in addition to such other factors as he considers relevant) the need for services of the descriptions specified in subsection (2) of section 4 as notified to him by the Commission under subsection (6) of that section.

(4) The [Lord Chancellor]¹ shall lay before each House of Parliament a copy of every determination under subsection (2)(a).

(5) The Commission shall pay into the Community Legal Service Fund—

- (a) sums received from the [Lord Chancellor]¹ under subsection (2), and
- (b) sums received by the Commission by virtue of regulations under section 10 or 11.

(6) The [Lord Chancellor]¹ may by direction impose requirements on the Commission as to the descriptions of services to be funded from any specified amount paid into the Community Legal Service Fund.

(7) In funding services as part of the Community Legal Service the Commission shall aim to obtain the best possible value for money.

NOTES

¹ Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

Services which may be funded

1A-007

6.—(1) The Commission shall set priorities in its funding of services as part of the Community Legal Service and the priorities shall be set—

- (a) in accordance with any directions given by the [Lord Chancellor]¹, and
- (b) after taking into account the need for services of the descriptions specified in section 4(2).

(2) Subject to that (and to subsection (6)), the services which the Commission may fund as part of the Community Legal Service are those which the Commission considers appropriate.

(3) The Commission may fund services as part of the Community Legal Service by—

- (a) entering into contracts with persons or bodies for the provision of services by them,
- (b) making payments to persons or bodies in respect of the provision of services by them,
- (c) making grants or loans to persons or bodies to enable them to provide, or facilitate the provision of, services,
- (d) establishing and maintaining bodies to provide, or facilitate the provision of, services,
- (e) making grants or loans to individuals to enable them to obtain services,
- (f) itself providing services, or
- (g) doing anything else which it considers appropriate for funding services.

(4) The [Lord Chancellor]¹ may by order require the Commission to discharge the function in subsection (3) in accordance with the order.

(5) The Commission may fund as part of the Community Legal Service different descriptions of services or services provided by different means—

- (a) in relation to different areas or communities in England and Wales, and
- (b) in relation to different descriptions of cases.

(6) The Commission may not fund as part of the Community Legal Service any of the services specified in Schedule 2.

(7) Regulations may amend that Schedule by adding new services or omitting or varying any services.

(8) The [Lord Chancellor]¹—

- (a) may by direction require the Commission to fund the provision of any of the services specified in Schedule 2 in circumstances specified in the direction, and
- (b) may authorise the Commission to fund the provision of any of those services in specified circumstances or, if the Commission request him to do so, in an individual case.

(9) The [Lord Chancellor]¹ shall either—

- (a) publish, or
- (b) require the Commission to publish,

any authorisation under subsection (8)(b) unless it relates to an individual case (in which case he or the Commission may publish it if appropriate).

NOTES

¹ Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

1A-008 Individuals for whom services may be funded

7.—(1) The Commission may only fund services for an individual as part of the Community Legal Service if his financial resources are such that, under regulations, he is an individual for whom they may be so funded.

(2) Regulations may provide that, in prescribed circumstances and subject to any prescribed conditions, services of a prescribed description may be so funded for individuals without reference to their financial resources.

(3) Regulations under this section may include provision requiring the furnishing of information.

1A-009 Code about provision of funded services

8.—(1) The Commission shall prepare a code setting out the criteria according to which it is to decide whether to fund (or continue to fund) services as part of the Community Legal Service for an individual for whom they may be so funded and, if so, what services are to be funded for him.

(2) In settling the criteria to be set out in the code the Commission shall consider the extent to which they ought to reflect the following factors—

- (a) the likely cost of funding the services and the benefit which may be obtained by their being provided,
- (b) the availability of sums in the Community Legal Service Fund for funding the services and (having regard to present and likely future demands on that Fund) the appropriateness of applying them to fund the services,
- (c) the importance of the matters in relation to which the services would be provided for the individual,
- (d) the availability to the individual of services not funded by the Commission and the likelihood of his being able to avail himself of them,
- (e) if the services are sought by the individual in relation to a dispute, the prospects of his success in the dispute,
- (f) the conduct of the individual in connection with services funded as part of the Community Legal Service (or an application for funding) or in, or in connection with, any proceedings,
- (g) the public interest, and
- (h) such other factors as the [Lord Chancellor]¹ may by order require the Commission to consider.

(3) The criteria set out in the code shall reflect the principle that in many family disputes mediation will be more appropriate than court proceedings.

(4) The code shall seek to secure that, where more than one description of service is available, the service funded is that which (in all the circumstances) is the most appropriate having regard to the criteria set out in the code.

(5) The code shall also specify procedures for the making of decisions about the funding of services by the Commission as part of the Community Legal Service, including—

- (a) provision about the form and content of applications for funding,
- (b) provision imposing conditions which must be satisfied by an individual applying for funding,

- (c) provision requiring applicants to be informed of the reasons for any decision to refuse an application,
 - (d) provision for the giving of information to individuals whose applications are refused about alternative ways of obtaining or funding services, and
 - (e) provision establishing procedures for appeals against decisions about funding and for the giving of information about those procedures.
- (6) The code may make different provision for different purposes.
- (7) The Commission may from time to time prepare a revised version of the code.
- (8) Before preparing the code the Commission shall undertake such consultation as appears to it to be appropriate; and before revising the code the Commission shall undertake such consultation as appears to it to be appropriate unless it considers that it is desirable for the revised version to come into force without delay.
- (9) The [Lord Chancellor]¹ may by order require the Commission to discharge its functions relating to the code in accordance with the order.

NOTES

¹ Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

Procedure relating to funding code

1A-010

- 9.**—(1) After preparing the code or a revised version of the code the Commission shall send a copy to the [Lord Chancellor]¹.
- (2) If he approves it he shall lay it before each House of Parliament.
 - (3) The Commission shall publish—
 - (a) the code as first approved by the [Lord Chancellor]¹, and
 - (b) where he approves a revised version, either the revisions or the revised code as appropriate.
 - (4) The code as first approved by the [Lord Chancellor]¹ shall not come into force until it has been approved by a resolution of each House of Parliament.
 - (5) A revised version of the code which does not contain changes in the criteria set out in the code shall not come into force until it has been laid before each House of Parliament.
 - (6) Subject as follows, a revised version of the code which does contain such changes shall not come into force until it has been approved by a resolution of each House of Parliament.
 - (7) Where the [Lord Chancellor]¹ considers that it is desirable for a revised version of the code containing such changes to come into force without delay, he may (when laying the revised version before Parliament) also lay before each House a statement of his reasons for so considering.
 - (8) In that event the revised version of the code—
 - (a) shall not come into force until it has been laid before each House of Parliament, and
 - (b) shall cease to have effect at the end of the period of 120 days beginning with the day on which it comes into force unless a resolution approving it has been made by each House (but without that affecting anything previously done in accordance with it).

NOTES

¹ Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

1A-011 Terms of provision of funded services

10.—(1) An individual for whom services are funded by the Commission as part of the Community Legal Service shall not be required to make any payment in respect of the services except where regulations otherwise provide.

(2) Regulations may provide that, in prescribed circumstances, an individual for whom services are so funded shall—

- (a) pay a fee of such amount as is fixed by or determined under the regulations,
- (b) if his financial resources are, or relevant conduct is, such as to make him liable to do so under the regulations, pay the cost of the services or make a contribution in respect of the cost of the services of such amount as is so fixed or determined, or
- (c) if the services relate to a dispute and he has agreed to make a payment (which may exceed the cost of the services) only in specified circumstances, make in those circumstances a payment of the amount agreed, or determined in the manner agreed, by him;

and in paragraph (b) “relevant conduct” means conduct in connection with the services (or any application for their funding) or in, or in connection with, any proceedings in relation to which they are provided.

(3) The regulations may include provision for any amount payable in accordance with the regulations to be payable by periodical payments or one or more capital sums, or both.

(4) The regulations may also include provision for the payment by an individual of interest (on such terms as may be prescribed) in respect of—

- (a) any loan made to him by the Commission as part of the Community Legal Service,
- (b) any payment in respect of the cost of services required by the regulations to be made by him later than the time when the services are provided, or
- (c) so much of any payment required by the regulations to be made by him which remains unpaid after the time when it is required to be paid.

(5) The regulations shall include provision for the repayment to an individual of any payment made by him in excess of his liability under the regulations.

(6) The regulations may—

- (a) include provision requiring the furnishing of information, and
- (b) make provision for the determination of the cost of services for the purposes of the regulations.

(7) Except so far as regulations otherwise provide, where services have been funded by the Commission for an individual as part of the Community Legal Service—

- (a) sums expended by the Commission in funding the services (except to the extent that they are recovered under section 11), and
- (b) other sums payable by the individual by virtue of regulations under this section,

shall constitute a first charge on any property recovered or preserved by him (whether for himself or any other person) in any proceedings or in any compromise or settlement of any dispute in connection with which the services were provided.

(8) Regulations may make provision about the charge, including—

- (a) provision as to whether it is in favour of the Commission or the body or person by whom the services were provided, and
- (b) provision about its enforcement.

1A-012 Costs in funded cases

11.—(1) Except in prescribed circumstances, costs ordered against an individual in relation to any proceedings or part of proceedings funded for him shall not exceed the amount (if any) which is a reasonable one for him to pay having regard to all the circumstances including—

- (a) the financial resources of all the parties to the proceedings, and
- (b) their conduct in connection with the dispute to which the proceedings relate;

and for this purpose proceedings, or a part of proceedings, are funded for an individual if services relating to the proceedings or part are funded for him by the Commission as part of the Community Legal Service.

(2) In assessing for the purposes of subsection (1) the financial resources of an individual for whom services are funded by the Commission as part of the Community Legal Service, his clothes and household furniture and the tools and implements of his trade shall not be taken into account, except so far as may be prescribed.

(3) Subject to subsections (1) and (2), regulations may make provision about costs in relation to proceedings in which services are funded by the Commission for any of the parties as part of the Community Legal Service.

(4) The regulations may, in particular, make provision—

- (a) specifying the principles to be applied in determining the amount of any costs which may be awarded against a party for whom services are funded by the Commission as part of the Community Legal Service,
- (b) limiting the circumstances in which, or extent to which, an order for costs may be enforced against such a party,
- (c) as to the cases in which, and extent to which, such a party may be required to give security for costs and the manner in which it is to be given,
- (d) requiring the payment by the Commission of the whole or part of any costs incurred by a party for whom services are not funded by the Commission as part of the Community Legal Service,
- (e) specifying the principles to be applied in determining the amount of any costs which may be awarded to a party for whom services are so funded,
- (f) requiring the payment to the Commission, or the person or body by which the services were provided, of the whole or part of any sum awarded by way of costs to such a party, and
- (g) as to the court, tribunal or other person or body by whom the amount of any costs is to be determined and the extent to which any determination of that amount is to be final.

Criminal Defence Service

Criminal Defence service

1A-013

12.—(1) The Commission shall establish, maintain and develop a service known as the Criminal Defence Service for the purpose of securing that individuals involved in criminal investigations or criminal proceedings have access to such advice, assistance and representation as the interests of justice require.

(2) In this Part “criminal proceedings” means—

- (a) proceedings before any court for dealing with an individual accused of an offence,
- (b) proceedings before any court for dealing with an individual convicted of an offence (including proceedings in respect of a sentence or order),
- [(c) proceedings for dealing with an individual under the Extradition Act 2003,]¹
- (d) proceedings for binding an individual over to keep the peace or to be of good behaviour under section 115 of the Magistrates’ Courts Act 1980 and for dealing with an individual who fails to comply with an order under that section,
- (e) proceedings on an appeal brought by an individual under section 44A of the Criminal Appeal Act 1968,
- (f) proceedings for contempt committed, or alleged to have been committed, by an individual in the face of a court, and
- (g) such other proceedings concerning an individual, before any such court or other body, as may be prescribed.

(3) The Commission shall fund services as part of the Criminal Defence Service in accordance with sections 13 to 15.

(4) The Commission may accredit, or authorise others to accredit, persons or bodies providing services which may be funded by the Commission as part of the Criminal Defence Service; and any system of accreditation shall include provision for the monitoring of the services provided by accredited persons and bodies and for the withdrawal of accreditation from any providing services of unsatisfactory quality.

(5) The Commission may charge—

- (a) for accreditation,
- (b) for monitoring the services provided by accredited persons and bodies, and
- (c) for authorising accreditation by others;

and persons or bodies authorised to accredit may charge for accreditation, and for such monitoring, in accordance with the terms of their authorisation.

(6) The [Lord Chancellor]² may by order require the Commission to discharge the functions in subsections (4) and (5) in accordance with the order.

NOTES

¹ Sub-s (2): para (c) substituted by the Extradition Act 2003 as from 1 January 2004, subject to savings.

² Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

1A-014 Advice and assistance

- 13.**—(1) The Commission shall fund such advice and assistance as it considers appropriate—
- (a) for individuals who are arrested and held in custody at a police station or other premises, and
 - [(b) in prescribed circumstances, for individuals who—
 - (i) are not within paragraph (a) but are involved in investigations which may lead to criminal proceedings,
 - (ii) are before a court or other body in such proceedings, or
 - (iii) have been the subject of such proceedings;
 and the assistance which the Commission may consider appropriate includes assistance in the form of advocacy.]¹
- (2) The Commission may comply with the duty imposed by subsection (1) by—
- (a) entering into contracts with persons or bodies for the provision of advice or assistance by them,
 - (b) making payments to persons or bodies in respect of the provision of advice or assistance by them,
 - (c) making grants or loans to persons or bodies to enable them to provide, or facilitate the provision of, advice or assistance,
 - (d) establishing and maintaining bodies to provide, or facilitate the provision of, advice or assistance,
 - (e) making grants to individuals to enable them to obtain advice or assistance,
 - (f) employing persons to provide advice or assistance, or
 - (g) doing anything else which it considers appropriate for funding advice and assistance.
- (3) The [Lord Chancellor]² may by order require the Commission to discharge the function in subsection (2) in accordance with the order.
- (4) The Commission may fund advice and assistance by different means—
- (a) in different areas in England and Wales, and
 - (b) in relation to different descriptions of cases.

NOTES

¹ Sub-s (1): para (b) and subsequent words in square brackets substituted by the Criminal Defence Service (Advice and Assistance) Act 2001.

² Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

Representation

1A-015

14.—(1) Schedule 3 (which makes provision about the grant of a right to representation in criminal proceedings) has effect; and the Commission shall fund representation to which an individual has been granted a right in accordance with that Schedule.

(2) Subject to the following provisions, the Commission may comply with the duty imposed by subsection (1) by—

- (a) entering into contracts with persons or bodies for the provision of representation by them,
- (b) making payments to persons or bodies in respect of the provision of representation by them,
- (c) making grants or loans to persons or bodies to enable them to provide, or facilitate the provision of, representation,
- (d) establishing and maintaining bodies to provide, or facilitate the provision of, representation,
- (e) making grants to individuals to enable them to obtain representation,
- (f) employing persons to provide representation, or
- (g) doing anything else which it considers appropriate for funding representation.

(3) The [Lord Chancellor]¹—

- (a) shall by order make provision about the payments which may be made by the Commission in respect of any representation provided by non-contracted private practitioners, and
- (b) may by order make any other provision requiring the Commission to discharge the function in subsection (2) in accordance with the order.

(4) For the purposes of subsection (3)(a) representation is provided by a non-contracted private practitioner if it is provided, otherwise than pursuant to a contract entered into by the Commission, by a person or body which is neither—

- (a) a person or body in receipt of grants or loans made by the Commission as part of the Criminal Defence Service, nor
- (b) the Commission itself or a body established or maintained by the Commission.

(5) The provision which the [Lord Chancellor]¹ is required to make by order under subsection (3)(a) includes provision for reviews of, or appeals against, determinations required for the purposes of the order.

(6) The Commission may fund representation by different means—

- (a) in different areas in England and Wales, and
- (b) in relation to different descriptions of cases.

NOTES

¹ Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

Selection of representative

1A-016

15.—(1) An individual who has been granted a right to representation in accordance with Schedule 3 may select any representative or representatives willing to act for him; and, where he does so, the Commission is to comply with the duty imposed by section 14(1) by funding representation by the selected representative or representatives.

(2) Regulations may provide that in prescribed circumstances—

- (a) the right conferred by subsection (1) is not to apply in cases of prescribed descriptions,

- (b) an individual who has been provided with advice or assistance funded by the Commission under section 13 by a person whom he chose to provide it for him is to be taken to have selected that person as his representative pursuant to that right,
 - (c) that right is not to include a right to select a representative of a prescribed description,
 - (d) that right is to select only a representative of a prescribed description,
 - (e) that right is to select not more than a prescribed number of representatives to act at any one time, and
 - (f) that right is not to include a right to select a representative in place of a representative previously selected.
- (3) Regulations under subsection (2)(b) may prescribe circumstances in which an individual is to be taken to have chosen a person to provide advice or assistance for him.
- (4) Regulations under subsection (2) may not provide that only a person employed by the Commission, or by a body established and maintained by the Commission, may be selected.
- (5) Regulations may provide that in prescribed circumstances the Commission is not required to fund, or to continue to fund, representation for an individual by a particular representative (but such provision shall not prejudice any right of the individual to select another representative).
- (6) The circumstances which may be prescribed by regulations under subsection (2) or (5) include that a determination has been made by a prescribed body or person.

1A-017 Code of conduct

16.—(1) The Commission shall prepare a code of conduct to be observed by employees of the Commission, and employees of any body established and maintained by the Commission, in the provision of services as part of the Criminal Defence Service.

(2) The code shall include—

- (a) duties to avoid discrimination,
 - (b) duties to protect the interests of the individuals for whom services are provided,
 - (c) duties to the court,
 - (d) duties to avoid conflicts of interest, and
 - (e) duties of confidentiality,
- and duties on employees who are members of a professional body to comply with the rules of the body.

(3) The Commission may from time to time prepare a revised version of the code.

(4) Before preparing or revising the code the Commission shall consult the Law Society and the General Council of the Bar and such other bodies or persons as it considers appropriate.

(5) After preparing the code or a revised version of the code the Commission shall send a copy to the [Lord Chancellor]¹.

(6) If he approves it he shall lay it before each House of Parliament.

(7) The Commission shall publish—

- (a) the code as first approved by the [Lord Chancellor]¹, and
- (b) where he approves a revised version, either the revisions or the revised code as appropriate.

(8) The code, and any revised version of the code, shall not come into force until it has been approved by a resolution of each House of Parliament.

NOTES

¹ Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

Terms of provision of funded services**1A-018**

17.—(1) An individual for whom services are funded by the Commission as part of the Criminal Defence Service shall not be required to make any payment in respect of the services except where subsection (2) applies or regulations under section 17A otherwise provide¹.

(2) Where representation for an individual in respect of criminal proceedings in any court other than a magistrates' court is funded by the Commission as part of the Criminal Defence Service, the court may, subject to regulations under subsection (3), make an order requiring him to pay some or all of the cost of any representation so funded for him (in proceedings in that or any other court), except insofar as he has already been ordered under regulations under section 17A to pay that cost.²

(3) Regulations may make provision about—

- (a) the descriptions of individuals against whom an order under subsection (2) may be made,
- (b) the circumstances in which such an order may be made and the principles to be applied in deciding whether to make such an order and the amount to be paid,
- (c) the determination of the cost of representation for the purposes of the making of such an order,
- (d) the furnishing of information and evidence to the court or the Commission for the purpose of enabling the court to decide whether to make such an order and (if so) the amount to be paid,
- (e) prohibiting individuals who are required to furnish information or evidence from dealing with property until they have furnished the information or evidence or until a decision whether to make an order, or the amount to be paid, has been made,
- (f) the person or body to which, and manner in which, payments required by such an order must be made and what that person or body is to do with them, and
- (g) the enforcement of such an order (including provision for the imposition of charges in respect of unpaid amounts).

Contribution orders³**1A-018.1**

17A.—(1) Regulations may provide that, in prescribed circumstances, where –

- (a) an individual has been granted a right to representation, and
- (b) his financial resources are such as to make him liable under the regulations to do so, the relevant authority shall order him to pay the costs of his representation or to make a contribution in respect of that cost of such amount as is fixed by or determined under the regulations.

(2) Regulations under subsection (1) may include –

- (a) provision requiring the furnishing of information;
- (b) provision for the determination of the cost of representation for the purposes of liability under a contribution order;
- (c) provision enabling the relevant authority to require that an amount payable under a contribution order be paid by periodical payments or one or more capital sums, or both;
- (d) provision for the payment by an individual of interest (on such terms as may be prescribed) in respect of –
 - (i) any payment in respect of the cost of representation required by a contribution order to be made by him later than the time when the representation is provided;
 - (ii) so much of any payment which he is required by a contribution order to make which remains unpaid after the time when it is required to be made;
- (e) provision about the enforcement of any liability under a contribution order, including provision for the withdrawal of the individual's right to representation in certain circumstances;
- (f) provision for the variation or revocation of contribution orders;

- (g) provision for an appeal to lie to such court or other person or body as may be prescribed against a contribution order;
- (h) such transitional provision as the Lord Chancellor may consider appropriate.
- (3) Regulations under subsection (1) shall include provision for the repayment to an individual of any payment made by him in excess of his liability under a contribution order.
- (4) Regulations under subsection (1) shall provide that an order made under the regulations may not order the payment of costs to the extent that they are already the subject of an order under section 17(2).
- (5) Regulations under subsection (1) may –
 - (a) be made so as to have effect only for a specified period not exceeding 12 months;
 - (b) provide that their provisions are to apply only in relation to one or more prescribed areas.
- (6) In this section, “contribution order” means an order under regulations under subsection (1).

NOTES

¹ The words “or regulations under section 17A otherwise provide” inserted by section 3(2)(a) of the Criminal Defence Service Act 2006.

² The words “, except insofar as he has already been ordered under regulations under section 17A to pay that cost.” Inserted by section 3(2)(b) of the Criminal Defence Service Act 2006.

³ Section 17A inserted by section 3(3) of the Criminal Defence Service Act 2006.

1A-019 Funding

18.—(1) The [Lord Chancellor]¹ shall pay to the Commission such sums as are required to meet the costs of any advice, assistance and representation funded by the Commission as part of the Criminal Defence Service.

(2) The [Lord Chancellor]¹ may—

- (a) determine the manner in which and times at which the sums referred to in subsection (1) shall be paid to the Commission, and
- (b) impose conditions on the payment of the sums.

(3) In funding services as part of the Criminal Defence Service the Commission shall aim to obtain the best possible value for money.

NOTES

¹ Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

Supplementary

1A-020 Foreign law

19.—(1) The Commission may not fund as part of the Community Legal Service or Criminal Defence Service services relating to any law other than that of England and Wales, unless any such law is relevant for determining any issue relating to the law of England and Wales.

(2) But the [Lord Chancellor]¹ may, if it appears to him necessary to do so for the purpose of fulfilling any obligation imposed on the United Kingdom by any international agreement, by order specify that there may be funded as part of the Community Legal Service or Criminal Defence Service (or both) services relating to the application of such other law as may be specified in the order.

NOTES

¹ Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

Restriction of disclosure of information**1A-021**

20.—(1) Subject to the following provisions of this section, information which is furnished—

- (a) to the Commission or any court, tribunal or other person or body on whom functions are imposed or conferred by or under this Part, and
- (b) in connection with the case of an individual seeking or receiving services funded by the Commission as part of the Community Legal Service or Criminal Defence Service,

shall not be disclosed except as permitted by subsection (2).

(2) Such information may be disclosed—

- (a) for the purpose of enabling or assisting the Commission to discharge any functions imposed or conferred on it by or under this Part,
- (b) for the purpose of enabling or assisting the [Lord Chancellor]¹ to discharge any functions imposed or conferred on him by or under this Part,
- (c) for the purpose of enabling or assisting any court, tribunal or other person or body to discharge any functions imposed or conferred on it by or under this Part,
- (d) except where regulations otherwise provide, for the purpose of the investigation or prosecution of any offence (or suspected offence) under the law of England and Wales or any other jurisdiction,
- (e) in connection with any proceedings relating to the Community Legal Service or Criminal Defence Service, or
- (f) for the purpose of facilitating the proper performance by any tribunal of disciplinary functions.

(3) Subsection (1) does not limit the disclosure of—

- (a) information in the form of a summary or collection of information so framed as not to enable information relating to any individual to be ascertained from it, or
- (b) information about the amount of any grant, loan or other payment made to any person or body by the Commission.

(4) Subsection (1) does not prevent the disclosure of information for any purpose with the consent of the individual in connection with whose case it was furnished and, where he did not furnish it himself, with that of the person or body who did.

(5) A person who discloses any information in contravention of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) Proceedings for an offence under this section shall not be brought without the consent of the Director of Public Prosecutions.

(7) Nothing in this section applies to information furnished to a person providing services funded as part of the Community Legal Service or the Criminal Defence Service by or on behalf of an individual seeking or receiving such services.

NOTES

¹ Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

Misrepresentation, etc.**1A-022**

21.—(1) Any person who—

- (a) intentionally fails to comply with any requirement imposed by virtue of this Part as to the information to be furnished by him, or
- (b) in furnishing any information required by virtue of this Part makes any statement or representation which he knows or believes to be false,

shall be guilty of an offence.

- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to—
- (a) a fine not exceeding level 4 on the standard scale, or
 - (b) imprisonment for a term not exceeding three months, or to both.

(3) Proceedings in respect of an offence under subsection (1) may (despite anything in the Magistrates' Courts Act 1980) be brought at any time within the period of six months beginning with the date on which evidence sufficient in the opinion of the prosecutor to justify a prosecution comes to his knowledge.

(4) But subsection (3) does not authorise the commencement of proceedings for an offence at a time more than two years after the date on which the offence was committed.

(5) A county court shall have jurisdiction to hear and determine any action brought by the Commission to recover loss sustained by reason of—

- (a) the failure of any person to comply with any requirement imposed by virtue of this Part as to the information to be furnished by him, or
- (b) a false statement or false representation made by any person in furnishing any information required by virtue of this Part.

1A-023 Position of service providers and other parties, etc.

22.—(1) Except as expressly provided by regulations, the fact that services provided for an individual are or could be funded by the Commission as part of the Community Legal Service or Criminal Defence Service shall not affect—

- (a) the relationship between that individual and the person by whom they are provided or any privilege arising out of that relationship, or
- (b) any right which that individual may have to be indemnified in respect of expenses incurred by him by any other person.

(2) A person who provides services funded by the Commission as part of the Community Legal Service or Criminal Defence Service shall not take any payment in respect of the services apart from—

- (a) that made by way of that funding, and
- (b) any authorised by the Commission to be taken.

(3) The withdrawal of a right to representation previously granted to an individual shall not affect the right of any person who has provided to him services funded by the Commission as part of the Criminal Defence Service to remuneration for work done before the date of the withdrawal.

(4) Except as expressly provided by regulations, any rights conferred by or by virtue of this Part on an individual for whom services are funded by the Commission as part of the Community Legal Service or Criminal Defence Service in relation to any proceedings shall not affect—

- (a) the rights or liabilities of other parties to the proceedings, or
- (b) the principles on which the discretion of any court or tribunal is normally exercised.

(5) Regulations may make provision about the procedure of any court or tribunal in relation to services funded by the Commission as part of the Community Legal Service or Criminal Defence Service.

(6) Regulations made under subsection (5) may in particular authorise the exercise of the functions of any court or tribunal by any member or officer of that or any other court or tribunal.

1A-024 Guidance

23.—(1) The [Lord Chancellor]¹ may give guidance to the Commission as to the manner in which he considers it should discharge its functions.

(2) The Commission shall take into account any such guidance when considering the manner in which it is to discharge its functions.

(3) Guidance may not be given under this section in relation to individual cases.

(4) The [Lord Chancellor]¹ shall either—

- (a) publish, or
 - (b) require the Commission to publish,
- any guidance given under this section.

NOTES

¹ Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

Consequential amendments**1A-025**

24. Schedule 4 (which makes amendments consequential on this Part) has effect.

Orders, regulations and directions**1A-026**

25.—(1) Any power of the [Lord Chancellor]¹ under this Part to make an order or regulations is exercisable by statutory instrument.

(2) Before making any remuneration order relating to the payment of remuneration to barristers or solicitors the [Lord Chancellor]¹ shall consult the General Council of the Bar and the Law Society.

(3) When making any remuneration order the [Lord Chancellor]¹ shall have regard to—

- (a) the need to secure the provision of services of the description to which the order relates by a sufficient number of competent persons and bodies,
- (b) the cost to public funds, and
- (c) the need to secure value for money.

(4) In subsections (2) and (3) “remuneration order” means an order under section 6(4), 13(3) or 14(3) which relates to the payment by the Commission of remuneration—

- (a) for the provision of services by persons or bodies in individual cases, or
- (b) by reference to the provision of services by persons or bodies in specified numbers of cases.

(5) No directions may be given by the [Lord Chancellor]¹ to the Commission under this Part in relation to individual cases.

(6) Any directions given by the [Lord Chancellor]¹ to the Commission under this Part may be varied or revoked.

(7) The [Lord Chancellor]¹ shall either—

- (a) publish, or
- (b) require the Commission to publish,

any directions given by him under this Part.

(8) Orders, regulations and directions of the [Lord Chancellor]¹ under this Part may make different provision for different purposes (including different areas).

(9) No order shall be made under section 2 or 8 or paragraph 5(3) of Schedule 3, and no regulations shall be made under section 6(7), 11(1) or (4)(b) or (d) or 15(2)(a) or (5) or [paragraph 4 of Schedule 3] paragraph 2A or 4 of Schedule 3² unless a draft of the order or regulations has been laid before, and approved by a resolution of, each House of Parliament.

(9A)³ The first regulations under section 17A or⁴ paragraph 3B of Schedule 3 shall not be made unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.

(10) A statutory instrument containing any other order or regulations under this Part shall be subject to annulment in pursuance of a resolution of either House of Parliament.

NOTES

¹ Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

² Section 1(8) of the Criminal Defence Service Act 2006 substituted “paragraph 2A or 4 of Schedule 3” for the words in italics.

³ Section 25(9A) inserted by section 2(5) of the Criminal Defence Service Act 2006.

⁴ The words “under section 17A or” inserted by section 3(4) of the Criminal Defence Service Act 2006.

1A-027 Interpretation

26. In this Part—

- “the Commission” means the Legal Services Commission,
- “the Community Legal Service Fund” has the meaning given by section 5(1),
- “criminal proceedings” has the meaning given in section 12(2),
- “prescribed” means prescribed by regulations and “prescribe” shall be construed accordingly,
- “regulations” means regulations made by the [Lord Chancellor]¹,
- “relevant authority” means such person or body as may be prescribed², and
- “representation” means representation for the purposes of proceedings and includes the assistance which is usually given by a representative in the steps preliminary or incidental to any proceedings and, subject to any time limits which may be prescribed, advice and assistance as to any appeal.

NOTES

¹ Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

² ““relevant authority” means such person or body as may be prescribed” inserted by section 2(6) of the Criminal Defence Service Act 2006.

PART II

OTHER FUNDING OF LEGAL SERVICES

Conditional fee and litigation funding agreements

1A-028 Conditional fee agreements

27.—(1) For section 58 of the Courts and Legal Services Act 1990 substitute—

“**58.—(1)** A conditional fee agreement which satisfies all of the conditions applicable to it by virtue of this section shall not be unenforceable by reason only of its being a conditional fee agreement; but (subject to subsection (5)) any other conditional fee agreement shall be unenforceable.

(2) For the purposes of this section and section 58A—

- (a) a conditional fee agreement is an agreement with a person providing advocacy or litigation services which provides for his fees and expenses, or any part of them, to be payable only in specified circumstances; and
- (b) a conditional fee agreement provides for a success fee if it provides for the amount of any fees to which it applies to be increased, in specified circumstances, above the amount which would be payable if it were not payable only in specified circumstances.

(3) The following conditions are applicable to every conditional fee agreement—

- (a) it must be in writing;
- (b) it must not relate to proceedings which cannot be the subject of an enforceable conditional fee agreement; and
- (c) it must comply with such requirements (if any) as may be prescribed by the Lord Chancellor.

(4) The following further conditions are applicable to a conditional fee agreement which provides for a success fee—

- (a) it must relate to proceedings of a description specified by order made by the Lord Chancellor;
- (b) it must state the percentage by which the amount of the fees which would be payable if it were not a conditional fee agreement is to be increased; and
- (c) that percentage must not exceed the percentage specified in relation to the description of proceedings to which the agreement relates by order made by the Lord Chancellor.

(5) If a conditional fee agreement is an agreement to which section 57 of the Solicitors Act 1974 (non-contentious business agreements between solicitor and client) applies, subsection (1) shall not make it unenforceable.

Conditional fee agreements: supplementary

58A.—(1) The proceedings which cannot be the subject of an enforceable conditional fee agreement are—

- (a) criminal proceedings, apart from proceedings under section 82 of the Environmental Protection Act 1990; and
- (b) family proceedings.

(2) In subsection (1) “family proceedings” means proceedings under any one or more of the following—

- (a) the Matrimonial Causes Act 1973;
- (b) the Adoption Act 1976;
- (c) the Domestic Proceedings and Magistrates’ Courts Act 1978;
- (d) Part III of the Matrimonial and Family Proceedings Act 1984;
- (e) Parts I, II and IV of the Children Act 1989;
- (f) Part IV of the Family Law Act 1996; and
- (g) the inherent jurisdiction of the High Court in relation to children.

(3) The requirements which the [Secretary of State]¹ may prescribe under section 58(3)(c)—

- (a) include requirements for the person providing advocacy or litigation services to have provided prescribed information before the agreement is made; and
- (b) may be different for different descriptions of conditional fee agreements (and, in particular, may be different for those which provide for a success fee and those which do not).

(4) In section 58 and this section (and in the definitions of “advocacy services” and “litigation services” as they apply for their purposes) “proceedings” includes any sort of proceedings for resolving disputes (and not just proceedings in a court), whether commenced or contemplated.

(5) Before making an order under section 58(4), the [Secretary of State]¹ shall consult—

- (a) the designated judges;
- (b) the General Council of the Bar;
- (c) the Law Society; and
- (d) such other bodies as he considers appropriate.

(6) A costs order made in any proceedings may, subject in the case of court proceedings to rules of court, include provision requiring the payment of any fees payable under a conditional fee agreement which provides for a success fee.

(7) Rules of court may make provision with respect to the assessment of any costs which include fees payable under a conditional fee agreement (including one which provides for a success fee)."

(2) In section 120(4) of the Courts and Legal Services Act 1990 (orders and regulations subject to affirmative procedure), for “58,” substitute “58(4).”

NOTES

¹ Words in square brackets substituted by the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003 No. 1887).

1A-029 Litigation funding agreements

28. In the Courts and Legal Services Act 1990, after section 58A (inserted by section 27 above) insert—

“Litigation funding agreements

58B.—(1) A litigation funding agreement which satisfies all of the conditions applicable to it by virtue of this section shall not be unenforceable by reason only of its being a litigation funding agreement.

(2) For the purposes of this section a litigation funding agreement is an agreement under which—

- (a) a person (“the funder”) agrees to fund (in whole or in part) the provision of advocacy or litigation services (by someone other than the funder) to another person (“the litigant”); and
 - (b) the litigant agrees to pay a sum to the funder in specified circumstances.
- (3) The following conditions are applicable to a litigation funding agreement—
- (a) the funder must be a person, or person of a description, prescribed by the [Lord Chancellor]¹;
 - (b) the agreement must be in writing;
 - (c) the agreement must not relate to proceedings which by virtue of section 58A(1) and (2) cannot be the subject of an enforceable conditional fee agreement or to proceedings of any such description as may be prescribed by the [Lord Chancellor]¹;
 - (d) the agreement must comply with such requirements (if any) as may be so prescribed;
 - (e) the sum to be paid by the litigant must consist of any costs payable to him in respect of the proceedings to which the agreement relates together with an amount calculated by reference to the funder’s anticipated expenditure in funding the provision of the services; and
 - (f) that amount must not exceed such percentage of that anticipated expenditure as may be prescribed by the [Lord Chancellor]¹ in relation to proceedings of the description to which the agreement relates.

(4) Regulations under subsection (3)(a) may require a person to be approved by the [Lord Chancellor]¹ or by a prescribed person.

(5) The requirements which the [Lord Chancellor]¹ may prescribe under subsection (3)(d)—

- (a) include requirements for the funder to have provided prescribed information to the litigant before the agreement is made; and
- (b) may be different for different descriptions of litigation funding agreements.

(6) In this section (and in the definitions of “advocacy services” and “litigation services” as they apply for its purposes) “proceedings” includes any sort of proceedings for resolving disputes (and not just proceedings in a court), whether commenced or contemplated.

(7) Before making regulations under this section, the [Lord Chancellor]¹ shall consult—

- (a) the designated judges;
- (b) the General Council of the Bar;
- (c) the Law Society; and
- (d) such other bodies as he considers appropriate.

(8) A costs order made in any proceedings may, subject in the case of court proceedings to rules of court, include provision requiring the payment of any amount payable under a litigation funding agreement.

(9) Rules of court may make provision with respect to the assessment of any costs which include fees payable under a litigation funding agreement”.

NOTES

¹ Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

Costs

Recovery of insurance premiums by way of costs

1A-030

29. Where in any proceedings a costs order is made in favour of any party who has taken out an insurance policy against the risk of incurring a liability in those proceedings, the costs payable to him may, subject in the case of court proceedings to rules of court, include costs in respect of the premium of the policy.

Recovery where body undertakes to meet costs liabilities

1A-031

30.—(1) This section applies where a body of a prescribed description undertakes to meet (in accordance with arrangements satisfying prescribed conditions) liabilities which members of the body or other persons who are parties to proceedings may incur to pay the costs of other parties to the proceedings.

(2) If in any of the proceedings a costs order is made in favour of any of the members or other persons, the costs payable to him may, subject to subsection (3) and (in the case of court proceedings) to rules of court, include an additional amount in respect of any provision made by or on behalf of the body in connection with the proceedings against the risk of having to meet such liabilities.

(3) But the additional amount shall not exceed a sum determined in a prescribed manner; and there may, in particular, be prescribed as a manner of determination one which takes into account the likely cost to the member or other person of the premium of an insurance policy against the risk of incurring a liability to pay the costs of other parties to the proceedings.

(4) In this section “prescribed” means prescribed by regulations made by the [Lord Chancellor]¹ by statutory instrument; and a statutory instrument containing such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Regulations under subsection (1) may, in particular, prescribe as a description of body one which is for the time being approved by the [Lord Chancellor]¹ or by a prescribed person.

NOTES

¹ Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

Rules as to costs

1A-032

31. In section 51 of the Supreme Court Act 1981 (costs), in subsection (2) (rules regulating matters relating to costs), insert at the end “or for securing that the amount awarded to a party in respect of the costs to be paid by him to such representatives is not limited to what would have been payable by him to them if he had not been awarded costs”.

1A-033 Regulations about financial limits in certain proceedings

32. In section 9(2) of the Legal Aid (Scotland) Act 1986 (application by regulations of Part II to assistance by way of representation), after paragraph (d) insert—

“(dd) provide that assistance by way of representation shall be available in relation to such proceedings as may be prescribed, without reference to the financial limits under section 8 of this Act;

(de) provide that section 11(2) of this Act shall not apply as respects assistance by way of representation received in relation to such proceedings as may be prescribed”;

1A-034 Recipients of disabled person’s tax credit

33. . . .¹

NOTES

¹ Repealed by the Tax Credits Act 2002.

1A-035 References by Scottish Criminal Cases Review Commission

34. In section 25(7) of the Legal Aid (Scotland) Act 1986 (legal aid in appeals), for “Secretary of State under section 124” substitute “Scottish Criminal Cases Review Commission under section 194B”.

PART VII

SUPPLEMENTARY

1A-036 Transitional provisions and savings

105. Schedule 14 (transitional provisions and savings) has effect.

1A-037 Repeals and revocations

106. Schedule 15 (repeals and revocations) has effect.

1A-038 Crown application

107. This Act binds the Crown.

1A-039 Commencement

108.—(1) Subject to subsections (2) and (3), the preceding provisions of this Act shall come into force on such day as the Lord Chancellor [or Secretary of State]¹ may by order made by statutory instrument appoint; and different days may be appointed for different purposes and, in the case of section 67(2), for different areas.

(2) Section 45 shall come into force on the day on which this Act is passed.

(3) The following provisions shall come into force at the end of the period of two months beginning with the day on which this Act is passed—

- (a) in Part II sections 32 to 34,
- (b) Part IV, apart from section 66 and Schedule 9 and sections 67(2) and 71,
- (c) in Part V, sections 74 to 76, 81, 82, 84, 86 and 87 and Schedule 10,

- (d) in Part VI section 104,
- (e) Schedule 14,
- (f) in Schedule 15, Part III and Part V(1) and (5), apart from the provisions specified in subsection (4), and
- (g) section 107.

(4) The provisions excepted from subsection (3)(f) are the repeal of section 67(8) of the Magistrates' Courts Act 1980 (and that in Schedule 11 to the Children Act 1989) contained in Part V(1) of Schedule 15.

NOTES

¹ Words in square brackets inserted by the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003 No. 1887).

Extent

1A-040

109.—(1) Sections 32 to 34 and 73(2) extend to Scotland

(2) Sections 98(2) and (3) and 104(2) extend to Northern Ireland.

(3) Sections 68, 101, 102 and 103 extend to England and Wales, Scotland and Northern Ireland.

(4) The other provisions of this Act which make amendments or repeals or revocations in other enactments also have the same extent as the enactments which they amend or repeal or revoke.

(5) Subject to subsection (4), the provisions of this Part (including paragraph 1, but not the rest, of Schedule 14) extend to England and Wales, Scotland and Northern Ireland.

(6) Subject to the preceding provisions, this Act extends to England and Wales.

(7) For the purposes of the Scotland Act 1998 this Act, so far as it extends to Scotland, shall be taken to be a pre-commencement enactment within the meaning of that Act.

Short title

1A-041

110. This Act may be cited as the Access to Justice Act 1999.

Schedules

Schedule 1

LEGAL SERVICES COMMISSION

Incorporation and status

1A-042

1. The Commission shall be a body corporate.
2. The Commission shall not be regarded—
 - (a) as the servant or agent of the Crown, or
 - (b) as enjoying any status, immunity or privilege of the Crown; and the Commission's property shall not be regarded as property of, or held on behalf of, the Crown.

Tenure of members

1A-043

3.—(1) Subject to paragraphs 4 and 5, any member of the Commission shall hold and vacate office in accordance with the terms of his appointment.

(2) But a person shall not be appointed a member of the Commission for a period of more than five years.

4.—(1) A member of the Commission, or the person appointed to chair it, may resign office by giving notice in writing to the [Lord Chancellor]¹.

(2) If the person appointed to chair the Commission ceases to be a member of it, he shall cease to chair it.

(3) A person who ceases to be a member of the Commission, or to chair it, shall be eligible for reappointment.

5. The [Lord Chancellor]¹ may terminate the appointment of a member of the Commission if satisfied that—

- (a) he has become bankrupt or made an arrangement with his creditors,
- (b) he is unable to carry out his duties as a member of the Commission by reason of illness,
- (c) he has been absent from meetings of the Commission for a period longer than six consecutive months without the permission of the Commission, or
- (d) he is otherwise unable or unfit to discharge the functions of a member of the Commission.

1A-044

Members' interests

6.—(1) Before appointing a person to be a member of the Commission, the [Lord Chancellor]¹ shall satisfy himself that that person will have no such financial or other interest as is likely to affect prejudicially the exercise or performance by him of his functions as a member of the Commission.

(2) The [Lord Chancellor]¹ shall from time to time satisfy himself with respect to every member of the Commission that he has no such interest as is referred to in sub-paragraph (1).

(3) Any person whom the [Lord Chancellor]¹ proposes to appoint as, and who has consented to be, a member of the Commission, and any member of the Commission, shall (whenever requested by the [Lord Chancellor]¹ to do so) supply him with such information as the [Lord Chancellor]¹ considers necessary for the performance by the [Lord Chancellor]¹ of his duties under this paragraph.

7.—(1) A member of the Commission who is in any way directly or indirectly interested in an individual contract entered into or proposed to be entered into, or an individual grant, loan or other payment made or proposed to be made, by the Commission shall disclose the nature of his interest at a meeting of the Commission; and—

- (a) the disclosure shall be recorded in the minutes of the Commission, and
- (b) the member shall not take any part in any deliberation or decision of the Commission with respect to that contract or grant, loan or other payment.

(2) For the purposes of sub-paragraph (1), a general notice given at a meeting of the Commission by a member of the Commission to the effect—

- (a) that he is a person with whom a contract may be entered into, or to whom a grant, loan or other payment may be made, by the Commission, or
- (b) that he is a member of a specified body with which a contract may be entered into, or to which a grant, loan or other payment may be made, by the Commission,

shall be regarded as a sufficient disclosure of his interest in relation to any contract subsequently entered into with, or grant, loan or other payment made to, him or the body.

(3) A member of the Commission need not attend in person at a meeting of the Commission in order to make any disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is brought up and read out at the meeting.

Remuneration of members

1A-045

- 8.—(1) The Commission may—
- (a) pay to its members such remuneration, and
 - (b) make provision for the payment of such pensions, allowances or gratuities to or in respect of its members,

as the [Lord Chancellor]¹ may determine.

(2) Where a person ceases to be a member of the Commission otherwise than on the expiry of his term of office, and it appears to the [Lord Chancellor]¹ that there are special circumstances which make it right for that person to receive compensation, the [Lord Chancellor]¹ may require the Commission to make that person a payment of such amount as the [Lord Chancellor]¹ may determine.

Staff

1A-046

9.—(1) The Commission shall appoint a person to be the chief executive of the Commission who shall be responsible to the Commission for the exercise of its functions.

(2) The Commission may appoint such other employees as it thinks fit.

(3) The Commission may only appoint a person to be—

- (a) its chief executive, or
- (b) the holder of any other employment of a description specified by the [Lord Chancellor]¹ by direction given to the Commission,

after consultation with, and subject to the approval of, the [Lord Chancellor]¹.

(4) An appointment under this paragraph may be made on such terms and conditions as the Commission, with the approval of the [Lord Chancellor]¹, may determine.

10.—(1) The Commission shall make, in respect of such of its employees as, with the approval of the [Lord Chancellor]¹, it may determine such arrangements for providing pensions, allowances or gratuities, including pensions, allowances or gratuities by way of compensation for loss of employment, as it may determine.

(2) Arrangements under sub-paragraph (1) may include the establishment and administration, by the Commission or otherwise, of one or more pension schemes.

(3) If an employee of the Commission—

- (a) becomes a member of the Commission, and
- (b) was by reference to his employment by the Commission a participant in a pension scheme established and administered by it for the benefit of its employees,

the Commission may determine that his service as a member shall be treated for the purposes of the scheme as service as an employee of the Commission whether or not any benefits are to be payable to or in respect of him by virtue of paragraph 8.

(4) Where the Commission exercises the power conferred by sub-paragraph (3), any discretion as to the benefits payable to or in respect of the member concerned which the scheme confers on the Commission shall be exercised only with the approval of the [Lord Chancellor]¹.

Funding of costs relating to administration etc.

1A-047

11.—(1) The [Lord Chancellor]¹ shall pay to the Commission such sums as he may determine as appropriate for—

- (a) the exercise by the Commission of functions in relation to the Community Legal Service other than the funding of services, [and]²
- (aa) the exercise by the Commission of functions in relation to the Criminal Defence Service other than the funding of services, and
- (b) the administrative costs of the Commission.

(2) The [Lord Chancellor]¹ may—

Part A Statutes

- (a) determine the manner in which and times at which the sums mentioned in sub-paragraph (1) are to be paid to the Commission, and
- (b) impose conditions on the payment of those sums.

1A-048

Proceedings

12.—(1) Subject to anything in any instrument made under this Part, the Commission may regulate its own proceedings.

(2) Committees—

- (a) may be appointed, and may be dissolved, by the Commission, and
- (b) may include, or consist entirely of, persons who are not members of the Commission, but the [Lord Chancellor]¹ may by direction require the Commission to make such provision relating to committees as is specified in the direction.

(3) A committee shall act in accordance with such instructions as the Commission may from time to time give; and the Commission may provide for anything done by a committee to have effect as if it had been done by the Commission.

(4) The Commission may pay to the members of any committee such fees and allowances as the [Lord Chancellor]¹ may determine.

(5) The validity of any proceedings of the Commission or of any committee appointed by the Commission shall not be affected by any vacancy among its members or by any defect in the appointment of any member.

1A-049

Provision of information

13.—(1) The Commission shall provide the [Lord Chancellor]¹ with such information as he may require relating to its property and to the discharge or proposed discharge of its functions.

(2) The Commission shall—

- (a) permit any person authorised by the [Lord Chancellor]¹ to inspect and make copies of any accounts or documents of the Commission, and
- (b) provide such explanation of them as any such person, or the [Lord Chancellor]¹, may require.

1A-050

Annual report

14.—(1) The Commission shall provide to the [Lord Chancellor]¹, as soon as possible after the end of each financial year, a report on how it has during that year—

- (a) funded services from the Community Legal Service Fund,
- (b) funded services as part of the Criminal Defence Service, and
- (c) exercised its other functions.

(2) The [Lord Chancellor]¹ may by direction require the Commission to deal with the matters specified in the direction in reports, or a particular report, under this paragraph.

(3) The [Lord Chancellor]¹ shall lay before each House of Parliament a copy of each report provided to him under this paragraph and the Commission shall publish a report once it has been so laid.

(4) In this paragraph and paragraphs 15 and 16 “financial year” means—

- (a) the period beginning with the day on which the Commission is established and ending with the next 31st March, and
- (b) each subsequent period of twelve months ending with 31st March.

1A-051

Annual plan

15.—(1) The Commission shall, before the beginning of each financial year (other than that specified in paragraph 14(4)(a)), prepare a plan setting out how it intends in that year—

- (a) to fund services from the Community Legal Service Fund,

(b) to fund services as part of the Criminal Defence Service, and

(c) to exercise its other functions,

and the plan shall include a summary of what the Commission has ascertained in the exercise of its functions under section 4(6).

(2) The [Lord Chancellor]¹ may by direction require the Commission to deal with the matters specified in the direction in plans, or a particular plan, under sub-paragraph (1).

(3) The Commission shall send a copy of each plan prepared under sub-paragraph (1) to the [Lord Chancellor]¹.

(4) If the [Lord Chancellor]¹ approves it, he shall lay a copy before each House of Parliament and the Commission shall publish the plan once it has been so laid.

(5) If he does not approve it, he shall by direction require the Commission to revise it in accordance with the direction; and the direction shall include the [Lord Chancellor's]¹ reasons for not approving the plan.

(6) When the Commission has revised the plan it shall send the [Lord Chancellor]¹ a copy of the revised plan and he shall lay a copy before each House of Parliament and the Commission shall publish the revised plan once it has been so laid.

Accounts and audit

1A-052

16.—(1) The Commission shall keep accounts and shall prepare in respect of each financial year a statement of accounts.

(2) The accounts shall be kept, and the statement of accounts shall be prepared, in such form as the [Lord Chancellor]¹ may, with the approval of the Treasury, specify by direction given to the Commission.

(3) The Commission shall send a copy of the statement of accounts in respect of each financial year to the [Lord Chancellor]¹ and to the Comptroller and Auditor General within such period after the end of the financial year to which it relates as the [Lord Chancellor]¹ may specify by direction given to the Commission.

(4) The Comptroller and Auditor General shall—

(a) examine, certify and report on each statement of accounts received by him under sub-paragraph (3), and

(b) lay a copy of each such statement of accounts, and his report on it, before each House of Parliament.

Instruments

1A-053

17.—(1) The fixing of the seal of the Commission shall be authenticated by a member of the Commission or by some other person authorised either generally or specially by the Commission to act for that purpose.

(2) A document purporting to be duly executed under the seal of the Commission or to be signed on the Commission's behalf—

(a) shall be received in evidence, and

(b) unless the contrary is proved, shall be deemed to be so executed or signed.

NOTES

¹ Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

² The "and" at the end of paragraph 11(a), is substituted with paragraph 11(aa) by section 1(9) of the Criminal Defence Service Act 2006.

COMMUNITY LEGAL SERVICE EXCLUDED SERVICES

The services which may not be funded as part of the Community Legal Service are as follows.

1. Services consisting of the provision of help (beyond the provision of general information about the law and the legal system and the availability of legal services) in relation to—
 - [(a) allegations of personal injury or death, other than allegations relating to clinical negligence,
 - (aa) allegations of negligently caused damage to property,]¹
 - (b) conveyancing,
 - (c) boundary disputes,
 - (d) the making of wills,
 - (e) matters of trust law,
 - (f) defamation or malicious falsehood,
 - (g) matters of company or partnership law,
 - (h) other matters arising out of the carrying on of a business, or
 - (i) attending an interview conducted on behalf of the Secretary of State with a view to his reaching a decision on a claim for asylum (as defined by section 167(1) of the Immigration and Asylum Act 1999).²

2. Advocacy in any proceedings except—
 - (1) proceedings in—
 - (a) the House of Lords in its judicial capacity,
 - (b) the Judicial Committee of the Privy Council in the exercise of its jurisdiction under the Government of Wales Act 1998, the Scotland Act 1998 or the Northern Ireland Act 1998,
 - (c) the Court of Appeal,
 - (d) the High Court,
 - (e) any county court,
 - (f) the Employment Appeal Tribunal,
 - (g) any Mental Health Review Tribunal,
 - [(h) the Asylum and Immigration Tribunal,]³
 - [(ha) the Special Immigration Appeals Commission,]⁴ [or
 - (i) the Proscribed Organisations Appeal Commission]⁵.
 - (2) proceedings in the Crown Court—
 - (a) for the variation or discharge of an order under section 5 of the Protection from Harassment Act 1997,
 - (b) which relate to an order under section . . .⁶ 10 of the Crime and Disorder Act 1998,
 - (c) . . .⁷
 - [(d) which relate to an order under paragraph 6 of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001,]⁸ [or
 - (e) under the Proceeds of Crime Act 2002 to the extent specified in paragraph 3]⁹.
 - (3) proceedings in a magistrates' court—
 - (a) under section 43 or 47 of the National Assistance Act 1948, section 22 of the Maintenance Orders Act 1950, section 4 of the Maintenance Orders Act 1958 or section 106 of the Social Security Administration Act 1992,
 - (b) under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 relating to a maintenance order made by a court of a country outside the United Kingdom,
 - (c) in relation to an application for leave of the court to remove a child from a person's custody under *section 27 or 28 of the Adoption Act 1976*¹⁰ or in which the making of

*an order under Part II or section 29 or 55*¹⁰ of that Act is opposed by any party to the proceedings,

- (d) for or in relation to an order under Part I of the Domestic Proceedings and Magistrates' Courts Act 1978,
- [(da) under section 55A of the Family Law Act 1986 (declarations of parentage),]¹¹
- (e) under the Children Act 1989,
- (f) under section 30 of the Human Fertilisation and Embryology Act 1990,
- (g) under section 20 . . .¹² of the Child Support Act 1991,
- (h) under Part IV of the Family Law Act 1996,
- (i) for the variation or discharge of an order under section 5 of the Protection from Harassment Act 1997,
- (j) under [section 8 or 11]¹³ of the Crime and Disorder Act 1998,
- [(k) for an order or direction under paragraph 3, 5, 6, 9 or 10 of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001,]¹⁴
- [(l) for an order or direction under section 295, 297, 298, 301 or 302 of the Proceeds of Crime Act 2002]¹⁵.

(4) proceedings before any person to whom a case is referred (in whole or in part) in any proceedings within paragraphs (1) to (3).

[3.—(1) These are the proceedings under the Proceeds of Crime Act 2002—

- [(za) an application under section 42 for a restraint order]¹
- (a) an application under section 42(3) to vary or discharge a restraint order or an order under section 41(7);
- (b) proceedings which relate to a direction under section 54(3) or 56(3) as to the distribution of funds in the hands of a receiver;
- (c) an application under section 62 relating to action taken or proposed to be taken by a receiver;
- (d) an application under section 63 to vary or discharge an order under any of sections 48 to 53 for the appointment of or conferring powers on a receiver;
- (e) an application under section 72 or 73 for the payment of compensation;
- (f) proceedings which relate to an order under section 298 for the forfeiture of cash;
- (g) an application under section 351(3), 362(3), 369(3) or 375(2) to vary or discharge certain orders made under Part 8.

(2) But sub-paragraph (1) does not authorise the funding of the provision of services to a defendant (within the meaning of Part 1 of that Act) in relation to—

- (a) proceedings mentioned in paragraph (b);
- (b) an application under section 73 for the payment of compensation if the confiscation order was varied under section 29.]¹⁶

NOTES

¹ Words in brackets substituted by the Community Legal Service (Scope) Regulations 2005 (S.I. 2005 No. 2008).
² Inserted, as of 1 April 2004, by the Community Legal Service (Scope) Regulations 2004 (SI 2004 No.1055).
³ Para 2: sub-para (1)(h) substituted by Schedule 2 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.
⁴ Para 2: sub-para (1)(h)(a) inserted by the Nationality, Immigration and Asylum Act 2002.
⁵ Para 2: sub-para (1)(i), and word “or” preceding it, inserted by the Terrorism Act 2000.
⁶ Para 2: words in sub-para (2)(b) repealed by the Community Legal Service (Scope) Regulations 2000 (S.I. 2000 No. 822).
⁷ Para 2: sub-para (2)(c) repealed by the Community Legal Service (Scope) Regulations 2000 (S.I. 2000 No. 822).
⁸ Para 2: sub-para (2)(d) inserted by the Anti-terrorism, Crime and Security Act 2001.
⁹ Para 2: sub-para (2)(e), and word “or” preceding it, inserted by the Proceeds of Crime Act 2002.
¹⁰ Para 2: sub-para (3)(c): words “section 27 or 28 of the Adoption Act 1976” to be replaced by “section 36 of the Adoption and Children Act 2002” and words “an order under Part II or section 29 or 55” to be replaced by “a placement order or adoption order (within the meaning of the Adoption and Children Act 2002) or an order under section 41 or 84” by the Adoption and Children Act 2002, as from a day to be appointed.
¹¹ Para 2: sub-para (3)(da) inserted by the Child Support, Pensions and Social Security Act 2000.

Part A Statutes

¹² Para 2: words in sub-para (3)(g) repealed by the Child Support, Pensions and Social Security Act 2000

¹³ Para 2: words in sub-para (3)(j) substituted by the Community Legal Service (Scope) Regulations 2000 (S.I. 2000 No. 822).

¹⁴ Para 2: sub-para (3)(k) inserted by the Anti-terrorism, Crime and Security Act 2001.

¹⁵ Para 2: sub-para (3)(l) inserted by the Proceeds of Crime Act 2002.

¹⁶ Para 3: inserted by the Proceeds of Crime Act 2002.

Schedule 3

CRIMINAL DEFENCE SERVICE: RIGHT TO REPRESENTATION

1A-055

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.

1A-056

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 [*except in such circumstances as may be prescribed*] subject to sub-paragraph (1A)¹.

(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

(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) Subject to sub-paragraph (5A),³ 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.

(5A) Sub-paragraph (5) does not apply where the Commission has power to withdraw the right to representation in respect of the proceedings.⁴

(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) Any rules under section 144 of the Magistrates’ Courts Act 1980 which provide for the functions of a single justice under sub-paragraph (6) to be exercised by a justices’ clerk may make different provision for different areas.

1A-057

Grant of right by commission

2A.⁵—(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).

(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.

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.

[(2) The form of any 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.]

(3) Regulations under sub-paragraph (1) may make such transitional provisions as the [Lord Chancellor]⁶ may consider appropriate.⁷

3A.—(1) The form of the 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.⁸

Financial eligibility

1A-057.1

3B.9—(1) Power under this Schedule to 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 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 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.

Appeals

1A-058

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.

5.—(1) Any question as to whether [*a right to representation should be granted*] power to grant a right to representation should be exercised¹⁰ 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.

(3) The [Lord Chancellor]⁶ may by order amend sub-paragraph (2) by adding new factors or varying any factor.

[(4) *A right to representation shall always be granted in such circumstances as may be prescribed.*]

(4) Regulations may prescribe circumstances in which the grant of a right to representation shall be taken to be in the interests of justice.¹¹

NOTES

¹ Paragraph 2 (grant of right by court), sub-paragraph (1) the italicised words “except in such circumstances as may be prescribed” there is substituted “subject to sub-paragraph (1A)” amended by section 1(2) of the Criminal Defence Service Act 2006.

² Paragraph 2 sub-paragraph 1A inserted by section 1(3) of the Criminal Defence Service Act 2006.

³ Paragraph 2 sub-paragraph (5), “Subject to sub-paragraph (5A)” inserted by section 1(4) of the Criminal Defence Service Act 2006.

⁴ Paragraph 2 sub-paragraph (5A) inserted by section 1(5) of the Criminal Defence Service Act 2006.

⁵ Paragraph 2A is inserted by section 1(6) of the Criminal Defence Service Act 2006.

⁶ Words in square brackets substituted by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005 No. 3429).

⁷ Paragraphs 3(2) and (3) are substituted by paragraphs 3A (1) and (2) by section 1(7) of the Criminal Defence Service Act 2006.

⁸ Paragraphs 3A (1) and (2) inserted by section 1(7) of the Criminal Defence Service Act 2006.

⁹ Paragraph 3B and sub-paragraphs (1) to (6) inserted by section 2(2) of the Criminal Defence Service Act 2006.

¹⁰ The wording in italics is replaced by “power to grant a right to representation should be exercised” by section 2(3) of the Criminal Defence Service Act 2006.

¹¹ In Paragraph 5(4), the wording in italics has been substituted with the new paragraph 5(4) by section 2(4) of the Criminal Defence Service Act 2006.

Schedule 4

AMENDMENTS CONSEQUENTIAL ON PART I

The Public Records Act 1958 (c.51)

1. In the First Schedule to the Public Records Act 1958 (definition of public records), in Part I of the Table at the end of paragraph 3, in the second column, after “Legal Aid Board.” insert—
“Legal Services Commission.”

The Parliamentary Commissioner Act 1967 (c.13)

1A-061

2. In Schedule 2 to the Parliamentary Commissioner Act 1967 (which lists the bodies subject to the jurisdiction of the Parliamentary Commissioner), insert (at the appropriate place in alphabetical order)—
 “Legal Services Commission.”

The Criminal Appeal Act 1968 (c.19)

1A-062

3. In section 50 of the Criminal Appeal Act 1968 (meaning of “sentence”), at the end insert—
 “(3) An order under section 17 of the Access to Justice Act 1999 is not a sentence for the purposes of this Act.”

The Children and Young Persons Act 1969 (c.54)

1A-063

4. The Children and Young Persons Act 1969 has effect subject to the following amendments.
5. . . .¹
6. In section 23 (remands and committals to local authority accommodation), in subsection (5A) (restrictions on imposing a security requirement on person who is not legally represented)—
 (a) for paragraph (a) substitute—
 “(a) he was granted a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service but the right was withdrawn because of his conduct; or” , and
 (b) in paragraph (b), for “legal aid” substitute “such representation”.
7. In that section as it has effect pursuant to section 98 of the Crime and Disorder Act 1998 (alternative provision for 15 and 16 year old boys), in subsection (4A) (restrictions on remand of boy who is not legally represented)—
 (a) for paragraph (a) substitute—
 “(a) he was granted a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service but the right was withdrawn because of his conduct; or” , and
 (b) in paragraph (b), for “legal aid” substitute “such representation”

The Attachment of Earnings Act 1971 (c.32)

1A-064

8. In section 1(3)(c) of the Attachment of Earnings Act 1971 (magistrates’ court may make order to secure payment of any sum required to be paid by legal aid contribution order), for “legal aid contribution order” substitute “order under section 17(2) of the Access to Justice Act 1999”.
9. . . .¹

The Solicitors Act 1974 (c.47)

1A-065

- 10.—(1) Section 47 of the Solicitors Act 1974 (jurisdiction of Solicitors Disciplinary Tribunal) is amended as follows.
- (2) In subsection (2)(d) (exclusion of solicitor from legal aid work), for “legal aid work” substitute “providing representation funded by the Legal Services Commission as part of the Criminal Defence Service”.
- (3) In subsection (2A) (exclusion of solicitor from providing legal aid work because of conduct in connection with services under the Legal Aid Act 1988)—
 (a) for “legal aid work” substitute “providing representation”, and

Part A Statutes

(b) in paragraph (a), for “under the Legal Aid Act 1988” substitute “funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service”.

(4) In subsection (2B) (exclusion of member of solicitor’s firm from legal aid work), for “legal aid work” substitute “providing representation funded by the Legal Services Commission as part of the Criminal Defence Service”.

(5) In subsection (2D) (person excluded from legal aid work may apply for termination of exclusion), for “legal aid work” substitute “providing representation funded by the Legal Services Commission as part of the Criminal Defence Service”.

1A-066 *The House of Commons Disqualification Act 1975 (c.24)*

11. In Part II of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified), insert (at the appropriate place in alphabetical order)—
“The Legal Services Commission.”

1A-067 *The Northern Ireland Assembly Disqualification Act 1975 (c.25)*

12. In Part II of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified), insert (at the appropriate place in alphabetical order)—
“The Legal Services Commission.”

1A-068 *The Sex Discrimination Act 1975 (c.65)*

13. In section 75(4) of the Sex Discrimination Act 1975 (charges to recover costs of assistance in legal proceedings subject to charges under the Legal Aid Act 1988 or any provision in that Act for sum payable to Legal Aid Board)—

- (a) for “under the Legal Aid Act 1988” substitute “imposed by section 10(7) of the Access to Justice Act 1999”,
- (b) after “any provision in” insert “, or made under,”, and
- (c) for “Legal Aid Board” substitute “Legal Services Commission”.

1A-069 *The Race Relations Act 1976 (c.74)*

14. In section 66(6) of the Race Relations Act 1976 (charges to recover costs of assistance in legal proceedings subject to charges under the Legal Aid Act 1988 or any provision in that Act for sum payable to Legal Aid Board)—

- (a) for “under the Legal Aid Act 1988” substitute “imposed by section 10(7) of the Access to Justice Act 1999”,
- (b) after “any provision in” insert “, or made under,”, and
- (c) for “Legal Aid Board” substitute “Legal Services Commission”.

1A-070 *The Magistrates’ Courts Act 1980 (c.43)*

15. The Magistrates’ Courts Act 1980 has effect subject to the following amendments.

16. In section 8(4) (matters which may be contained in a report of committal proceedings without an order), for paragraph (i) substitute—

- “(i) whether a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service was granted to the accused or any of the accused.”

17. In section 92(1)(b) (no restriction on power to impose imprisonment for default in paying contribution ordered under section 23 of the Legal Aid Act 1988), for the words from “section

23” to “to” substitute “section 17(2) of the Access to Justice Act 1999 (payment by individual in respect of”.

18. In section 130(3) (power of alternate court in remand hearings to grant legal aid), for “the grant of legal aid” substitute “the grant of a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service”.

19. In section 145A(4) (rules about costs may include provision for the reimbursement of sums paid by the Legal Aid Board), for “Legal Aid Board” substitute “Legal Services Commission”.

20. In Part I of Schedule 6 (fees), in paragraph 1(a) of the Note at the end (persons from whom fees not required), for the words from “a legally assisted person” to “1988” substitute “receiving services funded by the Legal Services Commission as part of the Community Legal Service”.

The Supreme Court Act 1981 (c.54)

1A-071

21. The Supreme Court Act 1981 has effect subject to the following amendments.

22. In section 28 (appeal by way of case stated from decisions of Crown Court, other than those relating to trial on indictment), at the end insert—

“(4) In subsection (2)(a) the reference to a decision of the Crown Court relating to trial on indictment does not include a decision relating to an order under section 17 of the Access to Justice Act 1999.”

23. In section 29 (judicial review of decisions of Crown Court, other than matters relating to trial on indictment), at the end insert—

“(6) In subsection (3) the reference to the Crown Court’s jurisdiction in matters relating to trial on indictment does not include its jurisdiction relating to orders under section 17 of the Access to Justice Act 1999.”

24. . . .¹

25. . . .¹

26. . . .²

The Prosecution of Offences Act 1985 (c.23)

1A-072

27. The Prosecution of Offences Act 1985 has effect subject to the following amendments.

28. In section 19(2)(b) (in making an order for costs account to be taken of grant of representation under Legal Aid Act 1988), for the words from “or any grant” to the end substitute

Access to Justice Act 1999

“or any grant of a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service;”.

29. In section 20(2) (recovery of sums paid by Legal Aid Board where legally assisted person is awarded costs), for “Legal Aid Board” substitute “Legal Services Commission”.

30.—(1) Section 21 (interpretation) is amended as follows.

(2) In subsection (1), in the definition of “legally assisted person”, for “representation under the Legal Aid Act 1988” substitute “a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service”.

(3) In subsection (4A)—

- (a) in paragraph (a), for the words from “include” to “of contribution;” substitute “the cost of representation funded for him by the Legal Services Commission as part of the Criminal Defence Service;”, and
- (b) in paragraph (b), for the words from “and 19” to the end substitute “, 19 and 19A of this Act, his costs shall be taken to include the cost of representation funded for him by the Legal Services Commission as part of the Criminal Defence Service;”.

The Child Abduction and Custody Act 1985 (c.60)

1A-073

31. In section 11 of the Child Abduction and Custody Act 1985 (costs of application for child custody or access), for the words from “by virtue of” to “1988,” substitute “by virtue of—

- (a) the provision of any service funded by the Legal Services Commission as part of the Community Legal Service, or
- (b) the grant of legal aid or legal advice and assistance under”.

The Administration of Justice Act 1985 (c.61)

1A-074

32. The Administration of Justice Act 1985 has effect subject to the following amendments.

33. In section 40(1) (legal aid complaints), for “under the Legal Aid Act 1988” substitute “funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service”.

34. In section 41(2) (reduction of fees payable in connection with services provided by barristers under Legal Aid Act 1988), for paragraphs (a) and (b) substitute “otherwise payable by the Legal Services Commission in connection with services provided by him as part of the Community Legal Service or Criminal Defence Service”.

35. In section 42 (exclusion of barristers from legal aid work), in subsections (1) and (3), for “legal aid work” substitute “providing representation funded by the Legal Services Commission as part of the Criminal Defence Service”.

36. In section 43(3) (reduction of costs payable in connection with services provided by solicitors under Legal Aid Act 1988), for the words from “any costs” to “solicitor” substitute “any costs otherwise payable by the Legal Services Commission in connection with services provided by the solicitor as part of the Community Legal Service or Criminal Defence Service”.

The Housing Act 1985 (c.68)

1A-075

37. In section 170(5) of the Housing Act 1985 (charges to recover costs of assistance in legal proceedings subject to any charge for benefit of Legal Aid Board), for the words from “under the

Part A Statutes

Legal Aid Act 1988” to the end substitute “imposed by section 10(7) of the Access to Justice Act 1999 and any provision in, or made under, Part I of that Act for the payment of any sum to the Legal Services Commission.”

1A-076

The Criminal Justice Act 1987 (c.38)

38. The Criminal Justice Act 1987 has effect subject to the following amendments.

39. In section 4(1) (functions of magistrates’ court to cease when case transferred to Crown Court, except for purposes of grant of legal aid), for “section 20(4) of the Legal Aid Act 1988” substitute “paragraph 2 of Schedule 3 to the Access to Justice Act 1999”.

40. In section 11(12) (matters to which restrictions on reporting do not apply), for paragraph (h) substitute—

“(h) whether a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service was granted to the accused or any of the accused.”

1A-077

The Consumer Arbitration Agreements Act 1988 (c.21)

41. In section 4(3) of the Consumer Arbitration Agreements Act 1988 (availability of legal aid to be considered in determining whether to make reference to arbitration), for “legal aid” substitute “services funded by the Legal Services Commission as part of the Community Legal Service”.

1A-078

The Housing Act 1988 (c.50)

42. The Housing Act 1988 has effect subject to the following amendments.

43. In section 82(4) (charge to recover costs of assistance in legal proceedings subject to any charge for benefit of Legal Aid Board), for the words from “under the Legal Aid Act 1988” to the end substitute “imposed by section 10(7) of the Access to Justice Act 1999 and any provision in, or made under, Part I of that Act for the payment of any sum to the Legal Services Commission.”

44. In section 107(4) (charge to recover costs of assistance in legal proceedings subject to any charge for benefit of Legal Aid Board), for the words from “under the Legal Aid Act 1988” to the end substitute “imposed by section 10(7) of the Access to Justice Act 1999 and any provision in, or made under, Part I of that Act for the payment of any sum to the Legal Services Commission.”

1A-079

The Children Act 1989 (c.41)

45. In section 25(6) of the Children Act 1989 (child without legal representation not to be placed in secure accommodation without having been informed of right to apply for legal aid), for “legal aid” substitute “representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service”.

1A-080

The Courts and Legal Services Act 1990 (c.41)

46. In section 17(3)(c)(iii) of the Courts and Legal Services Act 1990 (effect of rules of a professional body relating to the withholding of services from persons receiving support under the Legal Aid Act 1988), for “under the Legal Aid Act 1988” substitute “as part of the Community Legal Service or Criminal Defence Service”.

1A-081

The Criminal Justice Act 1991 (c.53)

47. In section 53(3) of the Criminal Justice Act 1991 (functions of magistrates’ court to cease when case transferred to Crown Court, except for purposes of grant of legal aid), for “section

20(4) of the Legal Aid Act 1988” substitute “paragraph 2 of Schedule 3 to the Access to Justice Act 1999”.

The Social Security Administration Act 1992 (c.5)

1A-082

48.—(1) Section 108(7) of the Social Security Administration Act 1992 (Secretary of State to inform Legal Aid Board if he recovers maintenance arrears for a person who owes money to the Board) is amended as follows.

- (2) For “the Legal Aid Board” substitute “the Legal Services Commission”.
- (3) In paragraph (a), for “; and” substitute “, or
 - (iii) received services funded by the Legal Services Commission as part of the Community Legal Service; and”.
- (4) In paragraph (b), after paragraph (ii) insert “or
 - (iii) by virtue of section 10 of the Access to Justice Act 1999 in respect of services funded by the Legal Services Commission as part of the Community Legal Service.”.

The Criminal Procedure and Investigations Act 1996 (c.25)

1A-083

49. In section 37(9) of the Criminal Procedure and Investigations Act 1996 (matters to which restrictions on reporting do not apply), for paragraph (g) substitute—

“(g) whether a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service was granted to the accused or any of the accused.”

The Family Law Act 1996 (c.27)

1A-084

50. The Family Law Act 1996 has effect subject to the following amendments.

51.—(1) Section 8 (information meetings) is amended as follows.

(2) In subsection (9) (matters about which regulations must be made for the purposes of information given at information meetings), for paragraph (h) substitute—

“(h) the availability of services funded by the Legal Services Commission as part of the Community Legal Service, and where parties can get advice about obtaining such services;”.

(3) In subsection (12) (contributions), for “provided for him under Part IIIA of the Legal Aid Act 1988” substitute “funded for him by the Legal Services Commission as part of the Community Legal Service”.

52.—(1) Section 23 (provision of marriage counselling) is amended as follows.

(2) In subsection (3) (contributions), for “provided for them under Part IIIA of the Legal Aid Act 1988” substitute “funded for them by the Legal Services Commission as part of the Community Legal Service”

- (3) In subsection (8) (powers of the Legal Aid Board)—
 - (a) for “the Legal Aid Board” substitute “the Legal Services Commission”,
 - (b) for “the Board” substitute “the Commission”,
 - (c) for “the Legal Aid Act 1988” substitute “Part I of the Access to Justice Act 1999”, and
 - (d) after “purposes of”, in the second place, insert “that Part of”.

The Crime and Disorder Act 1998 (c.37)

1A-085

53. The Crime and Disorder Act 1998 has effect subject to the following amendments.

Part A Statutes

54. [In section 50(2) (procedure at early administrative hearing), for paragraphs (a) to (c) substitute “the accused shall be asked whether he wishes to be granted a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service and, if he does, the justice shall decide whether or not to grant him such a right.”]

55. In paragraph 3(8) of Schedule 3 (matters which may be contained in a report of an application for dismissal of charges), for paragraph (g) substitute—

“(g) whether a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service was granted to the accused or any of the accused.”

1A-086

The Disability Rights Commission Act 1999 (c. 17)

56. In section 8(4)(a) of the Disability Rights Commission Act 1999 (charges to recover costs of assistance in legal proceedings subject to any charge for benefit of Legal Aid Board), for the words from “under” to “Board” substitute “imposed by section 10(7) of the Access to Justice Act 1999 and any provision in, or made under, Part I of that Act for the payment of any sum to the Legal Services Commission”.

NOTES

¹ Paras 5, 9, 24, 25: repealed by the Powers of Criminal Courts (Sentencing) Act 2000.

² Para 26: repealed by the Communications Act 2003.

³ Para 54: repealed by regulation 9 of the Criminal Defence Service (Representation Orders and Consequential Amendments) Regulations 2006 (S.I. 2006 No. 2493).

Schedule 14

TRANSITIONAL PROVISIONS AND SAVINGS

1A-087

PART I

GENERAL

1.—(1) The Lord Chancellor [or Secretary of State]¹ may by order made by statutory instrument make such transitional provisions and savings he considers appropriate in connection with the coming into force of any provision of this Act.

(2) Nothing in the following provisions of this Schedule limits sub-paragraph (1).

(3) Nothing in this Schedule limits the operation of sections 16 and 17 of the Interpretation Act 1978 (effect of repeals).

NOTES

¹ Words in square brackets inserted by the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003 No. 1887).

PART II

LEGAL SERVICES COMMISSION

1A-088

Replacement of Legal Aid Board by Legal Services Commission

2.—(1) When section 1 of this Act comes into force—

- (a) the functions of the Legal Aid Board, and
- (b) the property, rights and liabilities of the Board,

shall by virtue of this paragraph be transferred to the Legal Services Commission.

(2) Sub-paragraph (1)(b) has effect in relation to any property, rights or liabilities to which it applies in spite of any provision (of whatever nature) which would otherwise prevent or restrict their transfer.

3.—(1) Anything which, immediately before section 1 of this Act comes into force, is in the process of being done by or in relation to the Legal Aid Board may, if it relates to anything transferred by paragraph 2(1), be continued by or in relation to the Legal Services Commission.

(2) Anything done (or having effect as if done) by or in relation to the Legal Aid Board before the time when section 1 of this Act comes into force for the purpose of, or in connection with, anything transferred by paragraph 2(1) shall, so far as is required for continuing its effect after that time, have effect as if done by or in relation to the Legal Services Commission.

(3) Any reference to the Legal Aid Board in any document, including any enactment, constituting or relating to anything transferred by paragraph 2(1) shall, so far as is required for giving effect to that paragraph, be construed as a reference to the Legal Services Commission.

4. Where rights and liabilities under a contract of employment are transferred under paragraph 2(1)(b)—

- (a) for the purposes of Part XI of the Employment Rights Act 1996 (redundancy payments etc.), the employee shall not be regarded as having been dismissed by virtue of the transfer, and
- (b) for the purposes of that Act, the employee's period of employment with the Legal Aid Board shall count as a period of employment with the Legal Services Commission and the change of employment shall not break the continuity of the period of employment.

5.—(1) Any arrangements made by the Legal Aid Board under paragraph 10(2) of Schedule 1 to the Legal Aid Act 1988 (power to provide for pensions) before the time when section 1 of this Act comes into force shall be treated after that time (so far as may be necessary to preserve their effect) as having been made by the Legal Services Commission under paragraph 10(1) of Schedule 1 to this Act.

(2) For the purposes of any such arrangement as it has effect after section 1 of this Act comes into force, a person's period of employment with the Legal Aid Board shall count as a period of employment with the Legal Services Commission.

Winding-down of Legal Aid Board

1A-089

6.—(1) The Legal Aid Board shall give to the Legal Services Commission all the information, prepare all the documents and do all other things which appear to the Commission appropriate for the purpose of facilitating—

- (a) the carrying into effect of the transfers effected by paragraph 2(1), and
- (b) the exercise of any functions transferred by paragraph 2(1)(a) or conferred or imposed on the Commission by this Schedule;

and the Legal Aid Board may do anything else which appears to it appropriate for that purpose.

(2) The Legal Aid Board shall, as soon as possible after the time when section 1 of this Act comes into force, prepare a report in accordance with section 5(3) of the Legal Aid Act 1988—

- (a) in relation to the last financial year ending before that time (if it has not done so before then), and
- (b) in relation to the period between the end of that financial year and that time (as if that period were a financial year).

(3) The Legal Aid Board shall, as soon as possible after the time when section 1 of this Act comes into force, prepare a statement of accounts in accordance with section 7(1) of the Legal Aid Act 1988—

- (a) in relation to the last financial year ending before that time (if it has not done so before then), and

- (b) in relation to the period between the end of that financial year and that time (as if that period were a financial year).
- (4) Subsections (2) to (7) of section 7 to the Legal Aid Act 1988 shall, after section 1 of this Act comes into force, apply in relation to—
 - (a) the preparation of a statement under sub-paragraph (3)(a) or (b), and
 - (b) the auditing of accounts kept under that section for the periods mentioned in sub-paragraph (3)(a) and (b).
- (5) From the time when section 1 of this Act comes into force, the Legal Services Commission shall make available to the Legal Aid Board such facilities as it may reasonably require for exercising its functions under this paragraph.
- (6) The Lord Chancellor may pay to members of the Legal Aid Board—
 - (a) any remuneration which he considers appropriate in respect of the performance of their duties as members of the Board after the time when section 1 of this Act comes into force, and
 - (b) any allowances which he determines should be paid to them in respect of expenses properly incurred by them in the performance of those duties after that time.
- (7) The Lord Chancellor may determine that, as from the coming into force of section 1 of this Act, the number of members of the Legal Aid Board shall be reduced to a number which he considers appropriate (and may, accordingly, remove any such members from office).
- (8) The Lord Chancellor shall meet the costs of remunerating auditors and any other costs incurred by the Legal Aid Board in connection with the exercise of any of its functions under this paragraph.

1A-090

Abolition of Legal Aid Board

- 7.—(1) The Legal Aid Board shall cease to exist when the Lord Chancellor, being satisfied that its duties under paragraph 6 have been discharged, by order made by statutory instrument so specifies.
- (2) Nothing in this Schedule, and no amendment or repeal made by this Act, affects—
 - (a) the continuance of the Legal Aid Board for the purpose of exercising its functions under paragraph 6, or
 - (b) the continued operation for that purpose of any enactment relating to the Board.

Further provision for Legal Aid Board and Legal Services Commission

- 8.—(1) The Lord Chancellor may by order made by statutory instrument make any consequential, incidental, supplementary or transitional provisions, and any savings, which appear to him to be appropriate in consequence of or otherwise in connection with—
 - (a) the transfers effected by paragraph 2(1), or
 - (b) the abolition of the Legal Aid Board.
- (2) An order under sub-paragraph (1) may include provisions in the form of amendments or repeals of this Part of this Schedule or any other enactment.

Funding of representation by Lord Chancellor

- 9.—(1) Until such date as the Lord Chancellor may by order made by statutory instrument appoint, the duty of the Commission under section 14(1) of this Act shall have effect as a duty of the Commission or the Lord Chancellor, as the Lord Chancellor may specify.
- (2) To the extent that that duty has effect as a duty of the Lord Chancellor he shall comply with it by making payments to persons or bodies in respect of the provision of representation by them; and, accordingly, references in this Act and any other enactment to representation (or services) funded by the Commission as part of the Criminal Defence Service include representation funded by the Lord Chancellor under this sub-paragraph.

Access to Justice Act 1999

(3) The Lord Chancellor shall by order made by statutory instrument make provision about such payments (including provision for reviews of, or appeals against, determinations required for the purposes of the order); and subsections (2) and (3) of section 25 of this Act shall apply to it (as if it were a remuneration order as defined by subsection (4) of that section).

Schedule 15

Repeals and Revocations

Part I

1A-091

Legal Services Commission

Reference	Short title or title	Extent of repeal or revocation
1967 c. 13.	The Parliamentary Commissioner Act 1967.	In Schedule 2, the entry relating to the Legal Aid Board.
1971 c. 32.	The Attachment of Earnings Act 1971.	In section 25(1), the definition of “legal aid contribution order”.
1973 c. 62.	The Powers of Criminal Courts Act 1973.	In section 21(2), the words from “,and in subsection” to the end.
1974 c. 47.	The Solicitors Act 1974.	In section 47, in subsection (2C), the words “excluding any person from legal aid work”, in subsection (2D), the words “from such work” and subsection (6).
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Schedule 1, in Part III, the entries relating to the chairman of the Legal Aid Board and a member of the Legal Aid Board.
1975 c. 25.	The Northern Ireland Assembly Disqualification Act 1975.	In Schedule 1, in Part III, the entries relating to the chairman of the Legal Aid Board and a member of the Legal Aid Board.
1982 c. 48.	The Criminal Justice Act 1982.	In section 3(2), the words from “, and in subsection” to the end.
1985 c. 61.	The Administration of Justice Act 1985.	Section 41(3). In section 42, in subsection (3), the words “from such work” and subsection (4)(b) and the preceding “and”. Section 43(4). Section 44(4).
1988 c. 34.	The Legal Aid Act 1988.	Sections 1 to 32. Sections 34 to 43. Section 45. Section 46.
		Schedule 1 to 3. In Schedule 5, paragraphs 2, 3, 4, 5, 6(a), 7(a), 8, 9, 10, 12, 16, 18, 19(b) and the preceding “and”, 20, 21 and 22. Schedule 6 to 8.

Part A Statutes

Reference	Short title or title	Extent of repeal or revocation
1989 c. 41.	The Children Act 1989	Section 99. In Schedule 12, paragraph 45. In Schedule 14, paragraph 40.
S.I. 1989/549.	The Civil Legal Aid (Matrimonial Proceedings) Regulations 1989.	The whole instrument.
1990 c. 41.	The Courts and Legal Services Act 1990.	Section 59. In Schedule 17, paragraph 19. In Schedule 18, paragraphs 59 to 63.
1991 c. 53.	The Criminal Justice Act 1991.	In Schedule 6, paragraph 9. In Schedule 11, paragraph 40(2)(q).
S.I. 1991/1924.	The Legal Aid Act 1988 (Children Act 1989) Order 1991.	The whole instrument.
S.I. 1991/1997.	The Companies Act 1989 (Eligibility for Appointment as Company Auditor) (Consequential Amendments) Regulations 1991.	In the Schedule, paragraph 69.
S.I. 1991/2036.	The Civil Legal Aid (General) (Amendment) (No.2) Regulations 1991.	Regulation 3.
1992 c. 6.	The Social Security (Consequential Provisions) Act 1992.	In Schedule 2, paragraph 97.
1992 c. 53.	The Tribunals and Inquiries Act 1992.	In Schedule 3, paragraph 21.
1993 c. 19.	The Trade Union Reform and Employment Rights Act 1993.	In Schedule 8, paragraph 39.
S.I. 1993/1354.	The Civil Legal Aid (Scope) Regulations 1993.	The whole instrument.
S.I. 1994/2768.	The Legal Aid (Scope) Regulations 1994.	Regulation 2.
1995 c. 35.	The Criminal Appeal Act 1995.	In Schedule 2, paragraph 17.
1996 c. 18.	The Employment Rights Act 1996.	In Schedule 1, paragraph 36.
1996 c. 25.	The Criminal Procedure and Investigations Act 1996.	Section 46(2).
1996 c. 27.	The Family Law Act 1996.	Section 23(9). Part III. In Schedule 8, in Part I, paragraph 39 and Part II.
1997 c. 25.	The Justices of the Peace Act 1997.	In Schedule 5, paragraph 24.

Access to Justice Act 1999

Reference	Short title or title	Extent of repeal or revocation
1998 c. 37.	The Crime and Disorder Act 1998.	Section 49(1)(j). Section 50(5). In Schedule 8, paragraph 67.
1999 c. 23.	The Youth Justice and Criminal Evidence Act 1999.	Section 40(2).