

The Access to Justice Act 1999 (Commencement No. 3, Transitional Provisions and Savings) Order 2000

(S.I. 2000 No. 774 (C.16))

Legal Services Commission, England and Wales

Made

20th March 2000

The Lord Chancellor, in exercise of the powers conferred on him by section 108(1) of, and paragraph 1(1) and 8 of Schedule 14 to, the Access to Justice Act 1999, and all other powers enabling him in that behalf, makes the following Order:

1. Citation and interpretation

1B-015

(1) This Order may be cited as the Access to Justice Act 1999 (Commencement No. 3, Transitional Provisions and Savings) Order 2000.

(2) In this Order:

(a) “the Act” means the Access to Justice Act 1999 and references to a section, Part or Schedule by number alone mean the section, Part or Schedule so numbered in the Act; “authorised” means authorised under regulation 15 of the Legal Advice and Assistance Regulations 1989 (clients resident abroad);

“clinical negligence proceedings” means proceedings which include:

- (i) a claim for damages in respect of breach of a duty of care or trespass to the person committed in the course of the provision of clinical or medical services (including dental or nursing services); or
- (ii) a claim for damages in respect of professional negligence in the conduct of such a claim;

“the Commission” means the Legal Services Commission established under section 1 of the Act;

“criminal proceedings” means:

- (i) the proceedings mentioned in section 12(2) of the Act;
- (ii) applications for judicial review or habeas corpus relating to criminal investigations or proceedings;
- (iii) prison disciplinary hearings;
- (iv) representations to prison governors and other prison authorities regarding the status, security classification, discipline, transfer and treatment of prisoners;
- (v) representations to the Home Office relating to the mandatory life sentences and other parole reviews;
- (vi) Parole Board proceedings;
- (vii) representations to the High Court against a voluntary bill of indictment;
- (viii) proceedings under the Criminal Procedure and Investigations Act 1996 to quash an acquittal;
- (ix) proceedings under RSC Order 115 in Schedule 1 to the Civil Procedure Rules 1998 for confiscation or forfeiture in connection with criminal proceedings;
- (x) proceedings in a magistrates’ court arising from failure to pay a fine or to obey an order of that court where such failure carries the risk of imprisonment;
- (xi) proceedings under sections 1, 2 and 4 of the Crime and Disorder Act 1998 relating to anti-social behaviour orders or sex offender orders;
- (xii) proceedings under section 8(1)(b) of the Crime and Disorder Act 1998 relating to parenting orders made where an anti-social behaviour order or a sex offender order is made in respect of a child;

Part B Regulations/Orders

- (xiii) proceedings under section 8(1)(c) of the Crime and Disorder Act 1998 relating to parenting orders made on the conviction of a child; and
- (xiv) applications to the Criminal Cases Review Commission;
 - “the Funding Code” means the Funding Code approved under section 9 of the Act;
 - “funded services” means services which are provided directly for a client and funded for that client by the Commission under sections 4 to 11 of the Act as part of the Community Legal Service;
 - “the 1988 Act” means the Legal Aid Act 1988; and
 - “personal injury proceedings” means proceedings (excluding proceedings for clinical negligence) for damages for personal injuries to, or the death of, the claimant or any other person, and “personal injuries” includes any disease and any impairment of a person’s physical or mental condition;
- (b) subject to paragraph (c), unless the context requires otherwise, words and expressions defined in the Act shall have the same meaning in this Order;
- (c) the following words and phrases shall have the same meaning as in the 1988 Act:
 - (i) “representation”;
 - (ii) “advice”;
 - (iii) “assistance”; and
 - (iv) “Legal Aid Board”.

1B-016 2. Commencement of provisions in Access to Justice Act 1999

The following provisions of the Act shall come into force on 1st April 2000:

- (a) in Part I (Legal Services Commission):
 - (i) sections 1 to 11, 19 to 23, 25 and 26;
 - (ii) subject to articles 3 and 4, the following provisions of Schedule 4 (amendments consequential on Part I): paragraphs 1, 2, 10(1) and (3)(b), 11 to 15, 19, 20, 26, 31 to 34, 36, 37, 41 to 46, 48, 50 to 52, and 56; and
 - (iii) section 24 so far as it relates to the provisions of Schedule 4 referred to in sub-paragraph (ii) above;
- (b) in Part II, sections 27, 29 and 30; and
- (c) in Part VII:
 - (i) the repeal or revocation, in Part I of Schedule 15 of, or (as the case may be) of words in, the provisions specified in the Schedule to this Order; and
 - (ii) section 106 so far as it relates to the provisions of Schedule 15 referred to in sub-paragraph (i) above.

1B-017 3. Transitional provisions and savings

Until section 12 of the Act comes into force, paragraph 10(3)(b) of Schedule 4 to the Act shall be modified so that section 47(2A)(a) of the Solicitors Act 1974 reads as follows:

“his conduct, including conduct in the capacity of agent for another solicitor, in connection with the provision for any person of services under the Legal Aid Act 1988; or funded by the Legal Services Commission as part of the Community Legal Service; or”.

1B-018 4.—(1) In this article, “the 1985 Act” means the Administration of Justice Act 1985.

(2) Until section 12 of the Act comes into force, paragraphs 33, 34 and 36 of Schedule 4 to the Act shall be modified so that the provisions of the 1985 Act referred to in paragraphs (3) to (5) respectively read as set out in those paragraphs.

(3) Section 40(1) of the 1985 Act shall read:

“For the purposes of this Part of this Act a legal aid complaint is a complaint relating to the conduct of a barrister or solicitor in connection with the provision for any person of services under the Legal Aid Act 1988 or funded by the Legal Services Commission

The Access to Justice Act 1999

as part of the Community Legal Service, including in the case of a solicitor, provision for any person of such service in the capacity of agent for that person's solicitor.”;

- (4) Section 41(2) of the 1985 Act shall read:
- “Subject to any exclusion or restriction made by those provisions, any disciplinary tribunal which hears a legal aid complaint relating to the conduct of a barrister may, if it thinks fit and whether or not it makes any other order, order that any fees—
- (a) otherwise payable in connection with his services under or in accordance with the Legal Aid Act 1988, or
 - (b) otherwise chargeable in connection with his services in respect of advice or assistance made available under Part III of that Act, or
 - (c) otherwise payable by the Legal Services Commission in connection with services provided for him as part of the Community Legal Service
- shall be reduced or cancelled.”;
- (5) Section 43(3) of the 1985 Act shall read:
- “On the hearing of a legal aid complaint against a solicitor the Tribunal may, if it thinks fit and whether or not it makes any other order on the hearing, order that any costs—
- (a) otherwise payable under or in accordance with the Legal Aid Act 1988, or
 - (b) otherwise chargeable in respect of advice or assistance made available under Part III of that Act
- in connection with services provided by the solicitor, or
- (c) otherwise payable by the Legal Services Commission in connection with services provided by the solicitor as part of the Community Legal Service
- shall be reduced or cancelled.”

5.—(1) Subject to paragraphs (2) and (3), and articles 7, 8, and 11, nothing in the provisions commenced by this Order or the transitional provisions of this Order shall take effect in relation to any of the following:

1B-019

- (a) the application, by virtue of the Community Legal Service (Funding) Order 2000, of regulations made under the 1988 Act to funded services;
- (b) representation, advice and assistance or assistance by way of representation under any part of the 1988 Act relating to actual or contemplated criminal investigations or proceedings;
- (c) representation under Part IV of the 1988 Act:
 - (i) where the application is signed before 1st April 2000 and received by the Legal Aid Board before 2nd May 2000; or
 - (ii) where an emergency certificate is granted by a solicitor before 1st April 2000 and notified to the Legal Aid Board before 2nd May 2000;
- (d) except where sub-paragraph (e) or (f) applies, advice and assistance under Part III of the 1988 Act where the application is signed (or authorised) before 1st January 2000;
- (e) except where sub-paragraph (f) applies, advice and assistance under Part III of the 1988 Act relating to proceedings for personal injury or clinical negligence or to a dispute which may give rise to such proceedings, where the application is signed (or authorised) before 1st April 2000; or
- (f) assistance by way of representation under Part III of the 1988 Act:
 - (i) where the application is signed before 1st April 2000 and received by the Legal Aid Board before 2nd May 2000; or
 - (ii) which is granted by a solicitor before 1st April 2000 and notified to the Legal Aid Board before 2nd May 2000.

(2) Any reference to the following in regulations made under the 1988 Act, in so far as they remain in force, shall be construed in relation to the services mentioned in paragraph (1) as though they were amended as follows:

Part B Regulations/Orders

- (a) any reference to an “Area Director” shall be replaced by a reference to a “Regional Director”, as defined in the Legal Services Commission Regional Arrangements 2000, as amended from time to time;
 - (b) any reference to a “legal aid area” shall be replaced by a reference to a “Legal Services Commission Region” as defined in the Legal Services Commission Regional Arrangements 2000, as amended from time to time;
 - (c) any reference to an “area committee” or an “appropriate area committee” shall be replaced by a reference to a “Committee” as defined in, and appointed in accordance with, the Legal Services Commission Review Panel Arrangements 2000, as amended from time to time;
 - (d) any reference to work “done by a person or body (other than the Board) acting under the terms of a franchising contract which was entered into by the Board pursuant to its powers under section 4 of the Legal Aid Act 1988” shall be construed to include work done under a contract entered into by the Commission pursuant to its powers under section 6 of the Act, where the work was done within the scope of a Franchise Certificate designated as such by the Commission; and
 - (e) for the purposes of paragraph (1)(a), any reference to a “certificate” shall be construed to include a certificate issued under the Funding Code.
- (3) Any reference to the “Legal Aid Fund” in the 1988 Act, and regulations made under it, shall be construed in relation to the services mentioned in paragraph (1), except any which fall within sub-paragraph (b), as though it were replaced by a reference to the “Community Legal Service Fund”.
- (4) Without prejudice to paragraph (1), the repeal of sections 34 and 36 of the 1988 Act shall not affect the power under that Act to make regulations in relation to the services mentioned in paragraph (1).

1B-020 6. Consultation

(1) Consultation undertaken by the Legal Aid Board in relation to the Funding Code before this Order was made is deemed to be consultation by the Commission under section 8(8) of the Act notwithstanding that at the time of that consultation section 8(8) was not in force.

(2) Consultation undertaken by the Lord Chancellor in relation to any remuneration order made under the Act is deemed to be consultation by the Lord Chancellor under section 25(2) of the Act notwithstanding that at the time of that consultation section 25(2) was not in force.

1B-021 7. Assessment of resources

- (1) In this article,
- (a) “Legal Aid Assessment Regulations” means the Civil Legal Aid (Assessment of Resources) Regulations 1989; and
 - (b) “CLS Financial Regulations” means the Community Legal Service (Financial) Regulations 2000.
- (2) With effect from 1st April 2000, on any assessment, further or amended assessment of resources under the Legal Aid Assessment Regulations in respect of the services mentioned in article 5(1)(b) or (c):
- (a) the assisted person’s financial eligibility and contribution shall be calculated by reference to the higher of the relevant figures in the Legal Aid Assessment Regulations and the equivalent figures for the time being in the CLS Financial Regulations, as set out in the following table:

Legal Aid Assessment Regulations	CLS Financial Regulations
4(2)	5(6)
4(2)(a)	5(6)(i)
4(3)	5(6)
4(3)(a)	5(6)(i)
4(4)(a)	38(2)(a)
4(4)(b)	38(2)(b)

(b) regulation 20 of the CLS Financial Regulations shall apply.

8. Costs

1B-022

(1) In this article,

- (a) “Legal Aid General Regulations” means the Civil Legal Aid (General) Regulations 1989; and
- (b) “CLS Costs Regulations” means the Community Legal Service (Costs) Regulations 2000.

(2) Paragraph (3) applies where services mentioned in article 5(1)(c) have been provided in proceedings, and the amount of the assisted person’s liability for costs falls to be determined under regulation 124 of the Legal Aid General Regulations.

(3) With effect from 5th June 2000, subject to paragraph (4), regulations 127 to 130 and 134 to 147 of the Legal Aid General Regulations shall not apply, and the amount of the assisted person’s liability and any application for an order under section 18 of the 1988 Act shall be determined in accordance with regulations 2 and 9 to 13 of the CLS Costs Regulations.

(4) References in the CLS Cost Regulations to “client”, “section 11(1)” and “a costs order against the Commission” shall be construed, respectively, as references to “assisted person”, “section 17(1) of the 1988 Act” and “an order under section 18 of the 1988 Act”.

9. Exclusion from Community Legal Service work

1B-023

With effect from 1st April 2000, the exclusion from legal aid work before that date of any barrister by virtue of section 42 of the Administration of Justice Act 1985 or of any solicitor by virtue of section 47(2) of the Solicitors Act 1974 shall also take effect as an exclusion from providing funded services.

10. Prohibitory directions

1B-024

With effect from 1st April 2000, any prohibitory direction made under regulation 41 of the Civil Legal Aid (General) Regulations 1989 shall also take effect as if it had been made in accordance with the Funding Code.

11. Advice and assistance

1B-025

(1) Subject to paragraph (2), the Commission may refuse an application to exceed the financial limit on the prospective costs of advice or assistance under section 10(1) of the 1998 Act, if it considers that:

- (a) the provision of funded services would be more appropriate; or
- (b) any application for funded services would be refused.

(2) Paragraph (1) does not apply to applications for advice and assistance relating to actual or contemplated criminal investigations or proceedings.

(3) Subject to the provisions of any contract, all claims for payment in respect of advice and assistance mentioned in article 5(1)(d) and (e) shall be submitted so as to be received by the

Part B Regulations/Orders

Commission by whichever is the later of five months after the completion of the work for which payment is claimed and:

- (a) in relation to any claim other than for personal injury or clinical negligence, 30th June 2000; and
 - (b) in relation to any claim for personal injury or clinical negligence, 30th September 2000.
- (4) Subject to paragraph (5), the Commission may refuse claims for payment mentioned in paragraph (3) which are received late without good reason.
- (5) No claim for payment shall be refused unless the solicitor has been given a reasonable opportunity to show why it should not be refused.

20th March 2000

Irvine of Lairg, C.

1B-026

Schedule

Repeals and revocations in Part I of Schedule 15 to come into force on 1st April 2000

1. Parliamentary Commissioner Act 1967.
2. House of Commons Disqualification Act 1975.
3. Northern Ireland Assembly Disqualification Act 1975.
4. Sections 3(5) to (10), 4(5) and (8), 5 to 18, 31, 32, 34 to 40, 42, 45, and 46 of, and Schedule 1, Schedule 2, paragraphs 2, 4, 5, 6a, 7a, 8, 16 to 18, 20, and 21 of Schedule 5, and Schedules 6 to 8 to the Legal Aid Act 1988.
5. Children Act 1989, except section 99(3).
6. Civil Legal Aid (Matrimonial Proceedings) Regulations 1989.
7. Courts and Legal Services Act 1900, except section 59.
8. Legal Aid Act 1988 (Children Act 1989) Order 1991.
9. Companies Act 1989 (Eligibility for Appointment as Company Auditor) (Consequential Amendments) Regulations 1991.
10. Civil Legal Aid (General) (Amendment) (No. 2) Regulations 1991.
11. Social Security (Consequential Provisions) Act 1992.
12. Tribunals and Inquiries Act 1992.
13. Trade Union Reform and Employment Rights Act 1993.
14. Civil Legal Aid (Scope) Regulations 1993.
15. Legal Aid (Scope) Regulations 1994.
16. Employment Rights Act 1996.
17. Family Law Act 1996.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings the following provisions of the Access to Justice Act 1999 into force on 1st April 2000: sections 1 to 11 (Legal Services Commission and Community Legal Service), 19 (services relating to foreign law), 20 (disclosure of information), 21 (misrepresentation), 22 (relationship between service providers and other parties), 23 (Lord Chancellor's guidance), 25 (orders, regulations and directions), 26 (interpretation), 27 (conditional fee agreements), 29 and

30 (costs). Those sections which relate both to civil and to criminal matters are brought into force regarding civil matters only.

Certain other consequential provisions are also brought into force.

The Order also makes transitional arrangements and savings relating to the replacement of the legal aid scheme under the Legal Aid Act 1988 by the new scheme established under the Access to Justice Act 1999, and, in particular, relating to existing cases.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

Provision	Date of commencement	S.I. No.
Sections 36, 40, 42, 46 and 49	27.9.1999	1999/2657
Section 43 and Schedule 6 (partially)		
Section 48 and Schedule 7		
Section 66 and Schedule 9		
Section 67(2) (in certain areas only)		
Section 83(1) (partially)		
Section 83(3) and Schedule 12 (partially)		
Sections 88 and 89		
Section 105		
Section 106 and Schedule 15 (partially)		
Section 53	1.11.1999	
Section 106 and Schedule 15 (partially)		
Section 79	12.11.1999	
Section 106 and Schedule 15 (partially)		
Section 35	1.1.2000	1999/3344
Section 41 and Schedule 5		
Section 43 and Schedule 6 (partially)		
Section 71		
Section 85		
Section 106 and Schedule 15 (partially)		
Section 83(1) (partially)	1.3.2000	
Section 83(3) and Schedule 12 (partially)		