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STATUTORY INSTRUMENTS

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**2001 No. 916 (C. 32)**

**JUSTICES OF THE PEACE,  
ENGLAND AND WALES  
JUSTICES OF THE PEACE,  
NORTHERN IRELAND  
LEGAL SERVICES, ENGLAND AND WALES  
MAGISTRATES' COURTS,  
ENGLAND AND WALES  
PENSIONS, ENGLAND AND WALES  
SUPREME COURT OF ENGLAND AND WALES  
SUPREME COURT OF NORTHERN IRELAND  
GENERAL COMMISSIONERS OF  
INCOME TAX, ENGLAND AND WALES  
GENERAL COMMISSIONERS OF  
INCOME TAX, NORTHERN IRELAND**

The Access to Justice Act 1999 (Commencement No.  
7, Transitional Provisions and Savings) Order 2001

*Made* - - - - *28th February 2001*

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

### **Citation and interpretation**

1.—(1) This Order may be cited as the Access to Justice Act 1999 (Commencement No. 7, Transitional Provisions and Savings) Order 2001.

(2) In this Order “the Act” means the Access to Justice Act 1999, and references to a section, Part, Schedule or paragraph by number alone mean the section, Part, Schedule or paragraph so numbered in the Act.

### **Commencement of provisions of Access to Justice Act 1999**

2. The following provisions of the Act come into force on 1st April 2001:

(a) in Part V:

(i) to the extent that they are not already in force, section 83 and Schedule 12 (Greater London Magistrates' Courts Authority);

(ii) section 90 and Schedule 13 (transfer of clerks' functions to chief executives); and

(iii) section 91 (accounting etc. functions of chief executives); and

(b) in Part VI:

(i) sections 98 (justices and clerks: immunity from costs), 99 (justices and clerks: indemnity), and 100 (assistant justices' clerks: immunity from action); and

(ii) so far as they extend to England and Wales and Northern Ireland only, sections 101 (General Commissioners: immunity from action), 102 (General Commissioners: immunity from costs and expenses), and 103 (General Commissioners and clerks: indemnity); and

(c) in Part VII:

(i) so far as they have not already been effected, the repeals in Part V(6) of Schedule 15;

(ii) the repeals in Part V(7) of Schedule 15;

(iii) the repeal in Part VI of Schedule 15; and

(iv) so far as it relates to those repeals, section 106.

3. The following provisions of the Act come into force on 2nd April 2001:

(a) in Part I:

(i) sections 12 to 18 and Schedule 3 (Criminal Defence Service); and

(ii) to the extent that they are not already in force, section 24 and Schedule 4 (amendments consequential on Part I); and

(b) in Part VII, so far as they have not already been effected, the repeals and revocations in Part I of Schedule 15 and, so far as it relates to those repeals and revocations, section 106.

### **Transitional provisions and savings**

4. The transitional provisions and savings in Schedules 1 and 2 to this Order have effect.

28th February 2001

*Irvine of Lairg, C.*

SCHEDULE 1

Article 4

JUSTICES OF THE PEACE ACT 1997 ETC.: TRANSITIONAL PROVISIONS AND SAVINGS

1. In this Schedule “the 1997 Act” means the Justices of the Peace Act 1997(2).

2. Section 53A of the 1997 Act(3) shall not apply to proceedings commenced before 1st April 2001 in respect of any act or omission of a justice of the peace or justices' clerk in the execution (or purported execution) of his duty—

- (a) as such a justice, or
- (b) as such a clerk exercising, by virtue of any statutory provision, any of the functions of a single justice.

3.—(1) Notwithstanding the commencement of paragraphs 15 to 17 of Schedule 12 to the Act, and the repeal of part of section 55 of the 1997 Act by Part V(6) of Schedule 15 to the Act, section 57 of the 1997 Act(4) shall continue to have effect as if—

- (a) the outer London boroughs and the Common Council of the City of London were responsible authorities for the purposes of payment to them of grants towards the sums specified in sub-paragraph (2); and
- (b) the sums specified in sub-paragraph (2) were payable for the purposes of functions under Part VI of the 1997 Act.

(2) The sums referred to in sub-paragraph (1) are sums payable by the outer London boroughs and the Common Council of the City of London in relation to loan debt contracted to support capital expenditure incurred before 1st April 1990 for the purposes of functions under Part VI of the 1997 Act.

4. The repeal of section 15(1)(a)(ii) of the Superannuation (Miscellaneous Provisions) Act 1967(5) (“the 1967 Act”) by Part V(6) of Schedule 15 to the Act shall not affect the application of section 15 of the 1967 Act in relation to any person who ceased to be a member of the metropolitan civil staffs for the purposes of section 15 of the 1967 Act before the repeal of section 15(1)(a)(ii) of that Act.

5. Notwithstanding the repeal of section 60(4) of the 1997 Act by Part V(7) of Schedule 15 to the Act, the Justices' Clerks (Accounts) Regulations 1973(6) shall continue to have effect in respect of all sums received or paid by, or owed to, a justices' clerk.

6. Section 2A of the Taxes Management Act 1970(7) shall not apply to proceedings commenced in England and Wales or in Northern Ireland before 1st April 2001 in respect of any act or omission of a General Commissioner of income tax in the execution (or purported execution) of his duty.

7. Article 6A of the Magistrates' Courts (Northern Ireland) Order 1981(8) shall not apply to proceedings commenced before 1st April 2001 in respect of any act or omission of a resident magistrate, justice of the peace or clerk of petty sessions in the execution (or purported execution) of his duty—

- (a) as such a magistrate or justice, or

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(2) 1997 c. 25.

(3) Section 53A is inserted by section 98(1) of the Access to Justice Act 1999.

(4) Section 57 was amended by section 10 of the Local Government (Contracts) Act 1997 (c. 65).

(5) 1967 c. 28. Section 15 has been amended, and part has been repealed, by the Superannuation Act 1972 (c. 11), section 14 and Schedule 8. Further amendments have been made by S.I. 1974/520; the Police and Magistrates' Courts Act 1994 (c. 29), Schedule 8, Part II, paragraph 25; and the Greater London Authority Act 1999 (c. 29), Schedule 27, paragraph 20.

(6) S.I. 1973/579, as amended by S.I. 1992/709.

(7) 1970 c. 9. Section 2A is inserted by section 102 of the Access to Justice Act 1999.

(8) S.I. 1981/1675 (N.I. 26). Article 6A is inserted by section 98(2) of the Access to Justice Act 1999.

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- (b) as such a clerk exercising, by virtue of any statutory provision, any of the functions of a magistrates' court.

## SCHEDULE 2

Article 4

### CRIMINAL DEFENCE SERVICE: TRANSITIONAL PROVISIONS AND SAVINGS

**1. In this Schedule:**

“the 1988 Act” means the Legal Aid Act 1988<sup>(9)</sup>;

“authorised” means authorised under regulation 15 of the Legal Advice and Assistance Regulations 1989<sup>(10)</sup> (clients resident abroad);

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

“funded services” means services funded by the Commission under sections 4 to 11 of the Act as part of the Community Legal Service;

“solicitor” includes a firm of solicitors.

**2. Nothing in the provisions commenced by this Order or in the transitional provisions of this Order shall have effect:**

- (a) for the purposes of the application to funded services, by virtue of the Community Legal Service (Funding) Order 2000<sup>(11)</sup>, of the following regulations made under the 1988 Act:
- (i) the Civil Legal Aid (General) Regulations 1989<sup>(12)</sup>;
  - (ii) the Legal Advice and Assistance Regulation 1989;
  - (iii) the Legal Aid in Family Proceedings (Remuneration) Regulations 1991<sup>(13)</sup>; or
  - (iv) the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994<sup>(14)</sup>;
- (b) subject to paragraph 4 of this Schedule, and to the provisions of any contract, in relation to any work carried out under a legal aid order or legal aid certificate dated prior to 2nd April 2001;
- (c) in relation to assistance by way of representation under Part III of the 1988 Act:
- (i) where the application is signed prior to 2nd April 2001 and received by the Commission prior to 10th April 2001; or
  - (ii) which is granted by a solicitor prior to 2nd April 2001 and notified to the Commission prior to 10th April 2001;
- (d) in relation to advice and assistance under Part III of the 1988 Act (other than assistance by way of representation) where the application is signed or is authorised prior to 2nd April 2001;
- (e) for the purposes of assessment for payment, where both a legal aid order under the 1988 Act and a representation order under the Act exist, in proceedings which form part of a single case in that they relate to one or more charges or informations which are preferred

<sup>(9)</sup> 1988 c. 34. This Act is repealed by Part I of Schedule 15 to the Access to Justice Act 1999, subject to immaterial exceptions, and to transitional provisions and savings contained in S.I. 2000/774 and in this Order.

<sup>(10)</sup> S.I. 1989/340. These Regulations were amended by S.I. 2001/829. Together with S.I. 1989/339, 1991/2038 and 1994/228, they are revoked by virtue of the repeal of the enabling provisions in the Legal Aid Act 1988.

<sup>(11)</sup> S.I. 2000/627, as amended by S.I. 2000/1541 and 2001/831.

<sup>(12)</sup> S.I. 1989/339. These Regulations were most recently amended by S.I. 2000/451 and 2001/617.

<sup>(13)</sup> S.I. 1991/2038, as amended by S.I. 2001/830.

<sup>(14)</sup> S.I. 1994/228.

or laid at the same time, or which are founded on the same facts, or which form or are part of a series of offences;

- (f) in relation to any work carried out before 2nd April 2001 and paid for by the Lord Chancellor other than under the terms of any contract; or
- (g) for the application of paragraphs 10(3)(b), 33, 34 and 36 of Schedule 4 to the Act to work carried out under the provisions of the 1988 Act.

3. Notwithstanding the provisions of article 1(2)(a) of the Access to Justice Act 1999 (Commencement No. 3, Transitional Provisions and Savings) Order 2000(15) the Commission shall fund applications for judicial review or habeas corpus relating to criminal investigations or proceedings as part of the Community Legal Service.

4.—(1) Subject to the provisions of any contract, any claim for payment for work carried out under the provisions of the 1988 Act shall be submitted so as to be received by the Commission no later than five months after the completion of the work for which payment is claimed.

(2) Subject to sub-paragraph (3), the Commission may refuse any claim for payment mentioned in sub-paragraph (1) which is received late without good reason.

(3) No claim for payment shall be refused unless the solicitor has been given a reasonable opportunity to show why it should not be refused.

5. Where an application for a legal aid order under the 1988 Act is considered on or after 2nd April 2001, it shall be treated as an application for a representation order under section 14 of the Act.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force on 1st and 2nd April 2001 a number of provisions of the Access to Justice Act 1999.

### *Provisions brought into force on 1st April 2001*

The Greater London Magistrates' Courts Authority becomes the magistrates' courts committee for Greater London and its functions are specified (section 83 and Schedule 12).

The administrative functions of justices' clerks are transferred to justices' chief executives (section 90 and Schedule 13), and provision is made for the accounting functions of justices' chief executives (section 91).

New provision is made for the immunity from costs of justices and justices' clerks (section 98) and of General Commissioners of income tax (section 102); for indemnity for justices and justices' clerks (section 99) and for General Commissioners and their clerks (section 103); and for immunity from action for assistant justices' clerks (section 100) and General Commissioners (section 101).

The Order contains transitional provisions and savings, and consequential repeals.

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*Provisions brought into force on 2nd April 2001*

The Criminal Defence Service is established to provide advice, assistance and representation to individuals involved in criminal investigations or criminal proceedings (sections 12 to 18 and Schedule 3). The remaining consequential amendments in Schedule 4 are brought into force.

The Order makes transitional arrangements and savings relating to the replacement of the criminal legal aid scheme under the Legal Aid Act 1988 by the Criminal Defence Service and, in particular, relating to existing cases. There are also consequential repeals.

**NOTE AS TO EARLIER COMMENCEMENT ORDERS**

*(This note is not part of the Order)*

<i>Provision</i>	<i>Date of commencement</i>	<i>S.I. No.</i>
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)		

<i>Provision</i>	<i>Date of commencement</i>	<i>S.I. No.</i>
Section 83(1) (partially)	1.3.2000	
Section 83(3) and Schedule 12 (partially)		
Section 1 and Schedule 1	1.4.2000	2000/774
Sections 2 to 5		
Section 6 and Schedule 2		
Sections 7 to 11 and 19 to 23		
Section 24 and Schedule 4 (partially)		
Sections 25 and 26		
Sections 27, 29 and 30		
Section 106 and Schedule 15 (partially)		
Sections 37, 38 and 39	31.7.2000	2000/1920
Section 44		
Section 106 and Schedule 15 (partially)		
Section 78 and Schedule 11	31.8.2000	
Section 83(2) (partially)		
Section 106 and Schedule 15 (partially)		
Section 67(2) (partially)	8.1.2001	2000/3280
Sections 92 to 95		
Section 106 and Schedule 15 (partially)		
Sections 96 and 97	19.2.2001	2001/168
Section 106 and Schedule 15 (partially)		