

*These notes refer to the Access to Justice Act 1999
(c.22) which received Royal Assent on 27th July 1999*

ACCESS TO JUSTICE ACT 1999

EXPLANATORY NOTES

A.

FUNDING OF LEGAL SERVICES (PARTS I & II, SECTIONS 1-34)

Commentary

Part I: The Legal Services Commission

Supplementary

121. **Section 19: Foreign law.** This section limits the Community Legal Service and Criminal Defence Service to providing information, advice and other services only in relation to the law of England and Wales (except where foreign law is relevant to proceedings in England and Wales). The Lord Chancellor is given a power to order further exceptions where this is necessary to fulfil the United Kingdom's international obligations. This restriction is the same as that currently existing.
122. **Section 20: Restriction of disclosure of information.** This section provides for the protection of information given to the Commission, the court or any other person or body authorised to undertake functions conferred by the Act.
123. **Section 20** largely repeats the provisions presently found in section 38 of the Legal Aid Act 1988. But it allows information to be disclosed, subject to any regulations to the contrary, for the purposes of the investigation or prosecution of *any* offence or suspected offence. At present, information can only be disclosed for the purpose of prosecuting offences under the 1988 Act itself. This prevents information which indicates that other offences may have been committed from being made available to the appropriate authority for investigation or prosecution. For example, information provided to allow the Commission to assess the means of a claimant might show or suggest that a fraud was being perpetrated in relation to the receipt of social security benefits. This could not be disclosed under the 1988 Act, but it could be disclosed under section 20. Section 20(3)(b) makes clear that information may be disclosed about the value of payments made by the Commission to particular firms or lawyers. This reflects current practice.
124. Disclosure of information in contravention of this section will be an offence punishable by a fine not exceeding level 4 on the scale (currently £2,500). This mirrors the provisions of section 38(4) of the 1988 Act. No prosecution may be brought without the written approval of the Director of Public Prosecutions.
125. **Section 21: Misrepresentation etc.** This section provides criminal penalties for people who give false information about their finances, or otherwise make false statements, in applying for publicly-funded help under the Act. The section largely replicates the equivalent provisions in section 39 of the Legal Aid Act 1988, but extends beyond the person receiving help to anyone who furnishes information. It sets out the proceedings and penalties where those seeking help fail to furnish information required of them under the Act, or make false statements or representations in doing so. It also enables

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the Legal Services Commission to take proceedings in the county courts for recovering any losses caused by these acts.

126. **Section 22: Position of service providers and other parties etc.** Section 22(1) & (4) provides that, unless regulations say otherwise, the fact that services are funded as part of Community Legal Service or Criminal Defence Service shall not affect lawyer-client privilege or the rights of any third party. This mirrors section 31(1) of the 1988 Act.
127. Section 22(2) makes clear that service providers under either scheme may not seek additional remuneration to that funded by the Legal services Commission from their clients. Section 22(3) makes clear that a person chosen to represent a defendant with a right to representation is entitled to be paid if the right is later withdrawn. These provisions mirror sections 31(3) and 31(4) of the 1988 Act respectively. Section 22(5) provides for regulations about court procedures in cases involving funding under the two schemes. This mirrors section 34(2)(b) of the current Act.
128. **Section 23: Guidance.** This section enables the Lord Chancellor to give guidance to the Commission about the discharge its functions. He is required to publish any guidance. However, the Lord Chancellor may not give guidance about the handling of individual cases. The Commission is required to consider any guidance given by the Lord Chancellor.
129. **Sections 24-26 and Schedule 4** make consequential amendments and provisions about orders, regulations and directions under Part I and its interpretation.
130. Section 25(2)-(4) provides for remuneration orders, under sections 6(4), 13(3) and 14(3), about the payments which the Legal Services Commission may make to providers. Before making a remuneration order affecting payments to lawyers, the Lord Chancellor is required to consult the General Council of the Bar and the Law Society. This mirrors provisions in the 1988 Act about regulations dealing with remuneration. Section 25(3) sets out factors which the Lord Chancellor is required to consider before making a remuneration order. These are the need to secure a sufficient number of competent providers; the costs to public funds; and the need to secure value for money. This differs in several respects from the current list of factors in section 34(9) of the 1988 Act.
131. Section 25(9) lists the orders and regulations under Part I of the Act which require Parliamentary approval under the affirmative resolution procedure (see paragraphs 58, 74, 85, 96, 109 & 115 above). All other orders and regulations under this part are subject to the negative resolution procedure – that is they take effect without debate unless there is a successful motion to annul them.