

CRIMINAL DEFENCE SERVICE ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1: Grant of rights of representation

17. *Section 1* amends Schedule 3 to, and section 25 of, the Access to Justice Act 1999. That Schedule makes provision as to which bodies grant rights to representation, and the criteria on which such rights are granted.
18. *Subsection (2)* qualifies the general provision, in paragraph 2(1) of Schedule 3, conferring power on courts to grant rights to representation, with reference to new sub-paragraph (1A).
19. *Subsection (3)* inserts new sub-paragraph (1A) into paragraph 2 of Schedule 3. This provides that courts shall not be able to exercise the power where the LSC has the power to grant a right to representation, unless regulations provide otherwise, or in any other circumstances that may be prescribed.
20. *Subsection (5)* inserts new sub-paragraph (5A) into [paragraph 2 of Schedule 3](#), which provides that courts do not have the power to withdraw the right to representation where the LSC has that same power. *Subsection (4)* makes the necessary consequential amendment to [paragraph 2\(5\) of Schedule 3](#).
21. *Subsection (6)* inserts new paragraph 2A into Schedule 3. This provides that regulations may provide for the LSC to grant the right to representation in criminal proceedings, other than those prescribed under section 12(2)(g) of the 1999 Act (in relation to which the LSC already grant rights to representation) and similarly that the LSC will also have the power to withdraw any right to representation where it has already been granted. This new paragraph allows for regulations to make any consequential amendments or repeal any enactment that the Lord Chancellor considers appropriate.
22. *Subsection (7)* substitutes paragraph 3(2) and (3) of Schedule 3 (which relates to the grant of rights by the LSC) with new paragraph 3A so that the form of the grant may be prescribed in regulations. Paragraph 3A also provides that the regulations may include any transitional provisions that the Lord Chancellor considers appropriate.
23. *Subsection (8)* provides that regulations under paragraph 2A will be subject to the affirmative resolution procedure.

Section 2: Rights to representation: financial eligibility

24. *Section 2* amends Schedule 3 to the 1999 Act to provide for financial eligibility.
25. *Subsection (2)* inserts paragraph 3B which provides that power to grant a right to representation can only be exercised where an individual's financial resources are such that the body considering the application is satisfied that he is eligible. This paragraph also provides that there is an obligation to withdraw the right where an individual's financial resources are not such that he is eligible to be granted a right to representation or that the individual failed to provide information about his resources.

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(c.9) which received Royal Assent on 30th March 2006*

26. Paragraph 3B also provides that regulations may allow exceptions to the provisions outlined in paragraph 24.
27. There are ancillary powers to include in regulations a requirement for individuals to provide information to support the application, and provision for the notification and review of decisions. There is power to prescribe the circumstances when the body reviewing a decision in relation to financial eligibility may refer a question to the High Court. There is also power to make transitional provision.
28. *Subsections (3) and (4)* make consequential amendments to [paragraph 5](#) of [Schedule 3](#).
29. *Subsection (5)* provides that the first regulations under paragraph 3B will be subject to the affirmative resolution procedure.
30. *Subsection (6)* adds a definition of “relevant authority” to section 26 of the 1999 Act.

Section 3: Rights to representation: Contribution orders

31. [Section 3](#) provides for contribution orders to be made against an individual who has been granted public funding.
32. *Subsection (2)* qualifies the general prohibition in section 17(1) of the 1999 Act on requirements to contribute to the cost of representation, but also provides an exception to the existing power in section 17(2) for a court (other than a magistrates’ court) to order a contribution to defence costs, in so far as a contribution order is made under the provisions introduced by this Act.
33. *Subsection (3)* inserts new section 17A into the 1999 Act. This provides for regulations to provide for a prescribed body to order the individual to pay the full costs of representation or a contribution towards them. Regulations may also deal with the type of information that should be provided, how the costs of representation will be determined, how the contribution orders should be paid, interest on payments made after the time when representation is provided or on any outstanding contributions, how an outstanding debt may be recovered – including the power to withdraw representation, the variation or revocation of contribution orders and appeals against the making of a contribution order. Regulations must make provision for the repayment of any overpayment from a contribution order; they must further ensure that no defendant is subject to both a contribution order and Recovery of Defence Costs Order where the total value of both exceeds the total costs of his defence. Regulations may also allow for pilot schemes for contribution orders to be set up in prescribed areas and for a specified period.
34. *Subsection (4)* provides that the first regulations under new section 17A will be subject to the affirmative resolution procedure.

Section 4: Consequential Amendments

35. [Section 4](#) makes consequential amendments to other legislation which are necessitated by the Act. *Subsection (1)* amends the Attachment of Earnings Act 1971 so as to enable a magistrates' court to make an attachment of earnings order to secure the payment of any sum required to be paid under regulations made under the new section 17A(1) in the 1999 Act which is inserted by the Act. A similar power already exists in relation to sums required to be paid under orders under section 17(2) of the 1999 Act.
36. *Subsection (3)* amends provisions in the Children and Young Persons Act 1969 and the Powers of Criminal Courts (Sentencing) Act 2000 which are listed in *subsection (2)*, as a result of the re-introduction of means testing. These provisions restrict courts' powers to deal with a person who is unrepresented. Before the Access to Justice Act 1999 those four provisions, which pre-dated that Act, provided that the courts' powers were limited in respect of an unrepresented person, except where he had refused or failed to apply for legal aid, having had an opportunity to do so, or if legal aid had been refused because

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his financial resources made him ineligible. The second exception was removed by the 1999 Act. With the re-introduction of means testing the exception is now being restored to the pre-1999 Act provisions and added to the one post-1999 Act provision. An exception is also made where the right to representation is withdrawn because the person's financial resources make him ineligible.