

2000 No. 627

LEGAL SERVICES COMMISSION, ENGLAND AND WALES

The Community Legal Service (Funding) Order 2000

<i>Made - - - -</i>	<i>2nd March 2000</i>
<i>Laid before Parliament</i>	<i>7th March 2000</i>
<i>Coming into force</i>	<i>1st April 2000</i>

The Lord Chancellor, in exercise of the powers conferred on him by sections 6(4), 19 and 105 of, and paragraph 1 of Schedule 14 to, the Access to Justice Act 1999^(a), having had regard to the matters specified in section 25(3) and having consulted the General Council of the Bar and the Law Society, makes the following Order:

Citation and commencement

1. This Order may be cited as the Community Legal Service (Funding) Order 2000 and shall come into force on 1st April 2000.

Interpretation

2.—(1) In this Order:

“the Act” means the Access to Justice Act 1999;

“certificate” means a certificate issued under the Funding Code certifying a decision to fund services for the client;

“client” means an individual who receives funded services;

“clinical negligence proceedings” means proceedings which include:

- (a) 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
- (b) a claim for damages in respect of alleged professional negligence in the conduct of such a claim;

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

“family proceedings” means proceedings, other than proceedings for judicial review, which arise out of family relationships, including proceedings in which the welfare of children is determined, and including all proceedings under one or more of the following:

^(a) 1999 c. 22.

- (a) the Matrimonial Causes Act 1973**(a)**;
- (b) the Inheritance (Provision for Family and Dependents) Act 1975**(b)**;
- (c) the Adoption Act 1976**(c)**;
- (d) the Domestic Proceedings and Magistrates' Courts Act 1978**(d)**;
- (e) Part III of the Matrimonial and Family Proceedings Act 1984**(e)**;
- (f) Parts I, II and IV of the Children Act 1989**(f)**;
- (g) Part IV of the Family Law Act 1996**(g)**; and
- (h) the inherent jurisdiction of the High Court in relation to children;

“fund” means the Community Legal Service Fund established under section 5 of the Act;

“funded services” means services which are provided directly for a client and funded for that client by the Commission as part of the Community Legal Service under sections 4 to 11 of the Act;

“Funding Code” means the code approved under section 9 of the Act;

“group litigation” means litigation of a number of claims which give rise to common or related issues of fact or law;

“immigration proceedings” means any proceedings relating to immigration, nationality or asylum in:

- (a) the House of Lords;
- (b) the Court of Appeal;
- (c) the High Court; or before
- (d) the Immigration Appeal Tribunal or an adjudicator;

“personal injury proceedings” means proceedings in which there is a claim for damages in respect of death or any disease or impairment of a person’s physical or mental condition, excluding proceedings for clinical negligence or proceedings arising from the disrepair of, eviction from or obligation to allow quiet enjoyment of residential premises.

(2) References to the levels of service listed in paragraph (3) shall be construed as references to the receipt or provision of those levels of service granted in accordance with the Funding Code.

(3) The levels of service referred to in paragraph (2) are:

- (a) Legal Help;
- (b) Help at Court;
- (c) Legal Representation;
- (d) Help with Mediation; and
- (e) General Family Help.

(4) In this Order, any reference to the provisions of the Civil Legal Aid (General) Regulations 1989**(h)** shall be construed as though they were amended as follows:

- (a) any reference to “assisted person” shall be replaced by a reference to “client”;
- (b) any reference to “authorised summary proceedings” shall be replaced by a reference to “proceedings in a magistrates’ court”;
- (c) in regulation 59, the words “legal aid” shall be replaced by “Legal Services Commission”;

(a) 1973 c. 18.

(b) 1975 c. 63.

(c) 1976 c. 36.

(d) 1978 c. 22.

(e) 1984 c. 42.

(f) 1989 c. 41.

(g) 1996 c. 27.

(h) S.I. 1989/339. These Regulations were most recently amended by S.I. 2000/451. They are revoked by virtue of the repeal of enabling provisions in the Legal Aid Act 1988 (c. 34) by the Access to Justice Act 1999 (c. 22), subject to savings and transitional provisions contained in S.I. 2000/774 (C. 16).

- (d) in regulations 84 and 107, any reference to “regulation 83” shall be replaced by a reference to “regulation 4 of the Community Legal Service (Costs) Regulations 2000(a);”
- (e) in regulation 102, the words “or the Funding Code” shall be inserted after “these Regulations”;
- (f) in regulation 104, the words “or the Crown Court” shall be inserted after “magistrates’ court”;
- (g) in regulation 106A, the words “legal aid only costs” shall be replaced by “costs payable from the Community Legal Service Fund only”; and
- (h) in regulation 113(3), the words “section 16(6) of the Act” shall be replaced by “section 10(7) of the Access to Justice Act 1999”.

Funding of services—Direct payments

3.—(1) The Commission may only fund services as part of the Community Legal Service under section 6(3)(b) of the Act as follows:

- (a) where a certificate was granted before 1st April 2001, to make payments in respect of the provision of Legal Representation in actual or contemplated proceedings other than the following:
 - (i) personal injury;
 - (ii) clinical negligence;
 - (iii) family;
 - (iv) immigration; or
 - (v) before a Mental Health Review Tribunal;
- (b) where authorisation has been given in an individual case under section 6(8)(b) of the Act.

(2) The Commission may only fund services as part of the Community Legal Service under section 6(3)(e) of the Act where authorisation for such funding has been given in an individual case under section 6(8)(b) of the Act.

4. Where the Commission funds services under article 3(1)(a), the provisions of regulations 48, 59 to 63, 84, 100 to 102, 104 to 107A, 108 to 110, 112, 113(1), (2) and (4), 119(1), 122 and 149(7) of the Civil Legal Aid (General) Regulations 1989 shall apply.

Remuneration under contracts

5.—(1) Paragraph (2) applies to contracts which have not been awarded:

- (a) after competitive tendering as to price has taken place; or
- (b) in relation to a particular case (including group litigation or potential group litigation).

(2) Subject to paragraph (1), any contract for the provision of funded services under section 6(3)(a) of the Act which provides for the levels of service in this article shall provide for payment by the Commission to be at rates no higher than the rates in the following paragraphs.

- (3) In relation to:
 - (a) Legal Help; and
 - (b) Help at Court

payment shall be at rates no higher than those provided in Schedule 6, paragraphs 1 and 2 of the Legal Advice and Assistance Regulations 1989**(b)**.

(a) S.I. 2000/441.

(b) S.I. 1989/340. These Regulations, S.I. 1991/2038 and S.I. 1994/228 are revoked by virtue of the repeal of enabling provisions in the Legal Aid Act 1988 (c. 34) by the Access to Justice Act 1999 (c. 22), subject to savings and transitional provisions contained in S.I. 2000/774 (C. 16).

(4) In relation to:

(a) Help with Mediation;

(b) Legal Representation before a Mental Health Review Tribunal; and

(c) Legal Representation before the Immigration Appeal Tribunal or an adjudicator

payment shall be at rates no higher than those provided in Schedule 6, paragraphs 3 and 4 of the Legal Advice and Assistance Regulations 1989.

(5) In relation to General Family Help, payment shall be at rates no higher than the relevant rates provided in the Legal Aid in Family Proceedings (Remuneration) Regulations 1991**(a)**.

(6) In relation to Legal Representation (other than as provided for in paragraph (4)), payment shall be at rates no higher than whichever of those provided by the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994**(b)** or the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 would have been applicable if the representation had been provided under Part IV of the Legal Aid Act 1988**(c)**.

6. Where a contract entered into by the Commission in accordance with section 6(3)(a) of the Act before 1st April 2003 provides that the procedures for assessing the remuneration payable by the Commission shall be the same as those set out in the Civil Legal Aid (General) Regulations 1989, the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994, or the Legal Aid in Family Proceedings (Remuneration) Regulations 1991, the court shall assess the remuneration accordingly.

Foreign Law

7. The Commission may fund as part of the Community Legal Service Legal Help relating to the preparation of applications for transmission under the provisions of the European Agreement on the Transmission of Applications for Legal Aid**(d)**.

Dated 2nd March 2000

Irvine of Lairg, C.

(a) S.I. 1991/2038.

(b) S.I. 1994/228.

(c) 1988 c. 34. Part IV is repealed by the Access to Justice Act 1999 (c. 22), subject to savings in S.I. 2000/774 (C. 16).

(d) Signed at Strasbourg in January 1977 and ratified by the United Kingdom in January 1978.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order imposes conditions on the funding of services as part of the Community Legal Service by the Legal Services Commission regarding:

- (a) direct payments for the provision of funded services; and
- (b) remuneration under contracts for the provision of funded services.

It also provides for the funding of Legal Help for the preparation of applications for transmission under the provisions of the European Agreement on the Transmission of Applications for Legal Aid.

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