Criminal Defence Service Act 2006

2006 CHAPTER 9

An Act to make provision about representation funded as part of the Criminal Defence Service. [30th March 2006]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

VALID FROM 02/10/2006

1 Grant of rights to representation

(1) Schedule 3 to the Access to Justice Act 1999 (c. 22) (grant of right to representation in respect of criminal proceedings) is amended as mentioned in subsections (2) to (7).

(2) In paragraph 2 (grant of right by court), in sub-paragraph (1) (power of court to grant right in respect of proceedings before it), for "except in such circumstances as may be prescribed" there is substituted " subject to sub-paragraph (1A) ".

(3) In that paragraph, after sub-paragraph (1) there is inserted—

"(1A) The power under sub-paragraph (1) shall not be exercisable—

(a) in relation to proceedings in respect of which the Commission has power to grant a right to representation under paragraph 2A, unless regulations otherwise provide, or

(b) in such other circumstances as may be prescribed."

(4) In that paragraph, in sub-paragraph (5) (power of court to withdraw right in respect of proceedings before it), at the beginning there is inserted " Subject to sub-paragraph (5A), ".

(5) In that paragraph, after sub-paragraph (5) there is inserted—

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"(5A) Sub-paragraph (5) does not apply where the Commission has power to withdraw the right to representation in respect of the proceedings."

(6) After the heading "Grant of right by commission" there is inserted—

"2A (1) Regulations may—

(a) provide that the Commission shall have power to grant rights to representation in respect of criminal proceedings of a prescribed description;

(b) provide that the Commission shall, except in such circumstances as may be prescribed, have power to withdraw any rights to representation granted in respect of proceedings of a description prescribed under paragraph (a).

(2) In sub-paragraph (1)(a), the reference to criminal proceedings does not include proceedings prescribed under section 12(2)(g).

(3) Regulations under sub-paragraph (1) may make such consequential amendment or repeal of any enactment, including an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978), as the Lord Chancellor may consider appropriate."

(7) For paragraph 3(2) and (3) (which relate to the grant of rights by the Commission under paragraph 3) there is substituted—

"3A (1) The form of the grant of a right to representation under paragraph 2A or 3 shall be such as may be prescribed.

(2) Regulations under paragraph 2A or 3 may make such transitional provision as the Lord Chancellor may consider appropriate."

(8) In section 25(9) of that Act (regulations subject to affirmative resolution procedure), for "paragraph 4 of Schedule 3" there is substituted " paragraph 2A or 4 of Schedule 3 ".

(9) In paragraph 11 of Schedule 1 to that Act (funding of Legal Services Commission's costs relating to administration etc.), in sub-paragraph (1) (duty of Lord Chancellor to make payments in respect of certain costs) for "and" at the end of paragraph (a) there is substituted—

"(aa) the exercise by the Commission of functions in relation to the Criminal Defence Service other than the funding of services, and".

VALID FROM 02/10/2006

2 Rights to representation: financial eligibility

(1) Schedule 3 to the Access to Justice Act 1999 (c. 22) is amended as mentioned in subsections (2) to (4).

(2) After paragraph 3A there is inserted—

3B "**Financial eligibility**

(1) Power under this Schedule to grant a right to representation may only be exercised in relation to an individual whose financial resources appear to the relevant authority to be such that, under regulations, he is eligible to be granted such a right.

(2) Power under this Schedule to withdraw a right to representation shall be exercised in relation to an individual if it appears to the relevant authority—

(a) that his financial resources are not such that, under regulations, he is eligible to be granted such a right, or

(b) that he has failed, in relation to the right, to comply with regulations under this paragraph about the furnishing of information.

(3) Regulations may make provision for exceptions from sub-paragraph (1) or (2).

(4) Regulations under this paragraph may include—

(a) provision requiring the furnishing of information;

(b) provision for the notification of decisions about the application of—

(i) sub-paragraph (1) or (2), or

(ii) regulations under sub-paragraph (3);

(c) provision for the review of such decisions;

(d) such transitional provision as the Lord Chancellor may consider appropriate.

(5) The provision which may be made under sub-paragraph (4)(c) includes provision prescribing circumstances in which the person or body reviewing a decision may refer a question to the High Court for its decision.

(6) Section 16 of the Supreme Court Act 1981 (appeals from the High Court) shall not apply to decisions of the High Court on a reference under regulations under this paragraph."

(3) In paragraph 5 (criteria for grant of right), in sub-paragraph (1) (question whether right should be granted to be determined according to interests of justice), for "a right to representation should be granted" there is substituted " power to grant a right to representation should be exercised ".

(4) In that paragraph, for sub-paragraph (4) there is substituted—

"(4) Regulations may prescribe circumstances in which the grant of a right to representation shall be taken to be in the interests of justice."

(5) In section 25 of that Act (orders, regulations and directions), after subsection (9) there is inserted—

"(9A) The first regulations under paragraph 3B of Schedule 3 shall not be made unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament."

(6) In section 26 of that Act (interpretation), before the word "and" at the end of the definition of "regulations" there is inserted—

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""relevant authority" means such person or body as may be prescribed,".

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3 Rights to representation: contribution orders

(1) The Access to Justice Act 1999 (c. 22) is amended as follows.

(2) In section 17 (terms of provision of funded services)—

(a) in subsection (1), at the end there is inserted " or regulations under section 17A otherwise provide ", and

(b) in subsection (2), at the end there is inserted " , except insofar as he has already been ordered under regulations under section 17A to pay that cost ".

(3) After section 17 there is inserted—

"**17A Contribution orders**

(1) Regulations may provide that, in prescribed circumstances, where—

(a) an individual has been granted a right to representation, and

(b) his financial resources are such as to make him liable under the regulations to do so,

the relevant authority shall order him to pay the cost of his representation or to make a contribution in respect of that cost of such amount as is fixed by or determined under the regulations.

(2) Regulations under subsection (1) may include—

(a) provision requiring the furnishing of information;

(b) provision for the determination of the cost of representation for the purposes of liability under a contribution order;

(c) provision enabling the relevant authority to require that an amount payable under a contribution order be paid by periodical payments or one or more capital sums, or both;

(d) provision for the payment by an individual of interest (on such terms as may be prescribed) in respect of—

(i) any payment in respect of the cost of representation required by a contribution order to be made by him later than the time when the representation is provided;

(ii) so much of any payment which he is required by a contribution order to make which remains unpaid after the time when it is required to be made;

(e) provision about the enforcement of any liability under a contribution order, including provision for the withdrawal of the individual's right to representation in certain circumstances;

(f) provision for the variation or revocation of contribution orders;

(g) provision for an appeal to lie to such court or other person or body as may be prescribed against a contribution order;

(h) such transitional provision as the Lord Chancellor may consider appropriate.

(3) Regulations under subsection (1) shall include provision for the repayment to an individual of any payment made by him in excess of his liability under a contribution order.

(4) Regulations under subsection (1) shall provide that an order made under the regulations may not order the payment of costs to the extent that they are already the subject of an order under section 17(2).

(5) Regulations under subsection (1) may—

(a) be made so as to have effect only for a specified period not exceeding 12 months;

(b) provide that their provisions are to apply only in relation to one or more prescribed areas.

(6) In this section, "contribution order" means an order under regulations under subsection (1)."

(4) In section 25 (orders, regulations and directions), in subsection (9A) (inserted by section 2 of this Act), after "under" there is inserted " section 17A or ".

VALID FROM 02/10/2006

4 Consequential amendments

(1) In section 1(3) of the Attachment of Earnings Act 1971 (c. 32) (cases in which magistrates' court may make an attachment of earnings order), in paragraph (c) (attachment to secure payment of sum due under order under section 17(2) of the Access to Justice Act 1999 (c. 22)), at the end there is inserted " or under regulations under section 17A(1) of that Act ".

(2) Subsection (3) applies to the following enactments—

(a) section 23(5A) of the Children and Young Persons Act 1969 (c. 54) (security requirement not to be imposed in respect of person not legally represented in court, except in certain cases),

(b) subsection (4A) of that section as it has effect by virtue of section 98 of the Crime and Disorder Act 1998 (c. 37) (requirement to remand to secure accommodation not to apply where person not legally represented in court, except in certain cases),

(c) section 83(3) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (cases in which restriction on imposing custodial sentences on persons not legally represented in court does not apply),

(d) paragraph 5(7) of Schedule 6 to that Act (local authority residence requirement not to be imposed in respect of offender not legally represented in court, except in certain cases), and

(e) paragraph 5A(6) of that Schedule (foster parent residence requirement not to be imposed in respect of offender not legally represented in court, except in certain cases).

(3) In each of the enactments to which this subsection applies—

(a) in paragraph (a) (right to representation funded by the Legal Services Commission as part of the Criminal Defence Service withdrawn because of

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conduct), after "conduct" there is inserted " or because it appeared that his financial resources were such that he was not eligible to be granted such a right ", and

(b) for "or" at the end of that paragraph there is substituted—

"(aa) he applied for such representation and the application was refused because it appeared that his financial resources were such that he was not eligible to be granted a right to it; or".

5 Short title, commencement and extent

(1) This Act may be cited as the Criminal Defence Service Act 2006.

(2) This Act, except this section, shall come into force on such day as the Lord Chancellor may by order made by statutory instrument appoint; and different days may be appointed for different purposes.

(3) The Lord Chancellor may by order made by statutory instrument make such transitional provision or savings as he thinks fit in connection with the coming into force of any provision of this Act.

(4) This Act extends to England and Wales only.

Subordinate Legislation Made

P1 S. 5(2) power fully exercised: 2.10.2006 appointed by {S.I. 2006/2491}, art. 2

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