

CRIMINAL DEFENCE SERVICE ACT 2006

EXPLANATORY NOTES

BACKGROUND

7. The creation of the Criminal Defence Service (CDS) was part of the Government's fundamental reform of the legal aid system, as set out in the Access to Justice Act 1999, which received Royal Assent in July 1999.
8. The purpose of the CDS is to ensure access for individuals involved in criminal investigations or criminal proceedings to such advice, assistance and representation as the interests of justice require.
9. The CDS was implemented and managed by the LSC which was also created by the Access to Justice Act 1999. The General Criminal Contract is the framework within which the CDS operates under the management of the LSC. Solicitors are required to work within quality assured contracts to perform CDS functions.
10. The LSC is responsible for funding legal representation under the Criminal Defence Service. However, under the existing structure, it is the courts – and not the LSC or the Department for Constitutional Affairs (DCA) – which are responsible for granting the right to have funding.
11. The Act enables the Lord Chancellor to confer power to grant rights to have funding on the LSC instead of the court.
12. The old criminal legal aid scheme established by the Legal Aid Act 1988 and abolished by the Access to Justice Act 1999 provided for means testing in deciding whether a person was eligible for representation, and, if so, in deciding whether the represented person should be required to make a contribution to the cost of representation. The Access to Justice Act 1999 did not include provisions parallel to these, other than the powers in section 17 for courts other than magistrates' courts to order a defendant to pay a contribution to defence costs.