

CORONERS AND JUSTICE ACT 2009

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 6 - Legal aid and other payments for legal services

Section 149: Community Legal Service: pilot schemes

669. The creation of the Community Legal Service (CLS) was part of the Government's fundamental reform of the legal aid system, as set out in the Access to Justice Act 1999.
670. The purpose of the CLS is to ensure that individuals who qualify financially and have reasonable grounds for bringing or being part of any action, can receive publicly funded legal assistance in civil matters that are within scope of the civil scheme.
671. The Legal Services Commission (LSC) was created under the Access to Justice Act 1999, and has responsibility for administering the CLS Fund, and setting priorities about the types of services that may be funded; or for carrying out any changes to funding priorities that the Lord Chancellor directs are necessary.
672. The services that may be funded through the CLS Fund are set out in the Funding Code, which also sets out the criteria according to which the LSC decides whether or not to fund services.
673. As the LSC continuously monitors, reviews and enhances the services being provided through the CLS, it will occasionally need to explore or pilot new ways of delivering specialist services so that the costs and benefits can be judged in practice. Section 18A of the Access to Justice Act 1999 (inserted by section 58 of the 2008 Act) contains a power to pilot schemes in relation to the Criminal Defence Service (CDS), but at present there is no express power to pilot civil schemes under the CLS within the Act.
674. **Section 149** amends the Access to Justice Act 1999 to give express power to pilot schemes as part of the CLS. Section 6(8) of the Access to Justice Act 1999 empowers the Lord Chancellor to direct or authorise the LSC to fund the provision of particular types of legal services in specified circumstances. *Subsection (2)* of the section inserts new subsections (8A) and (8B) into section 6 of the 1999 Act to make it clear that the circumstances specified in a direction or authorisation may relate to particular areas or courts and that a direction or authorisation may require or authorise the LSC to fund the provision of certain types of legal service only for particular classes or selections of people.
675. *Subsection (3)* inserts a new section 8A into the Access to Justice Act 1999. New section 8A will enable the Funding Code to contain provisions ("pilot provisions") which are to have effect for period not exceeding three years. The pilot provisions of the Funding Code will be capable of having a limited application; for example the pilot provisions may apply only in relation to a particular area specified in the Code or only in relation to particular classes of person specified in the Code. At the end of the three-

year pilot period the LSC will be able to decide whether to amend the Funding Code so that the pilot provisions have a more general application.

676. *Subsection (4)* makes a consequential amendment to section 9(5) of the Access to Justice Act 1999. The effect of the amendment is that a revised version of the Funding Code which contains changes made in pursuance of new section 8A will not come into force until it has been approved by a resolution of both Houses of Parliament.
677. *Subsection (5)* inserts a new section 11A into the Access to Justice Act 1999. The effect of new section 11A is that subordinate legislation made under the 1999 Act in relation to the CLS will be capable of having a limited application. For example, it will be possible to make subordinate legislation in relation to the CLS that applies only in relation to a particular area or only in relation to a particular description of court. New section 11A specifies that the length of subordinate legislation made in pursuance of the new section is limited to three years. The Lord Chancellor may extend this period to cover any gap between the end of the pilot and extending the pilot more generally.
678. *Subsection (6)* amends section 25 of the Access to Justice Act 1999 to provide for the parliamentary procedure for delegated legislation containing pilot schemes.

Section 150: Excluded services: help in connection with business matters

679. Schedule 2 to the Access to Justice Act 1999 lists those legal services which may not be funded as part of the CLS.
680. Paragraph 1(h) of Schedule 2 currently excludes services consisting of the provision of help in relation to matters arising out of the carrying on of a business. Business cases were excluded from the scope of civil funding as they are low priority cases and alternative forms of funding are available. In addition, only individuals may make applications or be funded as part of the CLS.
681. *Subsection (2)* of section 150 omits paragraph 1(h) and *subsection (3)* replaces it with a new paragraph 1A. The new paragraph clarifies that as well as cases arising out of the carrying on of a business, which can be any activity carried out by an individual with a view to profit, cases which relate to an individual planning or proposing to set up a business, or cases which relate to the transfer or termination of a business, are also excluded from the CLS. Examples are disputes that arise out of the carrying on of a business that is no longer trading and disputes arising out of the preliminary steps of establishing a business regardless of whether the business exists at the time of the application.

Section 151: Criminal Defence Service: information requests

682. This section amends section 17A of and Schedule 3 to the Access to Justice Act 1999. *Subsection (1)* extends the power to seek information from the Commissioners for Her Majesty's Revenue and Customs (HMRC) and the Secretary of State, which at present may be exercised for purposes relating to an individual's financial eligibility for legal aid services, to cover purposes relating to an individual's liability to make contributions towards the cost of those services.
683. *Subsections (3) to (5)* amend paragraph 6 of Schedule 3 to the Access to Justice Act 1999 to provide that requests may be made for information relating to a time specified in the request, as well as for information as at the date of the request. *Subsection (7)* is a consequential amendment to paragraph 7 of Schedule 3 (restrictions on disclosure).
684. *Subsection (4)* amends paragraph 6 of Schedule 3 to allow requests to be made for any previous names or addresses of an individual and for information about an individual's benefit status at any time specified in the request.
685. *Subsection (5)* amends paragraph 6 of Schedule 3 to allow requests to the Commissioners to be made for information about whether or not an individual is (or at

any time was) self-employed and for information about an individual's benefit status at any time.

686. *Subsection (6)* amends paragraph 6 of Schedule 3 to allow information requests to be made about an individual's assets as well as income.
687. *Subsection (8)* amends paragraph 8 of Schedule 3 to clarify how requests as to an individual's employment apply where the individual is an office-holder, and to delete an unnecessary provision relating to the 1998 Act.

Section 152 and Schedule 18: Criminal Defence Service: enforcement of order to pay cost of representation

688. **Section 152** amends sections 17 and 17A of the Access to Justice Act 1999. It also introduces Schedule 18 which inserts new Schedule 3A into that Act.
689. *Subsection (2)* inserts new subsection (4) and (5) into section 17 of the Access to Justice Act 1999 to set out particular matters that may be provided for by regulations on the enforcement of recovery of defence costs orders.
690. Such regulations may provide for the addition of the costs of enforcing liability under a recovery of defence costs order to the amount which is unpaid and, for this purpose new subsection (5) adds a definition of "overdue sum".
691. Under new subsection (4) regulations will be able to provide that overdue sums are recoverable summarily as a civil debt, that is to say through magistrates' courts in accordance with the Magistrates' Courts Act 1980. The regulations will also be able to provide that overdue sums are recoverable, if a county court or the High Court so orders on the application of the person owed the sums, as if they were payable under an order of that court in accordance with rule 70.5 of the [Civil Procedure Rules \(The Civil Procedure \(Amendment No 3\) Rules 2008, SI 2008/3327\)](#), thereby making it unnecessary to begin fresh proceedings in respect of the debt.
692. *Subsection (3)* inserts new subsections (2A) to (2E) into section 17A of the Access to Justice Act 1999. New subsection (2A) provides, as for recovery of defence costs orders, that enforcement regulations may add the costs of enforcing liability under a contribution order to the amount which is unpaid, and in addition that any overdue sums are recoverable summarily as a civil debt or recoverable, if a county court or the High Court so orders, as if they were payable under an order of that court. Enforcement regulations may also provide for the withdrawal of an individual's right to representation in certain circumstances and may empower courts to make motor vehicle orders. These are defined in new subsection (2B) of section 17A as clamping orders and vehicle sale orders, which are themselves defined in new subsections (2C) and (2D) of section 17A. Under a vehicle sale order a motor vehicle which has been fitted with an immobilization device in accordance with enforcement regulations may be sold and the proceeds of sale applied in paying the overdue sum. *Subsection (4)* inserts new Schedule 3A to the Access to Justice Act 1999.
693. New Schedule 3A sets out further provisions relating to motor vehicle orders. Paragraph 2 of new Schedule 3A states that enforcement regulations may in particular make provision for the procedure for making an order, what matters must be included in the order, the fitting of clamping devices and notices to motor vehicles, the removal and storage of motor vehicles, the release of the clamp or the motor vehicle from storage, the conditions which need to be met before the release, sale or other disposal of an unreleased motor vehicle, the imposition of charges in connection with any of the above and the recovery of such charges.
694. Paragraph 3 of new Schedule 3A requires enforcement regulations to provide that a motor vehicle order may be made only on the application of the person or body to which the overdue sum is owed (in practice this is likely to be the LSC).

695. Before a clamping order is made the court must be satisfied (paragraph 4 of new Schedule 3A) that the person has wilfully refused or culpably neglected to pay and that the value of the motor vehicle, if sold, would be likely to be an amount which exceeds half of the estimated recoverable amount. The estimated recoverable amount is the combined total of the amount of the overdue sum and the amount of charges likely to be due under the enforcement regulations.
696. Enforcement regulations must also provide (paragraph 5 of new Schedule 3A) that a clamping order may be made only in relation to a vehicle which is owned by the individual liable to pay the overdue sum. A clamping order may not be made in relation to a vehicle used by a disabled person (paragraph 6 of new Schedule 3A).
697. Paragraph 7 of new Schedule 3A provides that enforcement regulations must also state that no vehicle sale order may be made in respect of the vehicle before the end of a specified period.

Section 153: Statutory instruments relating to the Legal Services Commission

698. Part 1 of the Access to Justice Act 1999 contains a number of powers for the Lord Chancellor to make orders or regulations in respect of the services provided by the LSC as part of the CLS or CDS. However, that Act does not currently contain a general power, which is commonly found in primary legislation, for such secondary legislation to include consequential, incidental, supplementary, transitional, transitory or saving provision.
699. *Subsection (3)* inserts a new subsection (8A) into section 25 of the Access to Justice Act 1999 so that secondary legislation made by the Lord Chancellor (whether in relation to the CLS or the CDS) may include consequential, incidental, supplementary, transitional, transitory and saving provisions.
700. *Subsection (2)* is a consequential amendment to section 2 of the Access to Justice Act 1999 (power to replace LSC with two bodies). Section 2(2) of that Act is no longer needed as the effect of that subsection is replicated by new subsection 25(8A).

Section 154: Damages-based agreements relating to employment matters

701. **Section 154** provides for the regulation of damages-based agreements in respect of claims relating to employment matters. It does this by inserting a new section 58AA into the Courts and Legal Services Act 1990. Damages-based agreements cannot be used in court proceedings but are commonly used by solicitors and claims managers in cases before an employment tribunal.
702. Subsection (1) of the new section 58AA provides that damages-based agreements relating to employment matters which satisfy certain conditions are not unenforceable by reason only of being damages-based agreements. Those damages-based agreements relating to employment matters which do not satisfy the prescribed conditions are unenforceable by virtue of subsection (2).
703. Subsection (3) defines a “damages-based agreement” as an agreement between a person providing advocacy services, litigation services or claims management services and the recipient of those services. The amount that the recipient pays for those services is determined by reference to the amount recovered by him or her from the claim or from proceedings before an employment tribunal.
704. Subsection (4) sets out the conditions that damages-based agreements relating to employment matters must satisfy in order to be enforceable. Subsection (5) enables the Lord Chancellor to make regulations (by affirmative resolution procedure) under subsection (4) and allows different provision to be made in respect of different descriptions of agreements.

*These notes refer to the Coroners and Justice Act 2009
(c.25) which received Royal Assent on 12 November 2009*

705. Subsection (6) sets out the persons who must be consulted before regulations are made. As with regulations made under section 58 of the Courts and Legal Services Act 1990 which regulates conditional fee agreements, this includes senior judiciary, those representing the legal profession and others as the Lord Chancellor considers appropriate. Subsection (7) defines the terms “payment” and “claims management services” for the purposes of the new section 58AA.