

2004 No. 2900

LEGAL SERVICES COMMISSION, ENGLAND AND WALES

The Community Legal Service (Funding) (Amendment No.2) Order 2004

<i>Made</i> - - - -	<i>9th November 2004</i>
<i>Laid before Parliament</i>	<i>9th November 2004</i>
<i>Coming into force</i> - -	<i>30th November 2004</i>

The Secretary of State, in exercise of the powers conferred by sections 6(4) and 19 of the Access to Justice Act 1999(a) and now vested in him(b), having regard to the matters specified in section 25(3) of that Act and having consulted the General Council of the Bar and the Law Society, makes the following Order—

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Community Legal Service (Funding) (Amendment No.2) Order 2004 and shall come into force on 30th November 2004.

(2) In this Order, “the Order” means the Community Legal Service (Funding) Order 2000(c) and an article referred to by number alone means the article so numbered in, and a reference to the Schedule means the Schedule to, that Order.

Amendments to the Community Legal Service (Funding) Order 2000

2. After article 5(1)(b) insert—

“(ba) as part of any pilot which provides for remuneration by way of one or more standard fees;”.

3.—(1) In article 5(2)—

(a) for “paragraph (1)” substitute “paragraphs (1) and (2A)”;

(b) after “in this article” insert “(“a relevant contract”)”.

(2) After article 5(2) insert—

“(2A) Where any relevant contract provides for payment for a unit of work to be based on an average value of units of work previously carried out, paragraph (2) shall not apply but

(a) 1999 c.22.

(b) By virtue of the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), articles 4(1) and 9, Schedule 1 and Schedule 2 paragraph 11(1)(a).

(c) S.I. 2000/627: relevant amending instruments are S.I. 2000/1541, 2001/831 and 2996, 2003/651 and 851 and 2004/597.

the rates applied in calculating that average value shall be no higher than rates 2.5% greater than the rates in the following paragraphs.”.

4.—(1) In article 5(3AA), after “payment shall”, insert “, subject to paragraph (4A),”.

(2) For article 5(4A) substitute—

“(4A) In relation to—

- (a) Legal Representation before a Mental Health Review Tribunal or, subject to paragraph (4B), before the Immigration Appeal Tribunal or an adjudicator appointed under section 81 of the Nationality, Immigration and Asylum Act 2002(a); or
- (b) Legal Help or Help at Court provided within the housing category of work to an applicant on a review by a local authority under section 202 of the Housing Act 1996(b) (but not advice as to whether the applicant should pursue the review) or to a defendant to a possession claim in a county court.

payment shall be at rates no higher than those set out in Part V of the Schedule provided that where advocacy is carried out as part of any service referred to in sub-paragraph (b) payment shall be no higher than the rate set out there for preparation.”.

5. In article 7, after “Transmission of Applications for Legal Aid” insert “and under Council Directive 2002/8/EC of 27th January 2003”.

6. For the heading to Part V of the Schedule substitute—

“LEGAL REPRESENTATION – IMMIGRATION AND MENTAL HEALTH

LEGAL HELP AND HELP AT COURT – HOMELESSNESS REVIEWS AND POSSESSION PROCEEDINGS”.

Transitional provision

7. Article 3 of this Order shall apply to payments made after the coming into force of this Order in relation to claims for payment made on or after 1st April 2004, and in relation to claims for payment made before that date the Order shall have effect as if article 3 of this Order had not been made.

Signed by authority of the Secretary of State

9th November 2004

David Lammy
Parliamentary Under Secretary of State
Department for Constitutional Affairs

(a) 2002 c.41.

(b) 1996 c.52; amended by Housing Act 2002 (c.7) Schedule 1 paragraph 16.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Community Legal Service (Funding) Order 2000 (S.I. 2000/627) (“the 2000 Order”), which relates to the remuneration of services provided by suppliers under the Community Legal Service.

The following amendments are made to article 5 of and the Schedule to the 2000 Order, which prescribe maximum rates of remuneration in contracts between the Legal Services Commission and suppliers–

- (a) an exception from article 5 is made in relation to pilots which provide for standard fees to be paid;
- (b) where a supplier’s fees under a contract are determined by reference to average fees for work previously carried out, the maximum rates which normally apply under the 2000 Order are disapplied, and instead the same maximum rates plus an uplift of 2.5% are applied to the rates used in calculating the figures on which the average is based;
- (c) new enhanced maximum rates are prescribed for services provided in some housing cases.

In addition, article 7 of the 2000 Order is amended to enable the Commission to fund services provided in relation to the preparation of applications for legal aid for transmission to the authorities of another member state under the provisions of Council Directive 2002/8/EC of 27th January 2003.

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