

Criminal Defence Service Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Constitutional Affairs, are published separately as Bill 14 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr David Lammy has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Criminal Defence Service Bill are compatible with the Convention rights.

Criminal Defence Service Bill

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Make provision about representation funded as part of the Criminal Defence Service.

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:—

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)”. 5
- (3) In that paragraph, after sub-paragraph (1) there is inserted—
 - “(1A) The power under sub-paragraph (1) shall not be exercisable— 10
 - (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.” 15
- (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—
 - “(5A) Sub-paragraph (5) does not apply where the Commission has power to withdraw the right to representation in respect of the proceedings.” 20

- (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; 5
 - (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). 10
- (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 Secretary of State may consider appropriate.” 15
- (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. 20
- (2) Regulations under paragraph 2A or 3 may make such transitional provision as the Secretary of State 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”. 25
- (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 Secretary of State 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”. 30

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 (5). 35
- (2) After paragraph 3A there is inserted –
- “Financial eligibility*
- 3B (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. 40
- (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. 5
- (3) Regulations may make provision for exceptions from sub-paragraph (1) or (2)(a).
- (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 – 10
- (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 Secretary of State may consider appropriate.” 15
- (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”. 20
- (4) In that paragraph, for sub-paragraph (4) there is substituted –
- “(4) The grant of a right to representation shall be taken to be in the interests of justice in such circumstances as may be prescribed.”
- (5) In section 26 of that Act (interpretation), before the word “and” at the end of the definition of “regulations” there is inserted – 25
- “relevant authority” means such person or body as may be prescribed.”

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) – 30
- (a) in subsection (1), at the end there is inserted “or regulations under section 17A otherwise provide”,
- (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”. 35
- (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,* 40
- 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; 5
 - (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; 10
 - (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; 15
 - (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; 20
 - (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 Secretary of State 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. 25
- (4) In this section, “contribution order” means an order under regulations under subsection (1).”
- 4 Financial provisions** 30
- There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums payable out of money so provided under any other enactment.*
- 5 Short title, commencement and extent**
- (1) This Act may be cited as the Criminal Defence Service Act 2005.
 - (2) This Act, except this section, shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed for different purposes. 35
 - (3) The Secretary of State 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. 40
 - (4) This Act extends to England and Wales only.

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B I L L

To make provision about representation funded as part of the Criminal Defence Service.

*Presented by Mr David Lammy
supported by
The Prime Minister, Mr Secretary Prescott,
Mr Chancellor of the Exchequer,
Mr Secretary Blunkett, Mr Peter Hain,
and Mr Christopher Leslie.*

*Ordered, by The House of Commons,
to be printed, 15th December 2004.*

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LONDON — THE STATIONERY OFFICE LIMITED
Printed in the United Kingdom by
The Stationery Office Limited
£x.xx