

*These notes refer to the Access to Justice Act 1999  
(c.22) which received Royal Assent on 27th July 1999*

# **ACCESS TO JUSTICE ACT 1999**

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## **EXPLANATORY NOTES**

## **ANNEX A: COMMUNITY LEGAL SERVICE**

### **ELIGIBILITY, FINANCIAL CONDITIONS AND COSTS RULES**

1. A number of changes are planned to the financial conditions for publicly-funded help from the Community Legal Service fund, as compared to the conditions for civil legal aid. The timing of these changes will depend on how quickly the new systems can be developed to bring spending under control. The necessary regulation-making powers are contained in sections 7, 10 and 11 of the Act. This annex sets out the changes to the existing position which, subject to consultation, the Government intends to make in due course under those powers.

#### ***Eligibility for Help***

2. Eligibility for advice and assistance is presently limited to those who would qualify for full legal aid without a contribution. The Government intends to change this so that in future, eligibility for advice and assistance and more substantial help are aligned at the same level. Both would be available *free* for people whose disposable income and capital were below the relevant limit; and available subject to contributions for people between the free and upper limits.
3. This change reflects the Government's intention to give greater priority to advice and assistance, especially in social welfare issues and from the not-for-profit advice sector, rather than litigation. It will also remove the anomaly created by the present eligibility limits, where some people are driven to apply for full legal aid (for which they are more likely to be eligible), when advice and assistance, which is generally cheaper, would have met the needs of the case.

#### ***Financial Conditions***

4. Financial conditions are intended to target the neediest cases by requiring people to pay what they can reasonably afford, but not more, towards the cost of their cases; and by generating receipts to increase the overall amount of help that the system can afford to give. Several changes are planned.

#### ***Graduated contributory scales***

5. At the moment, all assisted parties asked for contributions for full legal aid pay one-third of their disposable income above the free limit, every month for the lifetime of the case. In future, it is proposed to introduce a graduated scale for calculating contributions, with those nearer to the free limit being asked for a smaller proportion of their income, and those with more being asked for a larger proportion. Disposable income would be banded to decide the level of contribution, and the proportion for each income band would apply *only* to income in that band. This change would better reflect ability to pay.

#### ***Capital allowance***

6. At present, a contribution from capital assets towards the cost of a case can be required at two stages.
  - An assisted person has to contribute any disposable capital above a free limit of £3,000 at the start of the case. The property in dispute, and the first £100,000 of equity value that the assisted person owns in his or her home, are discounted when calculating disposable capital. People with disposable capital in excess of £6,000 are generally ineligible for legal aid.
  - If, at the end of a successful case, the Legal Aid Board needs to recover any outstanding costs that have not been recovered from the other side, a statutory charge applies to the property in dispute, including the *full equity* value of the family

home if that was in dispute; but *not* including maintenance payments and the first £2,500 won in a matrimonial case.

The assisted person's liability to contribute towards the cost of his or her case therefore depends on the nature of the case and whether or not a home was in dispute.

7. In future, there would be a single allowance (initially £3,000) covering both capital contributions and the statutory charge. Any unused allowance from the start of the case could be carried forward to defray the statutory charge. This would replace the £2,500 allowance in matrimonial cases, and produce a simpler and more coherent system with the same rules applying to everyone.

#### ***Equity value of the assisted person's home***

8. In addition, the full equity value of the home would in future be counted towards the calculation of disposable capital for the purpose of assessing contributions, with no initial exemption beyond the general £3,000 allowance. The first £100,000 would continue to be discounted for the purpose of assessing eligibility. But the assisted person would not be required to make a contribution from capital tied up in equity at the start of the case. It would only become payable at the end of the case, when the amount of any outstanding costs was known. Furthermore, as with the existing statutory charge, the Legal Services Commission would have discretion to postpone enforcing payment until the next time the home is sold or where its enforcement would cause hardship.
9. The *entire* equity value of the home in dispute is already liable to the statutory charge now. The position in these cases would not change significantly. This proposal would mainly affect people who owned equity in a home which was not in dispute. They might be required to pay significantly more towards the cost of their case than now. But the ability to postpone enforcement would ensure that no-one was forced to sell their home in order to repay costs incurred by the CLS fund. This proposal is intended to provide more equitable treatment between people whose capital is held in different forms.

#### ***Statutory charge enforcement***

10. Where the statutory charge applies to a home, its enforcement is usually postponed until the next time the house is sold. Simple interest runs on the money due to the Board. Furthermore, unlike a second mortgage, there are no ongoing repayments (although it is open to an assisted person to repay the charge by instalments).
11. In future, where the statutory charge is postponed, it is proposed that a more realistic rate of interest should be charged. This change would help place assisted people in a position closer to that faced by private clients.

#### ***Costs Rules***

12. The Government's view is that the rules governing costs between the parties in a case involving public funding should seek to ensure that people with worthwhile cases are not unreasonably deterred by the fear of costs they cannot afford; but that, so far as possible, they face a similar costs discipline as other litigants. The Government proposes to make two changes to the costs rules under the Legal Aid Act 1988.

#### ***Costs protection for assisted parties***

13. Unlike the general position on costs, the court is currently required to consider the means of *both* parties, before ordering costs against an unsuccessful litigant in receipt of legal aid. Furthermore, the assisted party's home cannot be taken into account in assessing his or her means, or be subject to any enforcement process. In practice, costs are rarely awarded against litigants on legal aid.
14. In future, assisted parties would retain most of their protection against paying their opponent's legal costs. But where courts were considering costs orders against assisted

parties, the value of their homes would be counted towards their assets and the bar on enforcing against homes would be removed. This limited proposal is intended to reflect the fact that most assisted parties are unlikely to be able to pay costs even if an order is made against them; but that those who own their homes may have enough capital to pay costs. It also parallels the proposal about contributions from capital.

***The costs position of unassisted parties***

15. Because costs are not normally awarded against assisted parties who lose their case, their successful opponents hardly ever get their costs back. But if a successful unassisted party who was defending a case can satisfy the court that he or she would otherwise suffer “severe financial hardship”, the court can order their costs to be paid from the legal aid fund. In future, it is proposed that this test should be relaxed to mere “financial hardship”. Also, the procedure for seeking costs orders against an assisted person or the CLS fund would be simplified. The courts would consider costs immediately at the end of the case, instead of adjourning, because the parties would be asked to supply evidence of their means at the time of the trial.
16. These proposals are designed to improve the position of successful unassisted opponents, which is a major cause of complaint against the existing scheme. The funding code (under section 8), which will replace the existing merits test, will also help to reduce the number of weak cases that unassisted parties have to contest.