

Lord Clinton-Davis: My Lords, I am much obliged to the noble Baroness for giving way. Would it not be a good idea if whoever is responsible for the matter wrote to the IMO on this important issue to enable that body to respond? All Members of this House who want to attend meetings of the assembly should be able to do so. Having had responsibility for this matter in the past, I realise that very few people are aware of what the IMO does. The organisation is located not very far from here.

Baroness Crawley: My Lords, I am sure that we shall have opportunities to take up my noble friend's point regarding promoting the work of the assembly and making it clearer to noble Lords who have an interest in such policy areas. Certainly, we shall look into that matter. With those comments I hope that the noble Lord, Lord Hanningfield, will feel able to withdraw the amendment.

The noble Lord, Lord Bradshaw, asked how adherence to the protocol would be policed. I understand that ships will be required to carry insurance which will be verified by port state inspection procedures upon entry into port.

Lord Hanningfield: My Lords, I thank the Minister very much for that reply which covered much that noble Lords on these Benches were concerned about. It is interesting to note that a meeting will be held this week and that decisions will be taken on future negotiations and future work. If that process is to take two to four years, we shall not know the result of it until long after the passage of the Bill through both Houses. I hope that we can be informed of the progress of that process through Questions or Statements in this House. I was also very pleased to hear the noble Baroness strongly commend encouraging other countries to sign up to the legislation. It is very important that not just European countries but also

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countries in the rest of the world adhere to it. I thank the Minister for her helpful comments. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Criminal Defence Service Bill [HL]

4.50 pm

Report received.

Clause 1 [*Grant of rights to representation*]:

The Parliamentary Under-Secretary of State, Department for Constitutional Affairs (Baroness Ashton of Upholland) moved Amendment No. 1:

Page 2, line 15, leave out "Secretary of State" and insert "Lord Chancellor"

The noble Baroness said: My Lords, in moving this Amendment, I shall speak also to Amendments Nos. 2, 4, 9, 14, 18 and 19.

The purpose of these amendments is to give the ministerial functions in this Bill relating to legal aid to the Lord Chancellor. The noble Lord, Lord Kingsland, raised the issue in Grand Committee of whether responsibility for legal aid should lie with the Lord Chancellor or the Secretary of State. The noble and learned Lord the Lord Chancellor has given further thought to this and has decided to relocate responsibility for legal aid with the Lord Chancellor.

While the Constitutional Reform Bill was completing its passage, the noble and learned Lord the Lord Chancellor deferred any further transfer of functions between his two ministerial posts until the contours of the reformed office of Lord Chancellor were clear. This has meant that his legal aid functions in secondary legislation made before July 2003 still lie with the Lord Chancellor. It has always been the intention of the noble and learned Lord, Lord Falconer of Thoroton, to locate all the legal aid functions in one ministerial post and, should your Lordships agree to these amendments, that will be the Lord Chancellorship. I beg to move.

Lord Kingsland: My Lords, this matter was discussed extensively both on Second Reading and in Committee. There is no need to go over the arguments. The Minister has agreed, extremely generously, to restore to the Lord Chancellor his rightful responsibilities for legal aid matters. It only remains for me to thank her very much for doing so.

On Question, amendment agreed to.

Baroness Ashton of Upholland moved Amendment No. 2:

Page 2, line 22, leave out "Secretary of State" and insert "Lord Chancellor"

On Question, amendment agreed to.

Lord Goodhart moved Amendment No. 3:

Page 2, line 22, at end insert—

"() In paragraph 4, "Except where regulations otherwise provide" is omitted."

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The noble Lord said: My Lords, Amendment No. 3 stands in my name, together with that of my noble friend Lord Thomas of Gresford and the noble Lord, Lord Kingsland. In moving it, I shall speak also to Amendment No. 8.

The purpose of Amendment No. 3 is not self-evident unless one looks closely at some of the background legislation which it seeks to change. It is therefore necessary for me to explain it briefly. That involves going back to the Access to Justice Act 1999, Schedule 3 of which provides for a right to representation by the Criminal Defence Service—which I will refer to informally as legal aid.

Under paragraph 2 of Schedule 3, legal aid may be granted by a court before which proceedings will take place or, indeed, by other courts as well. That power is subject to the proviso,

"except in such circumstances as may be prescribed".

Under paragraph 3 of Schedule 3, regulations may provide that the legal services provision may grant legal aid. Paragraph 4 provides that,

"Except where regulations otherwise provide, an appeal shall lie to such court or other person or body as may be prescribed against a decision to refuse to grant a right to representation or to withdraw a right to representation".

So far, in fact, the courts have been the sole source of legal aid since the 1999 Act. No regulations have been made under paragraph 3 to give power to the Legal Services

Commission to grant legal aid, and no regulations have been made under paragraph 4 to restrict the right of appeal.

One of the main purposes of the Bill is to facilitate the transfer to the Legal Services Commission of the responsibility for granting legal aid. Although that decision has aroused some controversy and was opposed, for example, by the Bar, we have not thought it appropriate to oppose that particular purpose in the Bill. As explained in the framework document published in May, the Government also intended to remove a right of appeal where legal aid was refused either because of the lack of merits of the case or on the ground of the applicant's failure to meet the criteria for legal aid.

No attempt was made to oust judicial review, but judicial review was inadequate in the view of many people because the court that reviewed the decision could only either approve the decision of the Legal Services Commission or refer it back to the commission to reconsider it. That elimination of appeals was seriously criticised in debates at Second Reading and in Committee. I welcome that the Government have accepted the arguments that we made in relation to the merits test. A court can now hear an appeal and will now be allowed to consider a decision to reject an application on grounds of a lack of merit; that is, a failure to meet the interests of justice test.

However, the Government have not altered the position on the eligibility test and there will still be no appeal on that; there will simply be an administrative reconsideration. The Government try to justify that on the basis that it is only a matter of mathematics. They

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say that all you have to do is look at the figures and make sure that the additions and subtractions have been calculated correctly and you will inevitably come up with the right answer—all that is needed is a check on the accuracy of the calculations. In many cases that is true; but it is not true by any means in all cases. The Government's argument is highly simplistic. Many issues are more complicated than that, even on the test of eligibility. For example, the Government will provide for the aggregation of the means of the applicant for legal aid with those of his or her partner. But what is the test for partnership? That is obviously a potential matter for a court.

Again, there will be cases in which exceptional circumstances require funding for people who fail to meet the basic eligibility criteria. The Government have recognised that in their supplement to the framework document, and they will provide in regulations for special consideration of these cases but, again, without there being any right of appeal. The Government have said on page 12 of the supplement that the test is whether cases require fine judgments that warrant the intervention of the courts, but it seems to me that when one is looking at those exceptional cases it is exactly that test that is met. Those cases frequently will require the fine judgment that warrants the intervention of the courts. So we on these Benches certainly believe that there are strong grounds for saying that the right of appeal should be extended to cases where eligibility is in consideration and not just the merits.

To refuse legal aid to a defendant in a criminal case on the grounds that the defendant has failed to meet the eligibility criteria when that defendant cannot for valid reasons afford to pay for independent representation is quite obviously a denial of access to justice. This is therefore an issue of principle. The basic rule must be that a decision that may lead to a denial of access to justice should be taken only by a judge or at the least, if taken by someone else, should be subject to appeal to a judge or a court. That is particularly so in a case such as this, where the Legal Services Commission has a conflict of interests, because it has the responsibility for keeping legal aid within budget and therefore arguably has interests which potentially conflict with those of applicants.

We have therefore put down these two amendments to preserve appeals. Amendment No. 3 removes from paragraph 4 of Schedule 3 to the Access to Justice Act power by regulation to remove a right of appeal. Amendment No. 8 is consequential on this: it removes a power which would then be superfluous if the right of appeal cannot be removed. These amendments have been strongly supported in a briefing paper that we have received from the Law Society.

We believe that the Government have not yet moved enough on this issue, and that a total removal of the right of appeal on eligibility grounds cannot be justified. I beg to move.

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5 pm