

*These notes refer to the Justice Act (Northern Ireland)  
2011 (c.24) which received Royal Assent on 4 May 2011*

# Justice Act (Northern Ireland) 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 8: Solicitors' rights of audience**

This Part extends solicitors' rights of audience in the High Court and Court of Appeal.

It creates a system of authorisation for solicitors wishing to exercise rights of audience in the High Court and Court of Appeal and the authorisation process is to be prescribed by the Law Society in regulations. A solicitor holding authorisation shall have the same rights of audience as counsel in the High Court and Court of Appeal. The sections also contain a range of measures which are designed to ensure that competition for advocacy services is maintained and conflicts of interest prevented.

The Part gives the Department an order-making power to make technical amendments to certain legal aid primary legislation to take account of the extension of solicitors' rights of audience. These orders are subject to the negative resolution procedure.

#### ***Section 88: Authorisation of Society conferring additional rights of audience***

This section makes various amendments to the Solicitors (Northern Ireland) Order 1976 which are related to the granting of authorisation to solicitors by the Law Society to appear in the High Court and Court of Appeal. The application for authorisation shall be made in a way, and accompanied by such fee, as the Law Society may prescribe together with such information the Society may reasonably require.

The Law Society is required to make regulations with regard to the education, training and experience which a solicitor must possess before authorisation can be granted. These regulations may provide that a solicitor who has already completed such training, education or experience shall be taken to hold such authorisation. These regulations are subject to the concurrence of the Lord Chief Justice and the Department which must consult with the Attorney General.

Where a solicitor meets the prescribed training, education and experience requirements, the Law Society shall grant authorisation. The Law Society must maintain a register of authorised solicitors.

***Section 89: Rights of audience of solicitors***

This section amends the Judicature (Northern Ireland) Act 1978 to provide that a solicitor holding authorisation shall have the same rights of audience as counsel in the High Court and Court of Appeal. It also amends the Solicitors (Northern Ireland) Order 1976 to create certain duties which will apply where a solicitor is minded to engage an authorised solicitor to represent a client in the High Court or Court of Appeal or, where he is an authorised solicitor, to provide that representation himself.

Specifically, in these circumstances, a solicitor will be required to advise their client in writing of the advantages and disadvantages of representation by an authorised solicitor and by counsel respectively and that the decision as to representation is entirely that of the client. The detail of the matters to be covered by this advice is to be prescribed by the Law Society in regulations. These regulations are subject to the concurrence of the Lord Chief Justice and the Department, which must consult with the Attorney General.

When advising a client, a solicitor must act in the best interest of the client and give effect to any decision of the client. The solicitor must inform the court, in a way and timescale provided by court rules, that they have complied with these requirements. If a solicitor breaches any of these duties, any person may make a complaint to the Solicitors' Disciplinary Tribunal.

This section also makes a technical amendment to the County Courts (Northern Ireland) Order 1980 to remove a restriction which prevents a solicitor being retained by another solicitor as an advocate. A solicitor may now instruct an authorised solicitor to act on behalf of a client in the County Court.

***Section 90: Consequential and supplementary provisions***

This section gives the Department an order-making power to make technical amendments to certain legal aid primary legislation to take account of the extension of solicitors' rights of audience. These orders are to be subject to the negative resolution procedure