

*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**

### ***B.***

#### **PROVISION OF LEGAL SERVICES (SECTIONS 35-53)**

##### ***Background***

##### ***Rights of audience etc.***

150. The background to these proposals is set out in a consultation paper issued by the Lord Chancellor's Department in June 1998 - *Rights of Audience and Rights to Conduct Litigation in England and Wales: The Way Ahead*.
151. Rights to appear as an advocate in court (rights of audience) and rights to do the work involved in preparing cases for court (rights to conduct litigation) are governed by the Courts and Legal Services Act 1990. The 1990 Act leaves it to 'authorised bodies' (currently the Bar Council, the Law Society and the Institute of Legal Executives) to set the rules which govern the rights of their members, subject to a statutory approval process under which new or altered rules must be submitted for the approval of the Lord Chancellor and the four 'designated judges' (the Lord Chief Justice, Master of the Rolls, President of the Family Division and Vice-Chancellor). Before making their decisions the Lord Chancellor and designated judges receive and consider the advice of the Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC) and of the Director General of Fair Trading. The Lord Chancellor and each of the designated judges must approve the application before it can succeed. Applications for designation as a new authorised body follow a similar procedure, with the additional requirement that the designation of the new body is made by Order in Council subject to Parliamentary approval.
152. The Government believes that the existing approval procedures are convoluted and slow, and that rights of audience are currently too restrictive. Some applications for approval have taken several years to be processed, in part due to the need for applications to meet the approval of several parties. Rights of audience in the higher courts (the House of Lords, Court of Appeal, High Court and Crown Court) remain restricted to barristers in private practice and a small number of solicitor advocates.
153. The Act will make the Bar Council and the Institute of Legal Executives authorised bodies for the purpose of granting rights to conduct litigation to their members. At present the Law Society is the only body able to grant these rights; so currently only solicitors are able to conduct litigation

##### ***Complaints handling***

154. The relevant professional body is responsible, in the first instance, for dealing with complaints about the conduct or competence of one of its members. Solicitors constitute by far the biggest branch of the legal profession, and complaints about them are handled by the Office for the Supervision of Solicitors, which is an arm of the Law Society. The Law Society's powers to discipline solicitors are contained in the Solicitors Act 1974

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(or, in the case of solicitors practices' incorporated as companies, in the Administration of Justice Act 1985 which provided for that form of organisation). Serious disciplinary cases are heard by the independent Solicitors Disciplinary Tribunal, which consists of experienced solicitors and lay members appointed by the Master of the Rolls.

155. The Legal Services Ombudsman was established by the Courts and Legal Services Act 1990. The current Ombudsman is Ann Abraham. She is responsible for overseeing the complaints handling procedures of (currently) four professional bodies: the General Council of the Bar, the Law Society, the Institute of Legal Executives and the Council on Licensed Conveyancers. (The Ombudsman would also oversee any other bodies authorised under the provisions of the 1990 Act – see paragraphs 151 above & 169 below). The Ombudsman investigates allegations about the way in which a professional body has handled a complaint against one of its members. She has power to make recommendations to the professional body or the individual practitioner, including recommendations that either should pay compensation or costs to the complainant.
156. The measures in the Act about complaints handling are motivated primarily by concerns, expressed by the Legal Services Ombudsman and others, about the performance of the Office for the Supervision of Solicitors (OSS). The OSS receives over 2,500 cases a month. There are currently 17,000 unresolved cases and a waiting-list of over 6 months. The Ombudsman criticised the OSS in her annual report for 1998, *“Modernising Justice”... Modernising Regulation?*, published on 30<sup>th</sup> June 1999.