

ACCESS TO JUSTICE ACT 1999

EXPLANATORY NOTES

B.

PROVISION OF LEGAL SERVICES (SECTIONS 35-53)

Commentary

Legal Services Complaints Commissioner

197. **Section 51: The Commissioner.** This section provides for the appointment of a Legal Services Complaints Commissioner and gives effect to **Schedule 8 (Legal Services Complaints Commissioner)** which makes detailed provision about the new post. These largely mirror the provisions for the post of Legal Services Ombudsman (in Schedule 3 to the Courts and Legal Services Act 1990) so that the two posts could be combined, if considered appropriate. The Government has announced that it does not intend to appoint a Commissioner for at least 18 months after Royal Assent, and then only if a professional body is fulfilling its responsibility for complaints inadequately. Paragraph 10 of Schedule 8 allows for the appointment of an Acting Commissioner, for example to undertake particular functions if there might be a conflict of interest if the Commissioner undertook them.
198. **Paragraphs 1 & 2** of Schedule 8 allow the Commissioner to make appropriate provision for the discharge of his or her functions, including their delegation to others, subject to any directions made and published by the Lord Chancellor. Paragraphs 3 & 4 provide for the remuneration of the Commissioner, and the appointment of staff and their pay and pensions. Paragraph 5 requires the Commissioner to make an annual report, and paragraph 6 provides for the audit of accounts.
199. Where (under section 52) the Lord Chancellor has directed the Commissioner to exercise functions in relation to a professional body, paragraph 7 empowers the Lord Chancellor to require that body to contribute towards the Commissioner's costs. It is in these circumstances that the Lord Chancellor might also require the body to contribute towards the costs of the Legal Services Ombudsman (see paragraph 196 above).
200. **Section 52: Commissioner's functions.** This section sets out the powers of the Commissioner, and provides for the Lord Chancellor to direct the Commissioner to exercise one or more of those powers in relation to a relevant professional body. (The relevant bodies are those supervised by the Legal Services Ombudsman – see paragraph 155 above). The Lord Chancellor may only make a direction when he considers that a body is not handling complaints against its members effectively and efficiently. This means that the Commissioner's powers might be brought into effect for some professional bodies but not others.
201. Subsection (2) lists the Commissioner's powers. These include the power to order a professional body to produce a plan for improving its complaints-handling procedures. If a body fails to produce or implement a plan, subsection (3) empowers the Commissioner to impose a penalty, proportionate to the size of the body and the number of complaints against it. The Lord Chancellor may set a maximum amount for any

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

penalty, by order subject to Parliamentary approval under the affirmative resolution procedure (subsections (5) & (9)).