



# Access to Justice Act 1999

## 1999 CHAPTER 22

### PART III

#### PROVISION OF LEGAL SERVICES

##### *Rights of audience and rights to conduct litigation*

#### **36 Barristers and solicitors.**

For sections 31 to 33 of the <sup>M1</sup>Courts and Legal Services Act 1990 (deemed rights of barristers and solicitors) substitute—

##### **“31 Barristers and solicitors.**

- (1) Every barrister shall be deemed to have been granted by the General Council of the Bar a right of audience before every court in relation to all proceedings (exercisable in accordance with the qualification regulations and rules of conduct of the General Council of the Bar approved for the purposes of section 27 in relation to the right).
- (2) Every solicitor shall be deemed to have been granted by the Law Society—
  - (a) a right of audience before every court in relation to all proceedings (exercisable in accordance with the qualification regulations and rules of conduct of the Law Society approved for the purposes of section 27 in relation to the right); and
  - (b) a right to conduct litigation in relation to every court and all proceedings (exercisable in accordance with the qualification regulations and rules of conduct of the Law Society approved for the purposes of section 28 in relation to the right).
- (3) A person shall not have a right of audience by virtue of subsection (1) if—
  - (a) he has not been called to the Bar by an Inn of Court; or

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- (b) he has been disbarred, or is temporarily suspended from practice, by order of an Inn of Court.”

**Marginal Citations**

M1 1990 c.41.

VALID FROM 31/07/2000

**37 Rights of audience: employed advocates.**

In the <sup>M2</sup>Courts and Legal Services Act 1990, after section 31 (as substituted by section 36 above) insert—

**“31A Employed advocates.**

- (1) Where a person who has a right of audience granted by an authorised body is employed as a Crown Prosecutor or in any other description of employment, any qualification regulations or rules of conduct of the body relating to that right which fall within subsection (2) shall not have effect in relation to him.
- (2) Qualification regulations or rules of conduct relating to a right granted by a body fall within this subsection if—
  - (a) they limit the courts before which, or proceedings in which, that right may be exercised by members of the body who are employed or limit the circumstances in which that right may be exercised by them by requiring them to be accompanied by some other person when exercising it; and
  - (b) they do not impose the same limitation on members of the body who have the right but are not employed.”

**Marginal Citations**

M2 1990 c.41.

VALID FROM 31/07/2000

**38 Employees of Legal Services Commission.**

In the Courts and Legal Services Act 1990, after section 31A (inserted by section 37 above) insert—

**“31B Advocates and litigators employed by Legal Services Commission.**

- (1) Where a person who has a right of audience or right to conduct litigation granted by an authorised body is employed by the Legal Services Commission, or by any body established and maintained by the Legal

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Services Commission, any rules of the authorised body which fall within subsection (2) shall not have effect in relation to him.

- (2) Rules of a body fall within this subsection if they are—
- (a) rules of conduct prohibiting or limiting the exercise of the right on behalf of members of the public by members of the body who are employees; or
  - (b) rules of any other description prohibiting or limiting the provision of legal services to members of the public by such members of the body,
- and either of the conditions specified in subsection (3) is satisfied.
- (3) Those conditions are—
- (a) that the prohibition or limitation is on the exercise of the right, or the provision of the services, otherwise than on the instructions of solicitors (or other persons acting for the members of the public); and
  - (b) that the rules do not impose the same prohibition or limitation on members of the body who have the right but are not employees.”

VALID FROM 31/07/2000

### 39 Rights of audience: change of authorised body.

In the <sup>M3</sup>Courts and Legal Services Act 1990, after section 31B (inserted by section 38 above) insert—

#### “31C Change of authorised body.

- (1) Where a person—
- (a) has at any time had, and been entitled to exercise, a right of audience before a court in relation to proceedings of any description granted by one authorised body; and
  - (b) becomes a member of another authorised body and has a right of audience before that court in relation to that description of proceedings granted by that body,
- any qualification regulations of that body relating to that right shall not have effect in relation to him.
- (2) Subsection (1) does not apply in relation to any qualification regulations to the extent that they impose requirements relating to continuing education or training which have effect in relation to the exercise of the right by all members of the body who have the right.
- (3) Subsection (1) does not apply to a person if he has been banned from exercising the right of audience by the body mentioned in paragraph (a) of that subsection as a result of disciplinary proceedings and that body has not lifted the ban.”

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#### Marginal Citations

M3 1990 c.41.

#### 40 Rights to conduct litigation: barristers and legal executives.

- (1) Section 28 of the Courts and Legal Services Act 1990 (rights to conduct litigation) is amended as follows.
- (2) In the definition of “authorised body” in subsection (5), after paragraph (a) (which specifies the Law Society), insert—
  - “(aa) the General Council of the Bar;
  - “(ab) the Institute of Legal Executives; and”.
- (3) After that subsection insert—
 

“(5A) Nothing in this section shall be taken to require the General Council of the Bar or the Institute of Legal Executives to grant a right to conduct litigation.”

VALID FROM 01/01/2000

#### 41 Authorised bodies: designation and regulations and rules.

Schedule 5 (which substitutes new provisions for sections 29 and 30 of, and Schedule 4 to, the Courts and Legal Services Act 1990) has effect.

#### 42 Overriding duties of advocates and litigators.

- (1) In section 27 of the <sup>M4</sup>Courts and Legal Services Act 1990 (rights of audience), after subsection (2) insert—
 

“(2A) Every person who exercises before any court a right of audience granted by an authorised body has—

  - (a) a duty to the court to act with independence in the interests of justice; and
  - (b) a duty to comply with rules of conduct of the body relating to the right and approved for the purposes of this section;

and those duties shall override any obligation which the person may have (otherwise than under the criminal law) if it is inconsistent with them.”
- (2) In section 28 of that Act (rights to conduct litigation), after subsection (2) insert—
 

“(2A) Every person who exercises in relation to proceedings in any court a right to conduct litigation granted by an authorised body has—

  - (a) a duty to the court to act with independence in the interests of justice; and
  - (b) a duty to comply with rules of conduct of the body relating to the right and approved for the purposes of this section;

and those duties shall override any obligation which the person may have (otherwise than under the criminal law) if it is inconsistent with them.”

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#### **Marginal Citations**

**M4** 1990 c.41.

### **43 Minor and consequential amendments.**

Schedule 6 (which makes minor and consequential amendments relating to rights of audience and rights to conduct litigation) has effect.

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#### **Commencement Information**

**II** S. 43 wholly in force at 1.1.2000; s. 43 not in force at Royal Assent see s. 108(1); s. 43 in force for certain purposes at 27.9.1999 by S.I. 1999/2657, art. 2(a); s. 43 in force at 1.1.2000 insofar as not already in force by S.I. 1999/3344, art. 2(a) (with art. 4)

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