



Access to Justice Act 1999

1999 CHAPTER 22

PART III

PROVISION OF LEGAL SERVICES

Modifications etc. (not altering text)

- C1** Pt. 3: functions of the Lord Chancellor transferred (19.8.2003) to the Secretary of State by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 4, [Sch. 1](#) (with art. 6)

Legal Services Consultative Panel

35 Replacement of ACLEC by Consultative Panel.

- (1) The Lord Chancellor's Advisory Committee on Legal Education and Conduct is abolished.
- (2) In the ^{M1}Courts and Legal Services Act 1990, after section 18 insert—

“ The Legal Services Consultative Panel

18A The Consultative Panel.

- (1) The Lord Chancellor shall appoint persons to form a panel to be known as the Legal Services Consultative Panel.
- (2) In appointing persons to the Consultative Panel the Lord Chancellor shall have regard to the desirability of securing that the Consultative Panel includes persons who (between them) have experience in or knowledge of—
 - (a) the provision of legal services;
 - (b) the lay advice sector;
 - (c) civil or criminal proceedings and the working of the courts;

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- (d) legal education and training;
 - (e) the maintenance of the professional standards of persons who provide legal services;
 - (f) the maintenance of standards in professions other than the legal profession;
 - (g) consumer affairs;
 - (h) commercial affairs; and
 - (i) social conditions.
- (3) The Consultative Panel shall have—
- (a) the duty of assisting in the maintenance and development of standards in the education, training and conduct of persons offering legal services by considering relevant issues in accordance with a programme of work approved by the Lord Chancellor and, where the Consultative Panel considers it appropriate to do so, making recommendations to him;
 - (b) the duty of providing to the Lord Chancellor, at his request, advice about particular matters relating to any aspect of the provision of legal services (including the education, training and conduct of persons offering legal services); and
 - (c) the functions conferred or imposed on it by other provisions of this Act or any other enactment.
- (4) The Consultative Panel may, in performance of the duty in subsection (3)(a), seek information from or give advice to any body or person.
- (5) The Lord Chancellor shall publish—
- (a) any recommendations made to him by the Consultative Panel in performance of the duty in paragraph (a) of subsection (3); and
 - (b) any advice provided to him by the Consultative Panel in performance of the duty in paragraph (b) of that subsection.
- (6) The Lord Chancellor shall consider any recommendations made to him by the Consultative Panel in performance of the duty in subsection (3)(a).
- (7) The Lord Chancellor—
- (a) shall make available to the Consultative Panel appropriate administrative support; and
 - (b) may pay to any of the persons forming it any such allowances, and make any such reimbursement of expenses, as he considers appropriate.
- (8) For the purposes of the law of defamation the publication of any advice by the Consultative Panel in the exercise of any of its functions shall be absolutely privileged.”
- (3) In section 119(1) of that Act (interpretation), after the definition of “authorised practitioner” insert—
- ““Consultative Panel” means the Legal Services Consultative Panel;”.
- (4) In Schedule 9 to that Act (exemption from prohibition on preparation of probate papers: approval)—

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- (a) for “Advisory Committee” (in each place) substitute “ Consultative Panel ”,
 - (b) in paragraph 2(1), for “Advisory Committee’s” substitute “ Consultative Panel’s ”, and
 - (c) in paragraphs 2(3) and 8(3), for “Committee” (in each place) substitute “ Consultative Panel ”.
- (5) In the First Schedule to the ^{M2}Public Records Act 1958 (definition of public records), in Part II of the Table set out at the end of paragraph 3, insert at the appropriate place—
- “The Legal Services Consultative Panel.”

Marginal Citations

- M1** 1990 c.41.
M2 1958 c.51.

Rights of audience and rights to conduct litigation

36 Barristers and solicitors.

For sections 31 to 33 of the ^{M3}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
 - (b) he has been disbarred, or is temporarily suspended from practice, by order of an Inn of Court.”

Marginal Citations

- M3** 1990 c.41.

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

In the ^{M4}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

M4 1990 c.41.

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 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

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- (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.”

39 Rights of audience: change of authorised body.

In the ^{M5}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.”

Marginal Citations

M5 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.”

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.

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42 Overriding duties of advocates and litigators.

- (1) In section 27 of the ^{M6}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.”

Marginal Citations

M6 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.

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)

Barristers and solicitors

44 Barristers employed by solicitors etc.

- (1) Where a barrister is employed by—
- (a) a solicitor or other authorised litigator (within the meaning of the ^{M7}Courts and Legal Services Act 1990), or
 - (b) a body recognised under section 9 of the ^{M8}Administration of Justice Act 1985 (incorporated solicitors’ practices),

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any rules of the General Council of the Bar which impose a prohibition or limitation on the provision of legal services shall not operate to prevent him from providing legal services to clients of his employer if either of the conditions specified in subsection (2) is satisfied.

- (2) Those conditions are—
- (a) that the prohibition or limitation is on the provision of the services otherwise than on the instructions of a solicitor (or other person acting for the client), and
 - (b) that the prohibition or limitation does not apply to barristers who provide legal services but are not employees.

Marginal Citations

M7 1990 c.41.

M8 1985 c.61.

45 Fees on application for appointment as Queen’s Counsel.

- (1) A person who applies to the [F¹ Secretary of State] to be recommended for appointment as Queen’s Counsel in England and Wales shall pay a fee to the [F¹ Secretary of State].
- (2) The amount of the fee shall be specified by order made by the [F¹ Secretary of State]; and in determining that amount the [F¹ Secretary of State] shall have regard to the expenses incurred by him in considering such applications.
- (3) An order under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) This section does not affect section 9 of the ^{M9}Great Seal (Offices) Act 1874 (under which fees are charged in respect of the grant of Letters Patent under the Great Seal for appointment as Queen’s Counsel).

Textual Amendments

F1 Words in s. 45 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 11\(1\)\(c\)](#)

Marginal Citations

M9 1874 c.81.

46 Bar practising certificates.

- (1) If the General Council of the Bar makes rules prohibiting barristers from practising as specified in the rules unless authorised by a certificate issued by the Council (a “practising certificate”), the rules may include provision requiring the payment of fees to the Council by applicants for practising certificates.
- (2) Rules made by virtue of subsection (1)—
 - (a) may provide for the payment of different fees by different descriptions of applicants, but

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- (b) may not set fees with a view to raising a total amount in excess of that applied by the Council for the purposes of.
- [^{F2}(i)] the regulation, education and training of barristers and those wishing to become barristers
 - [^{F3}(ii)] the participation by the Council in law reform and the legislative process,
 - (iii) the provision by barristers and those wishing to become barristers of free legal services to the public,
 - (iv) the promotion of the protection by law of human rights and fundamental freedoms, and
 - (v) the promotion of relations between the Council and bodies representing the members of legal professions in jurisdictions other than England and Wales.]
- (3) The [^{F4} Secretary of State] may by order made by statutory instrument—
- (a) amend subsection (2)(b) by adding to the purposes referred to in it such other purposes as the [^{F4} Secretary of State] considers appropriate, or
 - (b) vary or revoke an order under paragraph (a).
- (4) No order shall be made under subsection (3) unless—
- (a) the [^{F4} Secretary of State] has consulted the Council, and
 - (b) a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (5) No provision included in rules by virtue of subsection (1), and no other provision of rules made by the Council about practising certificates, shall have effect unless approved by the [^{F4} Secretary of State].
- (6) The Council shall provide the [^{F4} Secretary of State] with such information as he may reasonably require for deciding whether to approve any provision of rules made by the Council about practising certificates.

Textual Amendments

- F2** S. 46(2)(b)(i) renumbered (31.1.2001) by S.I. 2001/135, art. 2
- F3** S. 46(2)(b)(ii)-(v) inserted (31.1.2001) by S.I. 2001/135, art. 2
- F4** Words in s. 46 substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), art. 9, Sch. 2 para. 11(1)(c)

47 Fees for solicitors' practising certificates.

- (1) The [^{F5} Secretary of State] may by order made by statutory instrument amend section 11(3) of the ^{M10}Solicitors Act 1974 (power of Law Society to apply fees payable on issue of practising certificates for any of its purposes) by substituting for the purposes referred to in it (at any time)—
- (a) the purposes of the regulation, education and training of solicitors and those wishing to become solicitors, or
 - (b) both those purposes and such other purposes as the [^{F5} Secretary of State] considers appropriate.
- (2) No order shall be made under this section unless—

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- (a) the [^{F5} Secretary of State] has consulted the Master of the Rolls and the Law Society, and
- (b) a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

Textual Amendments

F5 Words in s. 47 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, **Sch. 2 para. 11(1)(c)**

Marginal Citations

M10 1974 c.47.

48 Law Society’s powers in relation to conduct of solicitors etc.

Schedule 7 (which extends the powers of the Law Society in relation to the conduct of solicitors and their employees and consultants) has effect.

Legal Services Ombudsman

49 Powers of Ombudsman.

- (1) Section 23 of the ^{M11}Courts and Legal Services Act 1990 (recommendations of the Legal Services Ombudsman) is amended as follows.
- (2) In subsection (1)(c) (written report of investigation to be sent to person with respect to whom recommendation is made), after “subsection (2)” insert “ or an order under subsection (2A) ”.
- (3) In paragraph (e) of subsection (2) (recommendation that costs be paid by person or body to which recommendation under paragraph (c) or (d) applies), for “which a recommendation under paragraph (c) or (d) applies” substitute “ pay compensation under paragraph (c) or (d) ”.
- (4) After that subsection insert—

“(2A) If after completing any investigation under this Act the Ombudsman considers that, rather than recommending the taking of any action by any person or professional body under paragraph (c), (d) or (e) of subsection (2), he should make an order requiring the taking of that action by the person or body—

 - (a) he shall afford the person or body, and the person who made the allegation, a reasonable opportunity of appearing before him to make representations; and
 - (b) having considered any representations from them, he may, in reporting his conclusions, make the order.”
- (5) In subsections (3) and (4) (reports), after “recommendation” (in each place) insert “ or order ”.
- (6) In subsection (6) (duty to have regard to Ombudsman’s report), for “subsection (1)(b) or (c)” substitute “ subsection (1)(b), (c) or (d) ”.
- (7) For the sidenote substitute “ Recommendations and orders. ”

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Marginal Citations

M11 1990 c.41.

50 Funding of Ombudsman by professional bodies.

In paragraph 7 of Schedule 3 to the Courts and Legal Services Act 1990 (financial provisions relating to Legal Services Ombudsman), for sub-paragraph (1) (Ombudsman’s expenses to be defrayed by [^{F6} Secretary of State]) substitute—

“(1) The [^{F6} Secretary of State] may require any professional body (within the meaning of section 22 of this Act) to make payments of such amount as the [^{F6} Secretary of State] considers appropriate to the Ombudsman towards meeting the expenditure incurred (or to be incurred) by him in the discharge of his functions.

(1A) To the extent that that expenditure is not met by payments under sub-paragraph (1), it shall be met by the [^{F6} Secretary of State] out of money provided by Parliament.”

Textual Amendments

F6 Words in s. 50 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 11\(1\)\(d\)](#)

VALID FROM 01/11/2003

Legal Services Complaints Commissioner

51 Commissioner.

- (1) The [^{F7} Secretary of State] may appoint a person as Legal Services Complaints Commissioner.
- (2) Any appointment of a person as Commissioner shall be for a period of not more than three years; and a person appointed as Commissioner shall hold and vacate office in accordance with the terms of his appointment.
- (3) At the end of his term of appointment the Commissioner shall be eligible for re-appointment.
- (4) The Commissioner shall not be an authorised advocate, authorised litigator, licensed conveyancer or authorised practitioner (within the meaning of the ^{M12}Courts and Legal Services Act 1990) or a notary.
- (5) Schedule 8 (which makes further provision about the Commissioner) has effect.

Textual Amendments

F7 Words in s. 51 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 11\(1\)\(e\)](#)

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Marginal Citations

M12 1990 c.41.

52 Commissioner's functions.

- (1) If it appears to the [^{F8}Secretary of State] that complaints about members of any professional body are not being handled effectively and efficiently, he may by direction require the Legal Services Complaints Commissioner to consider exercising in relation to the body such of the powers in subsection (2) as are specified in the direction.
- (2) Those powers are—
 - (a) to require a professional body to provide information, or make reports, to the Commissioner about the handling of complaints about its members,
 - (b) to investigate the handling of complaints about the members of a professional body,
 - (c) to make recommendations in relation to the handling of complaints about the members of a professional body,
 - (d) to set targets in relation to the handling of complaints about the members of a professional body, and
 - (e) to require a professional body to submit to the Commissioner a plan for the handling of complaints about its members.
- (3) Where the Commissioner requires a professional body to submit to him a plan for the handling of complaints about its members but the body—
 - (a) fails to submit to him a plan which he considers adequate for securing that such complaints are handled effectively and efficiently, or
 - (b) submits to him such a plan but fails to handle complaints in accordance with it,he may require the body to pay a penalty.
- (4) Before requiring a professional body to pay a penalty under subsection (3) the Commissioner shall afford it a reasonable opportunity of appearing before him to make representations.
- (5) The [^{F8} Secretary of State] shall by order made by statutory instrument specify the maximum amount of any penalty under subsection (3).
- (6) In determining the amount of any penalty which a professional body is to be required to pay under subsection (3) the Commissioner shall have regard to all the circumstances of the case, including in particular—
 - (a) the total number of complaints about members of the body and, where the penalty is imposed in respect of a failure to handle complaints in accordance with a plan, the number of complaints not so handled, and
 - (b) the assets of the body and the number of its members.
- (7) A penalty under subsection (3) shall be paid to the Commissioner who shall pay it to the [^{F8} Secretary of State].
- (8) Where a direction under subsection (1) in relation to a professional body has been given (and not revoked), section 24(1) of the ^{M13}Courts and Legal Services Act 1990 (power of Legal Services Ombudsman to make recommendations about

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arrangements for investigation of complaints) shall not have effect in relation to the body.

(9) No order shall be made under subsection (5) unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

(10) In this section “professional body” has the same meaning as in section 22 of the Courts and Legal Services Act 1990.

Textual Amendments

F8 Words in s. 52 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, **Sch. 2 para. 11(1)(e)**

Marginal Citations

M13 1990 c.41.

Public notaries

53 Abolition of scriveners’ monopoly.

A public notary may practise as a notary in, or within three miles of, the City of London whether or not he is a member of the Incorporated Company of Scriveners of London (even if he is admitted to practise only outside that area).

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