

*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

EXPLANATORY NOTES

OVERVIEW

3. This Act replaces the legal aid system with two new schemes; and makes provision about private methods of funding litigation; the provision of legal services; the handling of complaints about lawyers; appeals, courts, judges and court proceedings; magistrates and magistrates' courts; and immunity from legal action and costs and indemnities for certain officers exercising judicial functions.
4. The provisions in the Act form part of the wide-ranging programme of reforms to legal services and the courts described in the Government's White Paper, *Modernising Justice*, published on 2 December 1998.
5. Except where noted, the Act only affects England and Wales.
6. These Notes are in five main parts, reflecting the main topics in the Act.

Funding of legal services (Parts I & II – sections 1-34)

7. Part I of the Act provides for two new schemes, replacing the existing legal aid scheme, to secure the provision of publicly-funded legal services for people who need them.
8. It establishes a Legal Services Commission to run the two schemes; and enables the Lord Chancellor to give the Commission orders, directions and guidance about how it should exercise its functions.
9. It requires the Commission to establish, maintain and develop a Community Legal Service. The Community Legal Service fund will replace the legal aid fund in civil and family cases. The Commission will use the resources of the fund in a way that reflects priorities set by the Lord Chancellor and its duty to secure the best possible value for money, to procure or provide a range of legal services. The Commission will also have a duty to plan what can be done towards meeting need for legal services, and to liaise with other funders of legal services to facilitate the development of co-ordinated plans for making the best use of all available resources. The intention is to develop comprehensive referral networks of legal service providers of assured quality, offering the widest possible access to information and advice about the law and help with legal problems.
10. The Commission will also be responsible for a Criminal Defence Service, which will replace the current legal aid scheme in criminal cases. The new scheme is intended to ensure that people suspected or accused of a crime are properly represented, while securing better value for money than is possible under the legal aid scheme.
11. Part II makes changes to facilitate the private funding of litigation. It amends the law on conditional fee agreements between lawyers and their clients, in particular to allow the uplift payable in successful cases to be recovered in costs from the other side. It also changes the law on the recovery of costs between the parties to litigation, and allows for third parties to establish funds to support litigation on a conditional basis.

12. Part II also makes three changes to the legal aid scheme in Scotland.

Provision of legal services (Part III – sections 35-53)

13. Part III of the Act reforms the law on lawyers' rights of audience before the courts and rights to conduct litigation; and makes changes relating to complaints against lawyers. It:
- replaces the Lord Chancellor's Advisory Committee on Legal Education and Conduct with a new Legal Services Consultative Panel;
 - provides that, in principle, all lawyers should have full rights of audience before any court, subject only to meeting reasonable training requirements;
 - reforms the procedures for authorising further professional bodies to grant rights of audience or rights to conduct litigation to their members; and for approving changes to professional rules of conduct relating to the exercise of these rights; and
 - gives additional powers to the Law Society and the Legal Services Ombudsman to strengthen the system for handling complaints against lawyers, and creates a Legal Services Complaints Commissioner to set targets for the handling of complaints by the professional bodies.
14. Part III also provides for applicants for appointment as Queen's Counsel to be charged a fee; establishes a system of practising certificates for barristers; amends the law on the fee payable for a solicitor's practising certificate; and abolishes the monopoly of the Scriveners' Company of the provision of notarial services in and around the City of London.

Appeals, courts, judges and court proceedings (Part IV - sections 54-73)

15. Part IV of the Act reforms the system for appeals in civil and family cases. It:
- establishes the principles that should underlie the jurisdiction of the civil courts to hear appeals;
 - gives the Lord Chancellor power to define the venue for appeal in different categories of case; and
 - changes the law relating to the constitution of the Civil Division of the Court of Appeal.

The intention is to ensure that the appellate system reflects the principle, which underlies the Government's wider programme of civil justice reforms, that cases should be dealt with in a way that is proportionate to the issue at stake.

16. Part IV also confirms the powers of the High Court when hearing cases stated by the Crown Court for an opinion of the High Court. It enables these and certain other applications to the High Court to be heard by a single judge. It empowers the Crown Court, rather than a magistrates' court, to deal with breaches of community sentences imposed by the Crown Court, and changes the law about time limits when a defendant is sent directly to the Crown Court for trial. It provides for the secondment of UK judges to international courts and establishes the post of Vice-President of the Queen's Bench Division. It eliminates duplication between a public inquiry into a disaster and the inquest into the deaths. It prohibits the publication of material likely to identify a child involved in proceedings under the Children Act 1989 before the High Court or a county court; and allows for children under 14 to attend criminal trials.

Magistrates and magistrates' courts (Part V - sections 74-97)

17. Part V of the Act contains a range of provisions relating to magistrates and magistrates' courts. It:

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- provides for various changes to the organisation and management of magistrates' courts, and in particular establishes a single Magistrates' Courts Authority for Greater London;
- unifies the provincial and metropolitan Stipendiary Magistrates into a single bench;
- removes the requirement for magistrates to sit on cases committed to the Crown Court for sentence; and
- extends and clarifies the powers of civilians to execute warrants - this is intended to enable this function to be transferred from the police to the magistrates' courts.

Immunity and indemnity (Parts VI - sections 98-104)

18. Part VI of the Act makes provision about immunity from action and costs and indemnities for certain officials exercising judicial functions.
19. Part VII (sections 105-110) makes general supplementary provisions.