



Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

1990 CHAPTER 40

PART II

LEGAL SERVICES

Rights of audience

24 **Rights of audience in the Court of Session, the House of Lords, the Judicial Committee of the Privy Council and the High Court of Justiciary**

After section 25 of the 1980 Act there shall be inserted the following section—

“25A Rights of audience in the Court of Session, the House of Lords, the Judicial Committee of the Privy Council and the High Court of Justiciary

- (1) Without prejudice to section 250 (right of audience of solicitor before single judge) of the Criminal Procedure (Scotland) Act 1975 and section 48(2)(b) (extension of rights of audience by act of sederunt) of the Court of Session Act 1988, a solicitor who—
 - (a) seeks a right of audience in, on the one hand, the Court of Session, the House of Lords and the Judicial Committee of the Privy Council or, on the other hand, the High Court of Justiciary; and
 - (b) has satisfied the Council as to the requirements provided for in this section,shall have a right of audience in those courts or, as the case may be, that court.
- (2) The requirements mentioned in subsection (1), in relation to the courts or, as the case may be, the court in which a solicitor seeks a right of audience, are that—

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- (a) he has completed, to the satisfaction of the Council, a course of training in evidence and pleading in relation to proceedings in those courts or that court;
 - (b) he has such knowledge as appears to the Council to be appropriate of—
 - (i) the practice and procedure of; and
 - (ii) professional conduct in regard to,those courts or that court; and
 - (c) he has satisfied the Council that he is, having regard among other things to his experience in appropriate proceedings in the sheriff court, otherwise a fit and proper person to have a right of audience in those courts or that court.
- (3) Where a solicitor has satisfied the Council as to the requirements of subsection (2) in relation to the courts or, as the case may be, the court in which he seeks a right of audience the Council shall make an appropriate annotation on the roll against his name.
- (4) The Council shall make rules under this section as to—
- (a) the matters to be included in, the methods of instruction to be employed in, and the qualifications of the person who will conduct, any course of training such as is mentioned in subsection (2)(a); and
 - (b) the manner in which a solicitor’s knowledge of the practice and procedure and professional conduct mentioned in subsection (2)(b) is to be demonstrated,
- and separate rules shall be so made in relation to, on the one hand, the Court of Session, the House of Lords and the Judicial Committee of the Privy Council and, on the other hand, the High Court of Justiciary.
- (5) The Council shall make rules of conduct in relation to the exercising of any right of audience held by virtue of this section.
- (6) Where a solicitor having a right of audience in any of the courts mentioned in subsection (1) is instructed to appear in that court, those instructions shall take precedence before any of his other professional obligations, and the Council shall make rules—
- (a) stating the order of precedence of those courts for the purposes of this subsection;
 - (b) stating general criteria to which solicitors should have regard in determining whether to accept instructions in particular circumstances; and
 - (c) securing, through such of their officers as they think appropriate, that, where reasonably practicable, any person wishing to be represented before any of those courts by a solicitor holding an appropriate right of audience is so represented,
- and for the purposes of rules made under this subsection the Inner and Outer Houses of the Court of Session, and the High Court of Justiciary exercising its appellate jurisdiction, may be treated as separate courts.
- (7) Subsection (6) does not apply to an employed solicitor whose contract of employment prevents him from acting for persons other than his employer.

- (8) Subject to subsections (9) and (10), the provisions of section 34(2) and (3) apply to rules made under this section as they apply to rules made under that section and, in considering any rules made by the Council under subsection (5), the Lord President shall have regard to the desirability of there being common principles applying in relation to the exercising of rights of audience by all practitioners appearing before the Court of Session and the High Court of Justiciary.
- (9) The Council shall, after any rules made under subsection (4) have been approved by the Lord President, submit such rules to the Secretary of State, and no such rules shall have effect unless the Secretary of State, after consulting the Director in accordance with section 64A, has approved them.
- (10) The Council shall, after any rules made under subsection (5) have been approved by the Lord President, submit such rules to the Secretary of State.
- (11) Where the Secretary of State considers that any rule submitted to him under subsection (10) would directly or indirectly inhibit the freedom of a solicitor to appear in court or undertake all the work preparatory thereto he shall consult the Director in accordance with section 64A.
- (12) The Council may bring into force the rules submitted by them to the Secretary of State under subsection (10) with the exception of any such rule which he has, in accordance with section 64B, refused to approve.
- (13) Nothing in this section affects the power of any court in relation to any proceedings—
 - (a) to hear a person who would not otherwise have a right of audience before the court in relation to those proceedings; or
 - (b) to refuse to hear a person (for reasons which apply to him as an individual) who would otherwise have a right of audience before the court in relation to those proceedings, and where a court so refuses it shall give its reasons for that decision.
- (14) Where a complaint has been made that a solicitor has been guilty of professional misconduct in the exercise of any right of audience held by him by virtue of this section, the Council may, or if so requested by the Lord President shall, suspend him from exercising that right pending determination of that complaint under Part IV.
- (15) Where a function is conferred on any person or body by this section he or, as the case may be, they shall exercise that function as soon as is reasonably practicable.”.

25 Rights to conduct litigation and rights of audience

- (1) Any professional or other body may, for the purpose of enabling any of their members who is a natural person to acquire—
 - (a) rights to conduct litigation on behalf of members of the public; and
 - (b) rights of audience,make an application in that regard to the Lord President and the Secretary of State.
- (2) An application under subsection (1) above shall include a draft scheme—
 - (a) specifying—

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- (i) the courts;
 - (ii) the categories of proceedings;
 - (iii) the nature of the business; and
 - (iv) the rights to conduct litigation and the rights of audience,
- in relation to which the application is made;
- (b) describing—
- (i) the training requirements which the body would impose upon any of their members who sought to acquire any right such as is mentioned in subsection (1) above; and
 - (ii) the code of practice which they would impose upon their members in relation to the exercise by those members of any rights acquired by them by virtue of this section,
- in the event of the application being granted; and
- (c) proposing arrangements for—
- (i) the indemnification of members of the public against loss suffered by them through the actings of the body's members in the exercise by those members of any rights acquired by them by virtue of this section; and
 - (ii) the treatment by the body of complaints made to them by members of the public in relation to the actings of members of the body exercising rights acquired by virtue of this section,

and shall state that the body have complied with the provisions of Schedule 2 to this Act.

- (3) A code of practice such as is mentioned in subsection (2)(b)(ii) above shall include provision with regard to revoking, suspending or attaching conditions to the exercise of any right acquired by a member of the body by virtue of this section in consequence of a breach by that member of that code of practice; and shall in particular include provision enabling the body to comply with the provisions of section 27(4) of this Act.
- (4) A draft scheme submitted under this section shall also include the proposals of the body in relation to such other matters as may be prescribed by the Secretary of State in regulations made under this section.
- (5) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Schedule 2 shall have effect in relation to the publication of applications made under subsection (1) above.

26 Consideration of applications made under section 25

- (1) The Lord President shall consider the provision made in any draft scheme submitted to him under section 25(1) of this Act in relation to the matters mentioned in section 25(2); and the Secretary of State shall, subject to subsection (5) below and to section 40 of this Act, consider the provision so made in section 25(2)(b) and (c).
- (2) In considering the code of practice included in the draft scheme by virtue of section 25(2)(b)(ii), the Lord President shall have regard to the desirability of there being common principles applying in relation to the exercising of rights to conduct litigation and rights of audience by all practitioners in relation to the court or, as the case may be, the courts, mentioned in the application.

- (3) The Lord President and the Secretary of State shall—
- (a) consult each other in considering a draft scheme submitted to them under section 25(1); and
 - (b) consider any written representations timeously made to them under Schedule 2 to this Act,
- and may, either jointly or severally, make preliminary observations to the body concerned in relation to that draft; and the body may make such adjustments to the draft as appear to them to be appropriate, and the Lord President and the Secretary of State (who shall, in accordance with section 40, consult the Director in respect of any adjustments made in relation to the matters mentioned in section 25(2)(b) or (c)) shall thereafter consider the draft scheme as so adjusted.
- (4) In considering a draft scheme under subsection (1) or (3) above, the Lord President and the Secretary of State shall have regard to whether the provisions of the draft scheme are such as—
- (a) to achieve; and
 - (b) to ensure the maintenance of,
- appropriate standards of conduct and practice by persons who may acquire rights to conduct litigation or rights of audience in the event of the draft scheme being approved.
- (5) In relation to any code of practice such as is mentioned in section 25(2)(b)(ii), the duty of the Secretary of State under subsection (1) above is limited to a consideration of any provision of such a code as would, in his view, directly or indirectly inhibit the freedom of a member of the body concerned to undertake all the work necessary for the preparation of a case or for the presentation of a case before the court, other than such a provision which has that effect only by reason of the provision made in the draft scheme with respect to the matters mentioned in section 25(2)(a).
- (6) After they have considered a draft scheme under subsections (1) and (3) above, if the Lord President and the Secretary of State—
- (a) are satisfied with the draft scheme, the Lord President shall grant the application, and shall so inform the body;
 - (b) are not satisfied with the scheme, the Lord President shall refuse the application, and shall so inform the body, giving written reasons for the refusal,
- and the Lord President shall send a copy of the letter granting or refusing the application to any person who has made representations in relation to the draft scheme under Schedule 2 to this Act.
- (7) Where the Lord President has granted an application under subsection (6)(a) above, in relation to—
- (a) civil proceedings, the Court of Session may by act of sederunt; and
 - (b) criminal proceedings, the High Court of Justiciary may by act of adjournal,
- make such provision for giving effect to the scheme as appears to it to be appropriate.

27 Exercise of rights to conduct litigation and rights of audience

- (1) Where an application made under section 25 of this Act has been granted under section 26 of this Act, any member of the body concerned who has complied with the terms of the scheme in relation to the matters mentioned in section 25(2)(b)(i), and

who appears to the body to be a fit and proper person, shall have the right to conduct litigation or rights of audience to which that compliance entitles him.

- (2) Where a function is, whether expressly or by implication, conferred on any person or body by section 26 or this section he or, as the case may be, they shall exercise that function as soon as is reasonably practicable.
- (3) Nothing in subsection (1) above affects the power of any court in relation to any proceedings—
 - (a) to hear a person who would not otherwise have a right of audience before that court in relation to those proceedings; or
 - (b) to refuse to hear a person (for reasons which apply to him as an individual) who would otherwise have a right of audience before that court in relation to those proceedings, and where a court so refuses it shall give its reasons for that decision.
- (4) Where a complaint has been made that a person has been guilty of professional misconduct in the exercise of any right to conduct litigation or right of audience held by him by virtue of this section, the body of which he is a member may, or if so requested by the Lord President shall, suspend that person from exercising that right pending determination of that complaint by the body.
- (5) Where a person holding a right of audience in any court by virtue of this section is instructed to appear in that court, those instructions shall take precedence before any of his other professional or business obligations, and the code of practice mentioned in section 25(2)(b)(ii) shall include rules—
 - (a) stating the order of precedence of courts for the purposes of this subsection;
 - (b) stating general criteria to which members of the body should have regard in determining whether to accept instructions in particular circumstances; and
 - (c) securing, through such of their officers as they think appropriate, that, where reasonably practicable, any person wishing to be represented before any court by one of their members holding an appropriate right of audience is so represented,

and, for the purposes of such rules, the Inner and Outer Houses of the Court of Session, and the High Court of Justiciary exercising its appellate jurisdiction, may be treated as separate courts.

- (6) A person exercising any right of audience held by virtue of this section shall have the same immunity from liability for negligence in respect of his acts or omissions as if he were an advocate, and no act or omission on the part of any such person shall give rise to an action for breach of contract in relation to the exercise by him of such a right of audience.
- (7) Any person who wilfully and falsely—
 - (a) pretends to have any right to conduct litigation or right of audience by virtue of this section; or
 - (b) where he has any such right, pretends to have any further such right which he does not have; or
 - (c) takes or uses any name, title, addition or description implying that he has any such right or, as the case may be, any further such right,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

- (8) For the purposes of section 25, section 26 and this section—
- “right of audience” includes, in relation to any court, any such right exercisable by an advocate; and
 - “right to conduct litigation” means the right to exercise on behalf of a client all or any of the functions, other than any right of audience, which may be exercised by a solicitor in relation to litigation.

28 Surrender of rights to conduct litigation and rights of audience

- (1) Subject to the provisions of this section, where an application made under section 25 of this Act has been granted under section 26(6) of this Act, the body concerned may apply to the Lord President and the Secretary of State for permission to surrender any entitlement of their members to acquire rights to conduct litigation or rights of audience.
- (2) The Lord President and the Secretary of State shall jointly issue directions as to the requirements with which any body wishing to surrender their members' entitlement will have to comply, and, without prejudice to the generality of the foregoing, any such directions may include provision—
- (a) where members of a body have acquired rights to conduct litigation or rights of audience, as to the arrangements to be made for the completion of any work outstanding at the time the application is made; and
 - (b) relating to the particular circumstances of a particular body.
- (3) An application under subsection (1) above shall describe the manner in which the body have complied, or will comply, with the directions issued under subsection (2) above.
- (4) Where the Lord President and the Secretary of State are satisfied that the body concerned have complied, or will comply, with the directions issued under subsection (2) above, the Lord President shall grant the application, and shall so inform the body.
- (5) With effect from the date on which an application under subsection (1) above is granted, any member of the body concerned who has acquired rights to conduct litigation or rights of audience by virtue of the scheme shall cease to hold those rights.

29 Revocation of rights granted under section 26

- (1) Where it appears to the Secretary of State that a body has failed to comply with a direction under section 42(6) of this Act, he may by order made by statutory instrument revoke the grant of the application made by that body under section 25 of this Act.
- (2) No instrument shall be made under subsection (1) above unless a draft of the instrument has been laid before and approved by each House of Parliament.
- (3) With effect from the date on which an order under subsection (1) above takes effect, any member of the body concerned who has acquired rights to conduct litigation or rights of audience by virtue of the scheme shall cease to hold those rights.

30 Regulation of right of English, Welsh and Northern Irish practitioners to practise in Scotland

- (1) The Secretary of State, after consulting the Lord President, may by regulations prescribe circumstances in which, and conditions subject to which, practitioners who are qualified to practise in England and Wales or Northern Ireland may, in such capacity as may be prescribed, exercise in Scotland—
 - (a) prescribed rights of audience; or
 - (b) prescribed rights to conduct litigation,without being entitled to do so apart from the regulations.
- (2) The Secretary of State, after consulting the Lord President, may by regulations make provision for the purpose of enabling practitioners who are entitled to practise in England and Wales or Northern Ireland to become qualified to practise in Scotland on terms, and subject to conditions, corresponding or similar to those on which practitioners who are entitled to practise in member States may become qualified to practise in Scotland.
- (3) Regulations made under subsection (1) above may, in particular—
 - (a) prescribe any right of audience which may not be exercised by a person in Scotland unless he is instructed to act together with a person who has that right of audience there;
 - (b) prescribe legal services which may not be provided by any person practising by virtue of the regulations;
 - (c) prescribe the title or description which must be used by any person practising by virtue of the regulations;
 - (d) provide for the body by whom and the means by which the qualification of any person claiming to be entitled to practise by virtue of the regulations is to be verified; and
 - (e) provide for such professional or other body as may be prescribed to have power to investigate and deal with any complaint made against a person practising by virtue of the regulations.
- (4) Regulations made under subsection (1) or (2) above may modify any rule of law or practice which the Secretary of State considers should be modified in order to give effect to the regulations.
- (5) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this section “practitioner” means, in relation to England and Wales and Northern Ireland—
 - (a) a barrister or solicitor; and
 - (b) any person falling within such category as may be prescribed in regulations made by the Secretary of State after consultation with the Lord President.