



# Courts and Legal Services Act 1990

## 1990 CHAPTER 41

### PART II

#### LEGAL SERVICES

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

#### **27 Rights of audience**

- (1) The question whether a person has a right of audience before a court, or in relation to any proceedings, shall be determined solely in accordance with the provisions of this Part.
- (2) A person shall have a right of audience before a court in relation to any proceedings only in the following cases—
  - (a) where—
    - (i) he has a right of audience before that court in relation to those proceedings granted by the appropriate authorised body; and
    - (ii) that body's qualification regulations and rules of conduct have been approved for the purposes of this section, in relation to the granting of that right;
  - (b) where paragraph (a) does not apply but he has a right of audience before that court in relation to those proceedings granted by or under any enactment;
  - (c) where paragraph (a) does not apply but he has a right of audience granted by that court in relation to those proceedings;
  - (d) where he is a party to those proceedings and would have had a right of audience, in his capacity as such a party, if this Act had not been passed; or
  - (e) where—
    - (i) he is employed (whether wholly or in part), or is otherwise engaged, to assist in the conduct of litigation and is doing so under instructions given (either generally or in relation to the proceedings) by a qualified litigator; and

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- (ii) the proceedings are being heard in chambers in the High Court or a county court and are not reserved family proceedings.
- (3) No person shall have a right of audience as a barrister by virtue of subsection (2)(a) above unless he has been called to the Bar by one of the Inns of Court and has not been disbarred or temporarily suspended from practice by order of an Inn of Court.
- (4) Nothing in this section affects the power of any court in any proceedings 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.
- (5) Where a court refuses to hear a person as mentioned in subsection (4) it shall give its reasons for refusing.
- (6) Nothing in this section affects any provision made by or under any enactment which prevents a person from exercising a right of audience which he would otherwise be entitled to exercise.
- (7) Where, immediately before the commencement of this section, no restriction was placed on the persons entitled to exercise any right of audience in relation to any particular court or in relation to particular proceedings, nothing in this section shall be taken to place any such restriction on any person.
- (8) Where—
- (a) immediately before the commencement of this section; or
  - (b) by virtue of any provision made by or under an enactment passed subsequently,
- a court does not permit the appearance of advocates, or permits the appearance of advocates only with leave, no person shall have a right of audience before that court, in relation to any proceedings, solely by virtue of the provisions of this section.
- (9) In this section—
- “advocate”, in relation to any proceedings, means any person exercising a right of audience as a representative of, or on behalf of, any party to the proceedings;
  - “authorised body” means—
    - (a) the General Council of the Bar;
    - (b) the Law Society; and
    - (c) any professional or other body which has been designated by Order in Council as an authorised body for the purposes of this section;
  - “appropriate authorised body”, in relation to any person claiming to be entitled to any right of audience by virtue of subsection (2)(a), means the authorised body—
    - (a) granting that right; and
    - (b) of which that person is a member;
  - “family proceedings” has the same meaning as in the Matrimonial and Family Proceedings Act 1984 and also includes any other proceedings which are family proceedings for the purposes of the Children Act 1989;
  - “qualification regulations”, in relation to an authorised body, means regulations (however they may be described) as to the education and training which members of that body must receive in order to be entitled to any right of audience granted by it;
  - “qualified litigator” means—

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- (i) any practising solicitor ( “practising” having the same meaning as in section 19(8)(b));
- (ii) any recognised body; and
- (iii) any person who is exempt from the requirement to hold a practising certificate by virtue of section 88 of the Solicitors Act 1974 (saving for solicitors to public departments and the City of London);

“recognised body” means any body recognised under section 9 of the Administration of Justice Act 1985 (incorporated practices);

“reserved family proceedings” means such category of family proceedings as the Lord Chancellor may, after consulting the President of the Law Society and with the concurrence of the President of the Family Division, by order prescribe; and

“rules of conduct”, in relation to an authorised body, means rules (however they may be described) as to the conduct required of members of that body in exercising any right of audience granted by it.

- (10) Section 20 of the Solicitors Act 1974 (unqualified person not to act as a solicitor) section 22 of that Act (unqualified person not to prepare certain documents etc) and section 25 of that Act (costs where an unqualified person acts as a solicitor), shall not apply in relation to any act done in the exercise of a right of audience.

## **28 Rights to conduct litigation**

- (1) The question whether a person has a right to conduct litigation, or any category of litigation, shall be determined solely in accordance with the provisions of this Part.
- (2) A person shall have a right to conduct litigation in relation to any proceedings only in the following cases—
- (a) where—
    - (i) he has a right to conduct litigation in relation to those proceedings granted by the appropriate authorised body; and
    - (ii) that body’s qualification regulations and rules of conduct have been approved for the purposes of this section, in relation to the granting of that right;
  - (b) where paragraph (a) does not apply but he has a right to conduct litigation in relation to those proceedings granted by or under any enactment;
  - (c) where paragraph (a) does not apply but he has a right to conduct litigation granted by that court in relation to those proceedings;
  - (d) where he is a party to those proceedings and would have had a right to conduct the litigation, in his capacity as such a party, if this Act had not been passed.
- (3) Nothing in this section affects any provision made by or under any enactment which prevents a person from exercising a right to conduct litigation which he would otherwise be entitled to exercise.
- (4) Where, immediately before the commencement of this section, no restriction was placed on the persons entitled to exercise any right to conduct litigation in relation to a particular court, or in relation to particular proceedings, nothing in this section shall be taken to place any such restriction on any person.
- (5) In this section—
- “authorised body” means—

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- (a) the Law Society; and
- (b) any professional or other body which has been designated by Order in Council as an authorised body for the purposes of this section;

“appropriate authorised body”, in relation to any person claiming to be entitled to any right to conduct litigation by virtue of subsection (2)(a), means the authorised body—

- (a) granting that right; and
- (b) of which that person is a member;

“qualification regulations”, in relation to an authorised body, means regulations (however they may be described) as to the education and training which members of that body must receive in order to be entitled to any right to conduct litigation granted by it; and

“rules of conduct”, in relation to any authorised body, means rules (however they may be described) as to the conduct required of members of that body in exercising any right to conduct litigation granted by it.

- (6) Section 20 of the Solicitors Act 1974 (unqualified person not to act as a solicitor), section 22 of that Act (unqualified person not to prepare certain documents etc.) and section 25 of that Act (costs where unqualified person acts as a solicitor) shall not apply in relation to any act done in the exercise of a right to conduct litigation.

## **29 Authorised bodies: designation and approval of regulations and rules**

- (1) In order to be designated as an authorised body for the purposes of section 27 or 28 a professional or other body must—
  - (a) apply to the Lord Chancellor under this section, specifying the purposes for which it is seeking authorisation; and
  - (b) comply with the provisions of Part I of Schedule 4 as to the approval of qualification regulations and rules of conduct and other matters.

- (2) Where—
  - (a) an application has been made to the Lord Chancellor under this section;
  - (b) the requirements of Part I of Schedule 4 have been satisfied; and
  - (c) the application has not failed,

the Lord Chancellor may recommend to Her Majesty that an Order in Council be made designating that body as an authorised body for the purposes of section 27 or (as the case may be) section 28.

- (3) Where an authorised body alters—
  - (a) any of its qualification regulations; or
  - (b) any of its rules of conduct,

those alterations shall not have effect, so far as they relate to any right of audience or any right to conduct litigation granted by that body, unless they have been approved under Part II of Schedule 4.

- (4) Where an authorised body makes any alteration to the rights of audience or rights to conduct litigation granted by it (including the grant of a new right), the qualification regulations and rules of conduct of that body must be approved under Part II of Schedule 4.

- (5) Where the Lord Chancellor or any of the designated judges considers that it might be appropriate for an authorised body to alter—
  - (a) any of its qualification regulations or rules of conduct; or
  - (b) any right of audience, or right to conduct litigation, which it is entitled to grant, he may advise that body accordingly.
- (6) Where—
  - (a) the Lord Chancellor gives any advice under subsection (5), he shall inform the designated judges; and
  - (b) where a designated judge gives any such advice, he shall inform the Lord Chancellor and the other designated judges.
- (7) Where an authorised body has been given any such advice it shall, in the light of that advice, consider whether to make the recommended alteration.

### **30 Revocation of authorised body’s designation**

- (1) Where an Order in Council has been made under section 29 designating a body as an authorised body, the Lord Chancellor may recommend to Her Majesty that an Order in Council be made revoking that designation.
- (2) An Order under this section may only be made if—
  - (a) the authorised body has made a written request to the Lord Chancellor asking for it to be made;
  - (b) that body has agreed (in writing) to its being made; or
  - (c) the Lord Chancellor is satisfied that the circumstances at the time when he is considering the question are such that, had that body then been applying to become an authorised body, its application would have failed.
- (3) The provisions of Part III of Schedule 4 shall have effect with respect to the revocation of designations under this section.
- (4) An Order made under this section may make such transitional and incidental provision as the Lord Chancellor considers necessary or expedient.
- (5) Where such an Order is made, any right of audience or right to conduct litigation granted to any person by the body with respect to whom the Order is made shall cease to have effect, subject to any transitional provision made by the Order.
- (6) Where such an Order is made, the Lord Chancellor shall—
  - (a) give the body with respect to whom the Order is made written notice of the making of the Order;
  - (b) take such steps as are reasonably practicable to bring the making of the Order to the attention of the members of that body; and
  - (c) publish notice of the making of the Order in such manner as he considers appropriate for bringing it to the attention of persons (other than those members) who, in his opinion, are likely to be affected by the Order.

### **31 The General Council of the Bar**

- (1) On the coming into force of section 27—

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- (a) barristers shall be deemed to have been granted by the General Council of the Bar the rights of audience exercisable by barristers (in their capacity as such) immediately before 7th December 1989; and
  - (b) the General Council of the Bar shall be deemed to have in force qualification regulations and rules of conduct which have been properly approved for the purposes of section 27.
- (2) Those qualification regulations and rules of conduct shall be deemed to have been approved only—
  - (a) in relation to the rights of audience mentioned in subsection (1)(a); and
  - (b) so far as they relate to those rights of audience.
- (3) If any particular provision of those regulations or rules would not have been approved for the purposes of section 27 had it been submitted for approval under Part I of Schedule 4 it (but no other such provision) shall not be deemed to have been approved.
- (4) In the event of any question arising as to whether any provision is deemed to have been approved, subsection (5) shall apply in relation to that question if the Lord Chancellor so directs.
- (5) Where a direction is given under subsection (4)—
  - (a) the Lord Chancellor shall seek the advice of the Advisory Committee and the Director;
  - (b) the Lord Chancellor and each of the designated judges shall consider, in the light of that advice, whether the provision in question is deemed to have been so approved; and
  - (c) that provision shall not be deemed to have been so approved unless the Lord Chancellor and each of the designated judges are satisfied that it has been.
- (6) In the event of any question arising as to whether any provision of the qualification regulations or rules of conduct of the General Council of the Bar requires to be approved by virtue of section 29(3) or (4), subsection (7) shall apply in relation to that question if the Lord Chancellor so directs.
- (7) Where a direction is given under subsection (6)—
  - (a) the Lord Chancellor shall seek the advice of the Advisory Committee and the Director;
  - (b) the Lord Chancellor and each of the designated judges shall consider, in the light of that advice, whether the provision in question requires approval; and
  - (c) it shall require approval unless the Lord Chancellor and each of the designated judges are satisfied that it does not require approval.
- (8) Where, by virtue of subsection (5)(c), any provision is not deemed to have been approved—
  - (a) it shall cease to have effect, so far as it relates to any right of audience deemed to have been granted by the General Council of the Bar; and
  - (b) the regulations and rules which are deemed, by virtue of subsection (1)(b), to have been properly approved shall be taken not to include that provision.
- (9) Nothing in this section shall affect the validity of anything done in reliance on any provision of regulations or rules at any time before—
  - (a) it is determined in accordance with subsection (5)(c) that that provision is not deemed to have been approved; or

- (b) it is determined in accordance with subsection (7)(c) that that provision requires approval.

### **32 The Law Society: rights of audience**

- (1) On the coming into force of section 27—
  - (a) solicitors shall be deemed to have been granted by the Law Society the rights of audience exercisable by solicitors (in their capacity as such) immediately before 7th December 1989; and
  - (b) the Law Society shall be deemed to have in force qualification regulations and rules of conduct which have been properly approved for the purposes of section 27.
- (2) Those qualification regulations and rules of conduct shall be deemed to have been approved only—
  - (a) in relation to the rights of audience mentioned in subsection (1)(a); and
  - (b) so far as they relate to those rights of audience.
- (3) If any particular provision of those regulations or rules would not have been approved for the purposes of section 27 had it been submitted for approval under Part I of Schedule 4 it (but no other such provision) shall not be deemed to have been approved.
- (4) In the event of any question arising as to whether any provision is deemed to have been approved, subsection (5) shall apply in relation to that question if the Lord Chancellor so directs.
- (5) Where a direction is given under subsection (4)—
  - (a) the Lord Chancellor shall seek the advice of the Advisory Committee and the Director;
  - (b) the Lord Chancellor and each of the designated judges shall consider, in the light of that advice, whether the provision in question is deemed to have been so approved; and
  - (c) that provision shall not be deemed to have been so approved unless the Lord Chancellor and each of the designated judges are satisfied that it has been.
- (6) In the event of any question arising as to whether any provision of the qualification regulations or rules of conduct of the Law Society requires to be approved by virtue of section 29(3) or (4), subsection (7) shall apply in relation to that question if the Lord Chancellor so directs.
- (7) Where a direction is given under subsection (6)—
  - (a) the Lord Chancellor shall seek the advice of the Advisory Committee and the Director;
  - (b) the Lord Chancellor and each of the designated judges shall consider, in the light of that advice, whether the provision in question requires approval; and
  - (c) it shall require approval unless the Lord Chancellor and each of the designated judges are satisfied that it does not require approval.
- (8) Where, by virtue of subsection (5)(c), any provision is not deemed to have been approved—
  - (a) it shall cease to have effect, so far as it relates to any right of audience deemed to have been granted by the Law Society; and

- (b) the regulations and rules which are deemed, by virtue of subsection (1)(b) to have been properly approved shall be taken not to include that provision.
- (9) Nothing in this section shall affect the validity of anything done in reliance on any provision of regulations or rules at any time before—
- (a) it is determined in accordance with subsection (5)(c) that that provision is not deemed to have been approved; or
  - (b) it is determined in accordance with subsection (7)(c) that that provision requires approval.

### **33 The Law Society: rights to conduct litigation**

- (1) On the coming into force of section 28—
- (a) solicitors shall be deemed to have been granted by the Law Society the rights to conduct litigation exercisable by solicitors (in their capacity as such) immediately before 7th December 1989; and
  - (b) the Law Society shall be deemed to have in force qualification regulations and rules of conduct which have been properly approved for the purposes of section 28.
- (2) Those qualification regulations and rules of conduct shall be deemed to have been approved only—
- (a) in relation to the rights to conduct litigation mentioned in subsection (1)(a); and
  - (b) so far as they relate to those rights to conduct litigation.
- (3) If any particular provision of those regulations or rules would not have been approved for the purposes of section 28 had it been submitted for approval under Part I of Schedule 4 it (but no other such provision) shall not be deemed to have been approved.
- (4) In the event of any question arising as to whether any provision is deemed to have been approved, subsection (5) shall apply in relation to that question if the Lord Chancellor so directs.
- (5) Where a direction is given under subsection (4)—
- (a) the Lord Chancellor shall seek the advice of the Advisory Committee and the Director;
  - (b) the Lord Chancellor and each of the designated judges shall consider, in the light of that advice, whether the provision in question is deemed to have been so approved; and
  - (c) that provision shall not be deemed to have been so approved unless the Lord Chancellor and each of the designated judges are satisfied that it has been.
- (6) In the event of any question arising as to whether any provision requires to be approved by virtue of section 29(3) or (4), subsection (7) shall apply in relation to that question if the Lord Chancellor so directs.
- (7) Where a direction is given under subsection (6)—
- (a) the Lord Chancellor shall seek the advice of the Advisory Committee and the Director;
  - (b) the Lord Chancellor and each of the designated judges shall consider, in the light of that advice, whether the provision in question requires approval; and



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- (c) it shall require approval unless the Lord Chancellor and each of the designated judges are satisfied that it does not require approval.
- (8) Where, by virtue of subsection (5)(c), any provision is not deemed to have been approved—
- (a) it shall cease to have effect, so far as it relates to any right to conduct litigation deemed to have been granted by the Law Society; and
  - (b) the regulations and rules which are deemed, by virtue of subsection (1)(b), to have been properly approved shall be taken not to include that provision.
- (9) Nothing in this section shall affect the validity of anything done in reliance on any provision of regulations or rules at any time before—
- (a) it is determined in accordance with subsection (5)(c) that that provision is not deemed to have been approved; or
  - (b) it is determined in accordance with subsection (7)(c) that that provision requires approval.