



# Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

## 1990 CHAPTER 40

### PART II

#### LEGAL SERVICES

##### *Rights of audience*

#### **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 [F1CMA] 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.

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*Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Section 26 is up to date with all changes known to be in force on or before 15 September 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (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.

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#### **Textual Amendments**

- F1** Word in s. 26(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 46**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
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#### **Commencement Information**

- II** S. 26 in force at 19.3.2007 by S.S.I. 2007/141, **art. 2(b)**

**Changes to legislation:**

Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Section 26 is up to date with all changes known to be in force on or before 15 September 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 21A(1)(c) words substituted by [2007 asp 5 Sch. 5 para. 3\(7\)\(a\)\(iii\)](#)
- s. 33(6) inserted by [2007 asp 5 Sch. 5 para. 3\(11\)](#)