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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^{F1} . . . 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.

[^{F2}(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.]

(3)

(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.

[^{F3}(6)

(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.

[^{F4}(8A) But a court may not limit the right to appear before the court in any proceedings to only some of those who have the right 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;

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“family proceedings” has the same meaning as in the ^{M1}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 [^{F5}, or to exercise,] any right of audience granted by it;

“qualified litigator” means—

- (i) any practising solicitor [^{F6}(that is, one who has a practising certificate in force or is employed wholly or mainly for the purpose of providing legal services to his employer)];
- (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 ^{M2}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 ^{M3}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.

Textual Amendments

- F1** Words in s. 27(2)(a)(ii) repealed (27.9.1999) by 1999 c. 22, s. 43, Sch. 6 para. 6(1)(2), **Sch. 15 Pt. II** (with Sch. 14 paras. 7(2), 36(9)); S.I. 1999/2657, art. 2(a)(d)(ii)(a), **Sch. 2 Pt. I para. 2(a)**
- F2** S. 27(2A) inserted (27.9.1999) by 1999 c.22, s. 42(1) (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**
- F3** S. 27(3)(6) repealed (27.9.1999) by 1999 c. 22, s. 106, **Sch. 15 Pt. II**; S.I. 1999/2657, art. 2(d)(ii)(a), **Sch. 2 Pt. I para. 2(a)**
- F4** S. 27(8A) inserted (27.9.1999) by 1999 c. 22, s. 43, **Sch. 6 para. 6(1)(3)** (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**
- F5** Words in definition of "qualification regulations" in s. 27(9) inserted (27.9.1999) by 1999 c. 22, s. 43, **Sch. 6 para. 6(1)(4)(a)** (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**
- F6** Words in definition of "qualification litigator" in s. 27(9) substituted (27.9.1999) by 1999 c. 22, s. 43, **Sch. 6 para. 6(1)(4)(b)** (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**

Modifications etc. (not altering text)

- C1** S. 27 modified (27.9.1999) by 1999 c. 22, ss. 105, 108(3)(e), **Sch. 14 Pt. III para. 14(1)** (with Sch. 14 para. 7(2))
S. 27 modified (22.5.2000) by S.I. 2000/1119, regs. 1(1), 37, **Sch. 3 Pt. 2**
- C2** S. 27(2)(a) excluded (1.4.2001) by 2000 c. 43, s. 15(3); S.I. 2001/919, **art. 2(a)**

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Marginal Citations

- M1 1984 c. 42.
- M2 1985 c. 61.
- M3 1974 c. 47.

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 ^{F7} . . . 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.

[^{F8}(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.]

(3)

(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.

[^{F9}(4A) A court may not limit the right to conduct litigation in relation to proceedings before the court to only some of those who have the right by virtue of the provisions of this section.]

(5) In this section—

“authorised body” means—

- (a) the Law Society; ^{F10} . . .
- [^{F11}(aa) the General Council of the Bar;
- (ab) the Institute of Legal Executives; 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;

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“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 [^{F12}, or to exercise,] 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.

[^{F13}(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.]

- (6) Section 20 of the ^{M4}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.

Textual Amendments

- F7 Words in s. 28(2)(a)(ii) repealed (27.9.1999) by 1999 c. 22, ss. 43, 106, Sch. 6 para. 7(1)(2), **Sch. 15 Pt. II** (with Sch. 14 paras. 7(2), 36(9)); S.I. 1999/2657, art. 2(a)(d)(ii)(a), **Sch. 2 Pt. I para. 2(b)**
- F8 S. 28(2A) inserted (27.9.1999) by 1999 c. 22, s. 42(2) (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**
- F9 S. 28(4A) inserted (27.9.1999) by s. 43, Sch. 6 para. 7(1)(3) (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**
- F10 Word in definition of “authorised body” repealed in s. 28(5) (27.9.1999) by 1999 c.22, s. 106, **Sch. 15 Pt. II** (with Sch. 14 paras. 7(2), 36(9)); S.I. 1999/2657, art. 2(d)(ii)(a), **Sch. 2 Pt. I para. 2(b)**
- F11 S. 28(5)(aa)(ab) inserted (27.9.1999) by 1999 c. 22, s. 40 (with Sch. 14 para. (2)); S.I. 1999/2657, **art. 2(a)**
- F12 Words in definition of “qualification regulations” in s. 28(5) inserted (27.9.1999) by 1999 c.22, s. 43, **Sch. 6 para. 7(1)(4)** (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**
- F13 S. 28(5A) inserted (27.9.1999) by 1999 c. 22, s. 40 (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**

Modifications etc. (not altering text)

- C3 S. 28 modified (27.9.1999) by 1999 c. 22, ss. 105, 108(3)(e), **Sch. 14 Pt. III para. 14(2)** (with Sch. 14 para. 7(2))
S. 28 modified (22.5.2000) by S.I. 2000/1119, regs. 1(1), 37, Sch. 3 Pt. 2 (as amended (1.1.2010) by S.I. 2009/1587, **art. 2(6)(a)**; S.I. 2009/3250, **art. 2(b)(i)** (with art. 9))
- C4 S. 28(2)(a) excluded (1.4.2001) by 2000 c. 43, s. 15(2); S.I. 2001/919, **art. 2(a)**

Marginal Citations

- M4 1974 c. 47.

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—

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- (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.

Commencement Information

II S. 29 wholly in force at 1. 4.1991 see s. 124(3) and S.I. 1991/608, art. 2.

^{F14}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—

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- (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.

Textual Amendments

F14 S. 30: s. 29 substituted for ss. 29 and 30 (1.1.2000) by 1999 c. 22, s. 41, **Sch. 5 para. 1** (with **Sch. 14 para. 7(2)**); S.I. 1999/3344, **art. 2(a)** (with **art. 4**)

Commencement Information

I2 S. 30 wholly in force at 1. 4.1991 see s. 124(3) and S.I. 1991/608, **art. 2**.

[^{F15}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—

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- (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.]

Textual Amendments

F15 S. 31 substituted for ss. 31-33 (27.9.1999) by 1999 c.22, s. 36 (with Sch. 14 para. 7(2)); S.I. 1999/2657, art. 2(a)

VALID FROM 31/07/2000

[^{F16}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.]

Textual Amendments

F16 S. 31A inserted (31.7.2000) by 1999 c. 22, s. 37 (with Sch. 14 para. 7(2); S.I. 2000/1920, art. 2(a)

VALID FROM 31/07/2000

[^{F17}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.

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(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
- (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.]

Textual Amendments

F17 S. 31B inserted (31.7.2000) by 1999 c.22, s. 38 (with Sch. 14 para. 7(2)); S.I. 2000/1920, art. 2(a)

VALID FROM 31/07/2000

[^{F18}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.]

Textual Amendments

F18 S. 31C inserted (31.7.2000) by 1999 c.22, s. 39 (with Sch. 7(2)); S.I. 2000/1920, art. 2(a)

Status:

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