



Legal Services Act 2007

2007 CHAPTER 29

PART 8

MISCELLANEOUS PROVISIONS ABOUT LAWYERS ETC

Duties of regulated persons

176 Duties of regulated persons

- (1) A person who is a regulated person in relation to an approved regulator has a duty to comply with the regulatory arrangements of the approved regulator as they apply to that person.
- (2) A person is a regulated person in relation to an approved regulator if the person—
 - (a) is authorised by the approved regulator to carry on an activity which is a reserved legal activity, or
 - (b) is not so authorised, but is a manager or employee of a person who is so authorised.
- (3) This section applies in relation to the Board in its capacity as a licensing authority and its licensing rules, as it applies in relation to an approved regulator and its regulatory arrangements.

Solicitors, the Law Society and the Disciplinary Tribunal

177 The Law Society, solicitors, recognised bodies and foreign lawyers

Schedule 16 contains amendments of—

- (a) the Solicitors Act 1974 (c. 47),
- (b) Part 1 of the Administration of Justice Act 1985 (c. 61) (recognised bodies), and
- (c) section 89 of, and Schedule 14 to, the Courts and Legal Services Act 1990 (c. 41) (foreign lawyers: partnerships and recognised bodies).

178 The Solicitors Disciplinary Tribunal: approval of rules

- (1) If the Solicitors Disciplinary Tribunal (“the Tribunal”) makes an alteration of its rules under section 46(9)(b) of the Solicitors Act 1974 (“the tribunal rules”), the alteration does not have effect unless it is approved for the purposes of this Act.
- (2) An alteration is approved for the purposes of this Act if—
 - (a) it is approved by the Board under Part 3 of Schedule 4 (alteration of approved regulator’s regulatory arrangements),
 - (b) it is an exempt alteration, or
 - (c) it is an alteration made in compliance with a direction under section 32 (given by virtue of section 179).
- (3) For the purposes of subsection (2)(a), paragraphs 20 to 27 of Schedule 4 (procedure for approval of alterations of regulatory arrangements) apply in relation to an application by the Tribunal for approval of an alteration or alterations of the tribunal rules as they apply in relation to an application by an approved regulator for approval of an alteration or alterations of its regulatory arrangements, but as if—
 - (a) paragraph 23 of that Schedule applied in relation to the Law Society as well as the Tribunal,
 - (b) in paragraph 25(3) (grounds for refusal of application), paragraphs (d) and (e) were omitted, and
 - (c) in paragraph 27(3) the reference to section 32 were a reference to that section as applied (with modifications) by section 179.
- (4) For the purposes of subsection (2)(b), an exempt alteration is an alteration which the Board has directed is to be treated as exempt for the purposes of this section.
- (5) A direction under subsection (4) may be specific or general, and must be published by the Board.
- (6) In this section references to an “alteration” of the tribunal rules include the making of such rules and the modification of such rules.

179 Board’s power to give directions to the Tribunal

Sections 32 to 34 and Schedule 7 (Board’s powers to give directions) apply in relation to the Tribunal as they apply in relation to an approved regulator, but as if—

- (a) in section 32(1)—
 - (i) paragraphs (a) and (c) were omitted, and
 - (ii) in paragraph (b) after “failed” there were inserted “to perform any of its functions to an adequate standard (or at all) or”,
- (b) in subsection (4)(b) of that section for “regulatory arrangements” there were substituted “rules under section 46(9)(b) of the Solicitors Act 1974”,
- (c) section 34(3) were omitted, and
- (d) paragraphs 2 and 10 of Schedule 7 applied in relation to the Law Society, as well as the Tribunal, where it is proposed to give the Tribunal a direction under section 32.

180 Functions of the Tribunal

Sections 69 and 70 (modification of functions of approved regulators) apply in relation to the Tribunal as they apply in relation to an approved regulator, but as if—

- (a) for section 69(3) (purpose for which modifying order may be made) there were substituted—

“(3) The Board may make a recommendation under this section only with a view to an order being made which enables the Tribunal to carry out its role more effectively or efficiently.”, and

- (b) subsections (4), (5) and (7) of that section were omitted.

Other lawyers

181 Unqualified person not to pretend to be a barrister

- (1) It is an offence for a person who is not a barrister—
- (a) wilfully to pretend to be a barrister, or
- (b) with the intention of implying falsely that that person is a barrister to take or use any name, title or description.
- (2) A person who is guilty of an offence under subsection (1) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both), and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (3) In relation to an offence under subsection (1) committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (2) (a) to 12 months is to be read as a reference to 6 months.

182 Licensed conveyancers

Schedule 17 contains amendments relating to the Council for Licensed Conveyancers, licensed conveyancers and bodies recognised under section 32 of the Administration of Justice Act 1985 (c. 61).

183 Commissioners for oaths

- (1) For the purposes of any enactment or instrument (including an enactment passed or instrument made after the passing of this Act) “commissioner for oaths” includes an authorised person in relation to the administration of oaths (“a relevant authorised person”).
- (2) A relevant authorised person has the right to use the title “Commissioner for Oaths”.
- (3) A relevant authorised person may not carry on the administration of oaths in any proceedings in which that person represents any of the parties or is interested.
- (4) A relevant authorised person before whom an oath or affidavit is taken or made must state in the jurat or attestation at which place and on what date the oath or affidavit is taken or made.

Status: This is the original version (as it was originally enacted).

- (5) A document containing such a statement and purporting to be sealed or signed by a relevant authorised person must be admitted in evidence without proof of the seal or signature, and without proof that that person is a relevant authorised person.
- (6) The Lord Chancellor may by order prescribe the fees to be charged by relevant authorised persons in respect of the administration of an oath or the taking of an affidavit.
- (7) The Lord Chancellor may make an order under subsection (6) only—
 - (a) after consultation with the Board, and
 - (b) with the consent of the Lord Chief Justice and the Master of the Rolls.
- (8) In this section “affidavit” has the same meaning as in the Commissioners for Oaths Act 1889 (c. 10).

184 Trade mark attorneys

- (1) The Trade Marks Act 1994 (c. 26) is amended as follows.
- (2) In section 82 (recognition of agents) after “rules” insert “and subject to the Legal Services Act 2007”.
- (3) For section 83 (the register of trade mark agents) substitute—

“83 The register of trade mark attorneys

- (1) There is to continue to be a register of persons who act as agent for others for the purpose of applying for or obtaining the registration of trade marks.
- (2) In this Act a registered trade mark attorney means an individual whose name is entered on the register kept under this section.
- (3) The register is to be kept by the Institute of Trade Mark Attorneys.
- (4) The Secretary of State may, by order, amend subsection (3) so as to require the register to be kept by the person specified in the order.
- (5) Before making an order under subsection (4), the Secretary of State must consult the Legal Services Board.
- (6) An order under this section must be made by statutory instrument.
- (7) An order under this section may not be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

83A Regulation of trade mark attorneys

- (1) The person who keeps the register under section 83 may make regulations which regulate—
 - (a) the keeping of the register and the registration of persons;
 - (b) the carrying on of trade mark agency work by registered persons.
- (2) Those regulations may, amongst other things, make—

Status: This is the original version (as it was originally enacted).

- (a) provision as to the educational and training qualifications, and other requirements, which must be satisfied before an individual may be registered or for an individual to remain registered;
 - (b) provision as to the requirements which must be met by a body (corporate or unincorporate) before it may be registered or for it to remain registered, including provision as to the management and control of the body;
 - (c) provision as to the educational, training or other requirements to be met by regulated persons;
 - (d) provision regulating the practice, conduct and discipline of registered persons or regulated persons;
 - (e) provision authorising in such cases as may be specified in the regulations the erasure from the register of the name of any person registered in it, or the suspension of a person's registration;
 - (f) provision requiring the payment of such fees as may be specified in or determined in accordance with the regulations;
 - (g) provision about the provision to be made by registered persons in respect of complaints made against them;
 - (h) provision about the keeping of records and accounts by registered persons or regulated persons;
 - (i) provision for reviews of or appeals against decisions made under the regulations;
 - (j) provision as to the indemnification of registered persons or regulated persons against losses arising from claims in respect of civil liability incurred by them.
- (3) Regulations under this section may make different provision for different purposes.
- (4) Regulations under this section which are not regulatory arrangements within the meaning of the Legal Services Act 2007 are to be treated as such arrangements for the purposes of that Act.
- (5) Before the appointed day, regulations under this section may be made only with the approval of the Secretary of State.
- (6) The powers conferred to make regulations under this section are not to be taken to prejudice—
- (a) any other power which the person who keeps the register may have to make rules or regulations (however they may be described and whether they are made under an enactment or otherwise);
 - (b) any rules or regulations made by that person under any such power.
- (7) In this section—
- “appointed day” means the day appointed for the coming into force of paragraph 1 of Schedule 4 to the Legal Services Act 2007;
 - “manager”, in relation to a body, has the same meaning as in the Legal Services Act 2007 (see section 207);
 - “registered person” means—
- (a) a registered trade mark attorney, or
 - (b) a body (corporate or unincorporate) registered in the register kept under section 83;

Status: This is the original version (as it was originally enacted).

“regulated person” means a person who is not a registered person but is a manager or employee of a body which is a registered person;

“trade mark agency work” means work done in the course of carrying on the business of acting as agent for others for the purpose of—

- (a) applying for or obtaining the registration of trade marks in the United Kingdom, or
- (b) conducting proceedings before the Comptroller relating to applications for or otherwise in connection with the registration of trade marks.”

(4) In section 84 (unregistered persons not to be described as registered trade mark agents)

(a) in subsection (2)—

- (i) after “partnership” (in the first place) insert “or other unincorporated body”, and
- (ii) for “all the partners” to the end substitute “the partnership or other body is registered in the register kept under section 83.”, and

(b) in subsection (3) for “all the directors” to the end substitute “the body corporate is registered in the register kept under section 83.”

(5) Omit section 85 (power to prescribe conditions etc for mixed partnerships and bodies corporate).

(6) In section 87 (privilege for communications with registered trade mark attorneys), in subsection (3)(c) at the beginning insert “any other unincorporated body or”.

185 Patent attorneys

(1) The Copyright, Designs and Patents Act 1988 (c. 48) is amended as follows.

(2) In section 274 (persons permitted to carry on business of a patent agent) in subsection (1) after “this Part” insert “and to the Legal Services Act 2007”.

(3) For section 275 (the register of patent agents) substitute—

“275 The register of patent attorneys

(1) There is to continue to be a register of persons who act as agent for others for the purpose of applying for or obtaining patents.

(2) In this Part a registered patent attorney means an individual whose name is entered on the register kept under this section.

(3) The register is to be kept by the Chartered Institute of Patent Attorneys.

(4) The Secretary of State may, by order, amend subsection (3) so as to require the register to be kept by the person specified in the order.

(5) Before making an order under subsection (4), the Secretary of State must consult the Legal Services Board.

(6) An order under this section must be made by statutory instrument.

Status: This is the original version (as it was originally enacted).

- (7) An order under this section may not be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

275A Regulation of patent attorneys

- (1) The person who keeps the register under section 275 may make regulations which regulate—
- (a) the keeping of the register and the registration of persons;
 - (b) the carrying on of patent attorney work by registered persons.
- (2) Those regulations may, amongst other things, make—
- (a) provision as to the educational and training qualifications, and other requirements, which must be satisfied before an individual may be registered or for an individual to remain registered;
 - (b) provision as to the requirements which must be met by a body (corporate or unincorporate) before it may be registered, or for it to remain registered, including provision as to the management and control of the body;
 - (c) provision as to the educational, training and other requirements to be met by regulated persons;
 - (d) provision regulating the practice, conduct and discipline of registered persons or regulated persons;
 - (e) provision authorising in such cases as may be specified in the regulations the erasure from the register of the name of any person registered in it, or the suspension of a person's registration;
 - (f) provision requiring the payment of such fees as may be specified in or determined in accordance with the regulations;
 - (g) provision about the provision to be made by registered persons in respect of complaints made against them;
 - (h) provision about the keeping by registered persons or regulated persons of records and accounts;
 - (i) provision for reviews of or appeals against decisions made under the regulations;
 - (j) provision as to the indemnification of registered persons or regulated persons against losses arising from claims in respect of civil liability incurred by them.
- (3) Regulations under this section may make different provision for different purposes.
- (4) Regulations under this section which are not regulatory arrangements within the meaning of the Legal Services Act 2007 are to be treated as such arrangements for the purposes of that Act.
- (5) Before the appointed day, regulations under this section may be made only with the approval of the Secretary of State.
- (6) The powers conferred to make regulations under this section are not to be taken to prejudice—

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- (a) any other power which the person who keeps the register may have to make rules or regulations (however they may be described and whether they are made under an enactment or otherwise);
- (b) any rules or regulations made by that person under any such power.

(7) In this section—

“appointed day” means the day appointed for the coming into force of paragraph 1 of Schedule 4 to the Legal Services Act 2007;

“manager”, in relation to a body, has the same meaning as in the Legal Services Act 2007 (see section 207);

“patent attorney work” means work done in the course of carrying on the business of acting as agent for others for the purpose of—

- (a) applying for or obtaining patents, in the United Kingdom or elsewhere, or
- (b) conducting proceedings before the comptroller relating to applications for, or otherwise in connection with, patents;

“registered person” means—

- (a) a registered patent attorney, or
- (b) a body (corporate or unincorporate) registered in the register kept under section 275;

“regulated person” means a person who is not a registered person but is a manager or employee of a body which is a registered person.”

(4) In section 276 (persons entitled to describe themselves as patent attorneys)—

- (a) in subsection (2)—
 - (i) after “partnership” (in the first place) insert “or other unincorporated body”, and
 - (ii) for “all the partners” to the end substitute “the partnership or other body is registered in the register kept under section 275”, and
- (b) in subsection (3) for “all the directors” to the end substitute “the body corporate is registered in the register kept under section 275.”

(5) Omit section 279 (power to prescribe conditions etc for mixed partnerships and bodies corporate).

(6) In section 280 (privilege for communications with patent agents), in subsection (3), at the end of paragraph (b) insert—

- “(ba) an unincorporated body (other than a partnership) entitled to describe itself as a patent attorney, or”.

186 Immigration advisers and immigration service providers

(1) Schedule 18 makes provision relating to Part 5 of the Immigration and Asylum Act 1999 (c. 33) (immigration advisers and immigration service providers).

(2) In that Schedule—

- (a) Part 1 makes provision for approved regulators to become qualifying regulators for the purposes of Part 5 of the Immigration and Asylum Act 1999,
- (b) Part 2 contains amendments of that Act (which amongst other things enable persons authorised by qualifying regulators to provide immigration advice and immigration services in England and Wales), and

- (c) Part 3 makes provision for certain persons to be treated, during a transitional period, as authorised by qualifying regulators to provide such advice and services.

187 Claims management services

Schedule 19 contains amendments of Part 2 of the Compensation Act 2006 (c. 29) (claims management services).

Advocates and litigators

188 Duties of advocates and litigators

- (1) This section applies to a person who—
 - (a) exercises before any court a right of audience, or
 - (b) conducts litigation in relation to proceedings in any court,by virtue of being an authorised person in relation to the activity in question.
- (2) A person to whom this section applies has a duty to the court in question to act with independence in the interests of justice.
- (3) That duty, and the duty to comply with relevant conduct rules imposed on the person by section 176(1), override any obligations which the person may have (otherwise than under the criminal law) if they are inconsistent with them.
- (4) “Relevant conduct rules” are the conduct rules of the relevant authorising body which relate to the exercise of a right of audience or the conduct of litigation.
- (5) The relevant authorising body is—
 - (a) the approved regulator by which the person is authorised to exercise the right of audience or conduct the litigation, or
 - (b) where the person is authorised to exercise the right of audience or conduct the litigation by the Board in its capacity as a licensing authority, the Board.

189 Employed advocates

- (1) This section applies where an authorised person in relation to the exercise of a right of audience is employed as a Crown Prosecutor or in any other description of employment.
- (2) Qualification regulations or conduct rules of the approved regulator by whom the person is authorised to carry on that activity which relate to the right of audience do not have effect in relation to the person if—
 - (a) they—
 - (i) limit the courts before which, or proceedings in which, that activity may be carried on by persons who are employed, or
 - (ii) limit the circumstances in which that activity may be carried on by persons who are employed by requiring such persons to be accompanied by some other person when carrying on that activity, and
 - (b) they do not impose the same limitation on persons who are authorised persons in relation to the activity in question but are not employed.

Status: This is the original version (as it was originally enacted).

Legal professional privilege

190 Legal professional privilege

- (1) Subsection (2) applies where an individual (“P”) who is not a barrister or solicitor—
 - (a) provides advocacy services as an authorised person in relation to the exercise of rights of audience,
 - (b) provides litigation services as an authorised person in relation to the conduct of litigation,
 - (c) provides conveyancing services as an authorised person in relation to reserved instrument activities, or
 - (d) provides probate services as an authorised person in relation to probate activities.
- (2) Any communication, document, material or information relating to the provision of the services in question is privileged from disclosure in like manner as if P had at all material times been acting as P’s client’s solicitor.
- (3) Subsection (4) applies where—
 - (a) a licensed body provides services to a client, and
 - (b) the individual (“E”) through whom the body provides those services—
 - (i) is a relevant lawyer, or
 - (ii) acts at the direction and under the supervision of a relevant lawyer (“the supervisor”).
- (4) Any communication, document, material or information relating to the provision of the services in question is privileged from disclosure only if, and to the extent that, it would have been privileged from disclosure if—
 - (a) the services had been provided by E or, if E is not a relevant lawyer, by the supervisor, and
 - (b) at all material times the client had been the client of E or, if E is not a relevant lawyer, of the supervisor.
- (5) “Relevant lawyer” means an individual who is—
 - (a) a solicitor;
 - (b) a barrister;
 - (c) a solicitor in Scotland;
 - (d) an advocate in Scotland;
 - (e) a solicitor of the Court of Judicature of Northern Ireland;
 - (f) a member of the Bar of Northern Ireland;
 - (g) a registered foreign lawyer (within the meaning of section 89 of the Courts and Legal Services Act 1990 (c. 41));
 - (h) an individual not within paragraphs (a) to (g) who is an authorised person in relation to an activity which is a reserved legal activity; or
 - (i) a European lawyer (within the meaning of the European Communities (Services of Lawyers) Order 1978 (S.I. 1978/1910)).
- (6) In this section—

“advocacy services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right

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of audience in relation to any proceedings, or contemplated proceedings, to provide;

“litigation services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings, or contemplated proceedings, to provide;

“conveyancing services” means the preparation of transfers, conveyances, contracts and other documents in connection with, and other services ancillary to, the disposition or acquisition of estates or interests in land;

“probate services” means the preparation of any papers on which to found or oppose a grant of probate or a grant of letters of administration and the administration of the estate of a deceased person.

- (7) This section is without prejudice to any other enactment or rule of law by virtue of which a communication, a document, material or information is privileged from disclosure.

Employees of housing management bodies

191 Rights of audience etc of employees of housing management bodies

After section 60 of the County Courts Act 1984 (c. 28) insert—

“60A Rights of audience etc of employees of housing management bodies

- (1) An employee of a housing management body who is authorised by that body for the purposes of this section has—
- (a) a right of audience in relation to any proceedings to which this section applies, and
 - (b) a right to conduct litigation in relation to any such proceedings.
- (2) This section applies to relevant housing proceedings in a county court before a district judge which are brought—
- (a) in the name of a local housing authority, and
 - (b) by the housing management body in the exercise of functions of that local housing authority delegated to that body under a housing management agreement.
- (3) “Relevant housing proceedings” are—
- (a) proceedings under section 82A of the Housing Act 1985 (demotion because of anti-social behaviour);
 - (b) proceedings for possession of a dwelling-house subject to a secure tenancy, where possession is sought on ground 2 in Part 1 of Schedule 2 to that Act (anti-social behaviour);
 - (c) proceedings for possession of a dwelling-house subject to a demoted tenancy;
 - (d) proceedings for a suspension order under section 121A of the Housing Act 1985 (suspension of right to buy);
 - (e) proceedings under section 153A, 153B or 153D of the Housing Act 1996 (injunctions against anti-social behaviour);

Status: This is the original version (as it was originally enacted).

- (f) proceedings for the attachment of a power of arrest to an injunction by virtue of section 91(2) of the Anti-social Behaviour Act 2003 or section 27(2) of the Police and Justice Act 2006 (proceedings under section 222 of the Local Government Act 1972: power of arrest attached to injunction);
 - (g) at a hearing at which a decision is made in relation to proceedings within paragraphs (a) to (f), proceedings for permission to appeal against that decision;
 - (h) such other proceedings as the Lord Chancellor may prescribe by order.
- (4) An authorisation for the purposes of this section must be in writing.
- (5) The power to make an order under subsection (3)(h) is exercisable by statutory instrument subject to annulment by resolution of either House of Parliament.
- (6) In subsection (3)(e) the reference to section 153A of the Housing Act 1996 is a reference to that section—
- (a) as inserted by section 13 of the Anti-social Behaviour Act 2003, or
 - (b) as substituted by section 26 of the Police and Justice Act 2006.
- (7) In this section—
- “dwelling-house” has the same meaning as in Part 4 of the Housing Act 1985;
 - “housing management agreement” means an agreement under section 27 of the Housing Act 1985 (including an agreement to which section 27B(2) or (3) of that Act applies);
 - “housing management body” means a person who exercises management functions of a local housing authority by virtue of a housing management agreement;
 - “local housing authority” has the same meaning as in section 27 of the Housing Act 1985;
 - “right of audience” means the right to appear before and address a court, including the right to call and examine witnesses;
 - “right to conduct litigation” means the right—
 - (a) to issue proceedings before any court in England and Wales,
 - (b) to commence, prosecute and defend such proceedings, and
 - (c) to perform any ancillary functions in relation to such proceedings (such as entering appearances to actions);
 - “secure tenancy” has the same meaning as in Part 4 of the Housing Act 1985.”

Savings

192 Powers of court in respect of rights of audience and conduct of litigation

- (1) Nothing in this Act affects the power of any court in any proceedings to refuse to hear a person (for reasons which apply to that person as an individual) who would otherwise have a right of audience before the court in relation to those proceedings.
- (2) Where a court refuses to hear a person as mentioned in subsection (1), it must give its reasons for refusing.

- (3) Where—
- (a) immediately before the commencement of section 13 (entitlement to carry on reserved legal activities), 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 may exercise a right of audience before the court, in relation to any proceedings, solely by virtue of being entitled to do so under this Act.
- (4) But a court may not limit the right to appear before the court in any proceedings to only some of those who are entitled to exercise that right by virtue of this Act.
- (5) A court may not limit the right to conduct litigation in relation to proceedings before the court to only some of those who are entitled to exercise that right by virtue of this Act.
- (6) In this section “advocate”, in relation to any proceedings, means a person exercising a right of audience as a representative of, or on behalf of, any party to the proceedings.

193 Solicitors to public departments and the City of London

- (1) Nothing in this Act is to prejudice or affect any rights or privileges of—
- (a) the Treasury Solicitor,
 - (b) the solicitor to any other public department,
 - (c) the solicitor to the Church Commissioners, or
 - (d) the solicitor to the Duchy of Cornwall.
- (2) Nothing in this Act requires a person to whom subsection (1) applies, or any clerk or officer appointed to act for such a person, to be entitled to carry on an activity which is a reserved legal activity in any case where, by virtue of section 88(1) of the Solicitors Act 1974 (c. 47), it would not have been necessary for that person to be admitted and enrolled and to hold a practising certificate under that Act if this Act had not been passed.
- (3) Nothing in this Act is to prejudice or affect any rights or privileges which immediately before the commencement of this Act attached to the office of Solicitor of the City of London.
- (4) Nothing in section 17 (offence to pretend to be entitled) applies to a person to whom subsection (1) applies, or any clerk or officer appointed to act for such a person, or to the Solicitor of the City of London.
- (5) A person who—
- (a) exercises before any court a right of audience, or
 - (b) conducts litigation in relation to proceedings in any court,
- by virtue of this section has a duty to the court in question to act with independence in the interests of justice.
- (6) That duty overrides any obligations which the person may have (otherwise than under the criminal law) if it is inconsistent with them.

Status: This is the original version (as it was originally enacted).

Pro bono representation

194 Payments in respect of pro bono representation

- (1) This section applies to proceedings in a civil court in which—
 - (a) a party to the proceedings (“P”) is or was represented by a legal representative (“R”), and
 - (b) R’s representation of P is or was provided free of charge, in whole or in part.
- (2) This section applies to such proceedings even if P is or was also represented by a legal representative not acting free of charge.
- (3) The court may order any person to make a payment to the prescribed charity in respect of R’s representation of P (or, if only part of R’s representation of P was provided free of charge, in respect of that part).
- (4) In considering whether to make such an order and the terms of such an order, the court must have regard to—
 - (a) whether, had R’s representation of P not been provided free of charge, it would have ordered the person to make a payment to P in respect of the costs payable to R by P in respect of that representation, and
 - (b) if it would, what the terms of the order would have been.
- (5) The court may not make an order under subsection (3) against a person represented in the proceedings if the person’s representation was at all times within subsection (6).
- (6) Representation is within this subsection if it is—
 - (a) provided by a legal representative acting free of charge, or
 - (b) funded by the Legal Services Commission as part of the Community Legal Service.
- (7) Rules of court may make further provision as to the making of orders under subsection (3), and may in particular—
 - (a) provide that such orders may not be made in civil proceedings of a description specified in the rules;
 - (b) make provision about the procedure to be followed in relation to such orders;
 - (c) specify matters (in addition to those mentioned in subsection (4)) to which the court must have regard in deciding whether to make such an order, and the terms of any order.
- (8) “The prescribed charity” means the charity prescribed by order made by the Lord Chancellor.
- (9) An order under subsection (8) may only prescribe a charity which—
 - (a) is registered in accordance with section 3A of the Charities Act 1993 (c. 10), and
 - (b) provides financial support to persons who provide, or organise or facilitate the provision of, legal advice or assistance (by way of representation or otherwise) which is free of charge.
- (10) In this section—

“legal representative”, in relation to a party to proceedings, means a person exercising a right of audience or conducting litigation on the party’s behalf;

“civil court” means the civil division of the Court of Appeal, the High Court, or any county court;

“free of charge” means otherwise than for or in expectation of fee, gain or reward.

- (11) The court may not make an order under subsection (3) in respect of representation if (or to the extent that) it is provided before this section comes into force.

Scotland

195 Application of the Legal Profession and Legal Aid (Scotland) Act 2007

- (1) The Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5) (“the 2007 Act”) applies to—
- (a) any element of a complaint relating to,
 - (b) the provision by a practitioner of,
- the advice, services and activities mentioned in subsection (2) as it applies to any other advice, services and activities provided by a practitioner.
- (2) The advice, services and activities are—
- (a) activities carried out by virtue of a group licence issued under section 22(1) (b) of the Consumer Credit Act 1974 (c. 39);
 - (b) activities of an insolvency practitioner within the meaning of Part 13 of the Insolvency Act 1986 (c. 45);
 - (c) activities mentioned in paragraph (a) of paragraph 5(1) of Schedule 3 to the Financial Services Act 1986 (c. 60);
 - (d) immigration advice or immigration services;
 - (e) regulated activity within the meaning of section 22 of the Financial Services and Markets Act 2000 (c. 8), other than activity falling within paragraph (f) below, in respect of which the Financial Services Authority has by virtue of Part 20 of that Act arranged for its regulatory role to be carried out by the Law Society of Scotland;
 - (f) exempt regulated activities within the meaning of section 325(2) of the Financial Services and Markets Act 2000.
- (3) In subsection (1), “complaint” and “practitioner” have the same meaning as in Part 1 of the 2007 Act.
- (4) Omit section 77 of the 2007 Act (advice services and activities to which Act does not apply).
- (5) Schedule 20 contains minor and consequential amendments in connection with the application of the 2007 Act by virtue of this section.

196 Scottish legal services ombudsman: functions

- (1) The functions of the Scottish legal services ombudsman cease to be exercisable in relation to the advice, services and activities mentioned in section 195(2).
- (2) In the Immigration and Asylum Act 1999 (c. 33)—

Status: This is the original version (as it was originally enacted).

- (a) in section 86(4)(c) (designated professional bodies), for “Scottish Legal Services Ombudsman” substitute “Scottish Legal Complaints Commission”,
and
- (b) in paragraph 4(2)(c) of Schedule 5 (the Immigration Services Commissioner), for “Scottish Legal Services Ombudsman” substitute “Scottish Legal Complaints Commission”.