



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

## 1990 CHAPTER 40

### PART II

#### LEGAL SERVICES

##### *Rights of audience*

#### **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

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**Changes to legislation:** Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Section 27 is up to date with all changes known to be in force on or before 11 August 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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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.

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**Commencement Information**

**II** S. 27 in force at 19.3.2007 by S.S.I. 2007/141, art. 2(c)

**Changes to legislation:**

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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\(11\)](#)