SCOTTISH STATUTORY INSTRUMENTS

2004 No. 383

LEGAL PROFESSION

The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations 2004

Made - - - -	*8th September 2004*
Laid before the Scottish Parliament - - - -	*9th September 2004*
Coming into force - -	*1st October 2004*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**) and all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi national Practices) Regulations 2004 and shall come into force on 1st October 2004.

(2) These Regulations extend to Scotland and insofar as they extend beyond Scotland they do so only as a matter of Scots law.

(3) Expressions used in these Regulations have the same meanings as they have in the Solicitors (Scotland) Act 1980(**2**).

Amendment and modification of the 1980 Act

2. The Solicitors (Scotland) Act 1980 is amended and applied in accordance with these Regulations.

New section 23B

3. After section 23A(**3**) insert–

(**1**) 1972 c. 68; section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3). The function conferred on a Minister of the Crown by section 2(2), in so far as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(**2**) 1980 c. 46.

(**3**) Section 23A was inserted by the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 (S.S.I. 2000/121) ("the 2000 Regulations"), Schedule 1, paragraph 1(4).

"**23B.** Failure on the part of a registered foreign lawyer in practice to have in force a current registration certificate may be treated as professional misconduct for the purposes of Part IV.".

Amendment of section 26

4. In section 26 (offence for solicitors to act as agents for unqualified persons)–

(a) in subsection (2)(**4**), after "solicitor" in both places where it appears, insert ", registered foreign lawyer";

(b) in subsection (3), after "incorporated practice" insert ", registered foreign lawyer, multi national practice".

Amendment of section 28

5. In section 28(**5**) (offence for solicitors who are disqualified to seek employment without informing employer)–

(a) after paragraph (d) insert–

"; or

(e) has had his registration as a registered foreign lawyer withdrawn; or

(f) has been suspended from practice as a registered foreign lawyer,";

(b) after "incorporated practice" insert "or multi-national practice".

Amendment of section 31

6. In section 31(1)(**6**) (offence for unqualified persons to pretend to be solicitor or notary public)–

(a) after paragraph (aa) insert–

"(ab) pretends to be a registered foreign lawyer; or"; and

(b) in paragraph (b), for "or registered European lawyer" substitute ", registered European lawyer or registered foreign lawyer".

Amendment of section 32

7. After section 32(3) (offence for unqualified person to prepare certain documents) insert–

"(4) For the purposes of this section, "unqualified person" includes a registered foreign lawyer.".

New section 33B

8. After section 33A(**7**) (privilege of incorporated practice from disclosure etc.) insert–

"**33B.**—(1) Any communication made to or by a registered foreign lawyer in the course of his actings as such for a client shall in any legal proceedings be privileged from disclosure in like manner as if the registered foreign lawyer had at all material times been a solicitor acting for a client.

(**4**) Section 26(2) and (3) was amended by the 2000 Regulations, Schedule 1, paragraph 1(6).

(**5**) Section 28 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73) ("the 1985 Act"), Schedule 1, paragraph 6, and the 2000 Regulations, Schedule 1, paragraph 1(7).

(**6**) Section 31(1) was amended by the 1985 Act, Schedule 1, paragraph 8, and the 2000 Regulations, Schedule 1, paragraph 1(7) and (8).

(**7**) Section 33A was inserted by the 1985 Act, Schedule 1, paragraph 11.

(2) Any enactment or instrument making special provision in relation to a solicitor or other legal representative as to the disclosure of information, or as to the production, seizure or removal of documents, with respect to which a claim to professional privilege could be maintained, shall, with any necessary modifications, have effect in relation to a registered foreign lawyer as it has effect in relation to a solicitor.".

Amendment of section 34

9. After section 34(1A)(**8**) (rules as to professional practice, conduct and discipline) insert–

"(1B) Rules made under this section may–

(a) prevent a solicitor from entering a multi-national practice without the approval of the Council; and

(b) make different provision for the regulation of solicitors and registered foreign lawyers in a multi-national practice in the following different cases–

(i) where the principal place of business of the practice is outside Scotland and it has a place of business in Scotland;

(ii) where the principal place of business of the practice is in Scotland and it has a place of business outside Scotland;

(iii) where the principal place of business of the practice is in Scotland and it has no place of business outside Scotland.

(1C) For the purposes of subsection (1B)(b), the principal place of business of a multi-national practice shall be determined by the Council who shall take into account factors set out in rules which may be made under this section.".

Amendment of section 43

10. In section 43(**9**) (Guarantee Fund)–

(a) in subsection (2)(a), after "solicitor" in each place where it appears insert ", registered foreign lawyer"; and

(b) in subsection (3)–

(i) at the end of paragraph (d) omit "or"; and

(ii) after paragraph (e) insert–

";

(f) in respect of any act or default of a registered foreign lawyer, or any of his employees or partners, where such act or default takes place outside Scotland, unless the Council is satisfied that the act or default is closely connected with the registered foreign lawyer's practice, or any of his partners' practice, in Scotland; or

(g) in respect of any act or default of any member, director, manager, secretary or other employee of an incorporated practice which is a multi-national practice, where such act or default takes place outside Scotland, unless the Council is satisfied that the act or default is closely connected with the incorporated practice's practice in Scotland.".

(**8**) Section 34 (1A) was inserted by the 1985 Act, Schedule 1, paragraph 12.
(**9**) Section 43 was amended by the 1985 Act, Schedule 1, paragraph 21 and the 2000 Regulations, Schedule 1, paragraph 1(11).

Amendment of section 60A

11. In section 60A(**10**) (multi national practices)–

(a) in subsection (2), after paragraph (a) insert–

"(aa) the information which shall accompany such applications;";

(b) after subsection (4) insert–

"(4A) Any person may inspect the register of foreign lawyers during office hours without payment.

(4B) A registered foreign lawyer who wishes his name to be removed from the register of foreign lawyers may make an application to the Council in that behalf, and the Council shall, if the registered foreign lawyer satisfies the Council that he has made adequate arrangements with respect to the business that he has then in hand, remove the name of that foreign lawyer from the register of foreign lawyers.

(4C) On an application to the Council by a foreign lawyer whose name has been removed from the register of foreign lawyers under subsection (4B), the Council may, after such inquiry as they think proper, restore the name of the foreign lawyer to the register of foreign lawyers.

(4D) A foreign lawyer whose name has been removed (other than pursuant to an application made under subsection (4B)) from the register of foreign lawyers shall have his name restored to that register only if, on an application in that behalf made by him to the Tribunal and after such inquiry as the Tribunal thinks proper, the Tribunal so orders.

(4E) Rules made by the Tribunal under section 52(**11**) (procedure on complaints to the Tribunal) may–

(a) regulate the making, hearing and determining of applications under subsection (4D); and

(b) provide for payment by the applicant to the Council of such fee in respect of restoration to the register of foreign lawyers as the rules may specify.

(4F) Where, following an application under subsection (4), the Council decide not to enter the name of a foreign lawyer in the register of foreign lawyers the applicant may, within three months of the notification to him of the Council's decision (or later with the permission of the court), appeal to the court against the decision and, on such an appeal, the court may–

(a) order the Council to register the foreign lawyer;

(b) refuse the appeal; or

(c) remit the matter to the Council with such directions as it sees fit.

(4G) Sections 24A to 24G(**12**) (registration certificates for registered European lawyers) shall apply to registered foreign lawyers as they apply to registered European lawyers and any reference in those sections (as so applied) to a registration certificate shall be construed as a reference to a registration certificate for a registered foreign lawyer."; and

(c) in subsection (5), omit paragraph (a).

(**10**) Section 60A was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) ("the 1990 Act"), section 32.

(**11**) Section 52 was amended by the 1985 Act, Schedule 1, paragraph 27 and the Solicitors (Scotland) Act 1988 ("the 1988 Act"), Schedule 1, paragraph 15.

(**12**) Sections 24A to 24G were inserted by the 2000 Regulations, Schedule 1, paragraph 1(3).