SCOTTISH STATUTORY INSTRUMENTS

2000 No. 121

LEGAL PROFESSION

The European Communities (Lawyer's Practice) (Scotland) Regulations 2000

Made - - - -	*27th April 2000*
Laid before the Scottish Parliament - - - -	*28th April 2000*

Coming into force in accordance with regulation 1

The Scottish Ministers, in exercise of the powers conferred upon them 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:

PART I

INTRODUCTORY

Citation, commencement, transitional and extent

1.—(1) These Regulations may be cited as the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 and shall come into force on 22nd May 2000, except for regulations 21 and 22, which shall come into force on 22nd November 2000.

(2) Where, on 22nd May 2000, a European lawyer is practising professional activities under his home professional title on a permanent basis in Scotland or commences such practice by 21st November 2000, he shall apply to be registered in accordance with regulation 16 by 21st November 2000 where he intends to practise those activities on a permanent basis after that date.

(3) On or after 22nd November 2000, a European lawyer shall not practise as referred to in paragraph (2) without being registered in accordance with regulation 16, unless he was already practising before that date and has made an application for registration which has not been determined.

(4) In paragraphs (3) and (5), an application for registration shall, as at a particular date, be taken not to have been determined if as at that date the applicant–

(**1**) 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(a) has not received a rejection of his application and the period for such a rejection or a deemed rejection has not yet expired; or

(b) is appealing against a rejection of the application (including a deemed rejection) and the appeal has not been determined.

(5) Regulations 21(1)(b) and 22 shall not apply to a European lawyer whilst that lawyer satisfies all the following conditions–

(a) immediately before 22nd November 2000 he was practising on a permanent basis in any part of the United Kingdom;

(b) before 22nd November 2000 he applied for registration to any of the barristers' professional bodies or England and Wales or Northern Ireland solicitors' professional bodies, or to the Faculty of Advocates or the Law Society of Scotland; and

(c) his application for registration has not yet been determined.

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

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires–

"advocate" means a member of the Faculty of Advocates;

"barrister" means a person who is a barrister of England and Wales or, as the case may be, Northern Ireland, and practising as such;

"barristers' professional bodies" means the Inns of Court and the General Council of the Bar of England and Wales and the Executive Council of the Inn of Court of Northern Ireland;

"competent authority", in relation to Scotland, means either of the bodies designated as a competent authority by regulation 4 to undertake the activities required by the Directive set out in that regulation;

"the Directive" means of the European Communities Parliament and Council Directive No.98/5/EC to facilitate practice of the profession of lawyer on a permanent basis in certain states other than the State in which the professional qualification was obtained(**2**);

"England and Wales or Northern Ireland registered European lawyer" means a European lawyer who is registered with one of the barristers' professional bodies or England and Wales or Northern Ireland solicitors' professional bodies and whose registration has not been withdrawn or suspended;

"England and Wales or Northern Ireland solicitors' professional bodies" means the Law Society and the Law Society of Northern Ireland respectively;

"European lawyer" has the meaning given in paragraphs (2) and (3);

"home State" means the State in paragraph (4) in which a European lawyer acquired his authorisation to pursue professional activities and, if he is authorised in more than one of those States, it shall mean any of those States;

"home professional title" means, in relation to a European lawyer, the professional title or any of the professional titles specified in relation to his home State in paragraph (4) under which he is authorised in his home State to pursue professional activities;

"Irish barrister" means a European lawyer who is authorised in the Republic of Ireland to pursue professional activities under the professional title of barrister and whose home State is the Republic of Ireland;

(**2**) O.J. L77, 14.3.98, p.36.

"Irish solicitor" means a European lawyer who is authorised in the Republic of Ireland to pursue professional activities under the professional title of solicitor and whose home State is the Republic of Ireland;

"member of the professional body" means a practising solicitor or advocate, as the case may be;

"professional body" means the Law Society of Scotland or the Faculty of Advocates;

"Qualification Regulations" means the European Communities (Recognition of Professional Qualifications) Regulations 1991(**3**);

"registered European lawyer" means a European lawyer who is registered with a professional body in accordance with regulation 17 and whose registration has not been withdrawn or suspended;

"solicitor" shall have the same meaning as in section 65(1) of the Solicitors (Scotland) Act 1980(**4**);

"supreme court" means the Court of Session, the High Court of Justiciary, the Lands Valuation Appeal Court, the House of Lords (hearing an appeal from the Court of Session) or the Judicial Committee of the Privy Council (hearing a reference or an appeal under the Scotland Act 1998).

(2) In these Regulations, "European lawyer" means a person who is–

(a) a national of the United Kingdom or of a State listed in paragraph (4);

(b) authorised in any of the States listed in paragraph (4) to pursue professional activities under any of the professional titles appearing in that paragraph; and

(c) subject to paragraph (3), not a solicitor or advocate, or under the law of England and Wales or Northern Ireland, a solicitor or barrister.

(3) Where a person is a European lawyer registered with more than one of the following–

(a) the Law Society of Scotland or the Faculty of Advocates; or

(b) the England and Wales or Northern Ireland solicitors' professional bodies or the barristers' professional bodies,

and subsequently acquires the title used by members of one of the bodies referred to in sub paragraph (b) then notwithstanding paragraph (2)(c), that person shall continue to fall within the definition of a European lawyer in relation to the relevant professional body referred to in sub paragraph (a) for the period that he remains registered with that other professional body.

(4) The States and professional titles referred to in the definition of European lawyer in paragraph (1) are as follows–

State	*Professional titles*
Belgium	Avocat/Advocaat/Rechtsanwalt
Denmark	Advokat
Germany	Rechtsanwalt
Greece	Dikegoros
Spain	Abogado/Advocat/Avogado/Abokatu
France	Avocat
Republic of Ireland	Barrister/Solicitor
Italy	Avvocato

(**3**) S.I.1991/824.
(**4**) 1980 c. 46.

State	*Professional titles*
Luxembourg	Avocat
Netherlands	Advocaat
Austria	Rechtsanwalt
Portugal	Advogado
Finland	Asianajaja/Advokat
Sweden	Advokat

(5) For the purposes of regulations 4(2)(d), 5(3) and 24(1) registration with the Faculty of Advocates shall be construed as membership of it.

(6) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation, Part or Schedule is a reference to a regulation or Part of, or a Schedule to, these Regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation.

Purpose of Regulations

3.—(1) The purpose of these Regulations is to implement the Directive in or as regards Scotland.

(2) The provisions of these Regulations shall have effect for the purpose of facilitating the practice of the profession of lawyer on a permanent basis by a European lawyer registered or registering in Scotland.

(3) References in these regulations to practice or professional activities shall not include the provision of services by lawyers within the meaning of the European Communities (Services of Lawyers) Order 1978(**5**).

Competent authorities

4.—(1) The Law Society of Scotland is designated as the competent authority for the purposes of–

(a) receiving applications for registration by European lawyers under Part III of these Regulations;

(b) receiving applications from registered European lawyers for entry into the profession of solicitor;

(c) the regulation of registered European lawyers registered with it; and

(d) the provision of certificates attesting to registration of solicitors with it.

(2) The Faculty of Advocates is designated as the competent authority for the purposes of–

(a) receiving applications for registration by European lawyers under Part III of these Regulations;

(b) receiving applications from registered European lawyers for entry into the profession of advocate;

(c) the regulation of registered European lawyers registered with it; and

(d) the provision of certificates attesting to registration of advocates with it.

(**5**) S.I. 1978/1910.

Exchange of information

5.—(1) In order to facilitate the application of the Directive and to prevent its provisions from being misapplied, a professional body may supply to or receive from–

(a) another professional body;

(b) the England and Wales or Northern Ireland solicitors' professional bodies or barristers' professional bodies; or

(c) an authority in any of the States listed in regulation 2(4) which has been designated by that State under the Directive as a competent authority in that State,

any information relating to a European lawyer or to any person with whom he jointly practises.

(2) Subject to paragraph (1) or as otherwise required by law in the interests of justice, a professional body shall preserve the confidentiality of any information received in accordance with paragraph (1) relating to a European lawyer or to any person with whom he jointly practises.

(3) A competent authority in Scotland shall provide a certificate attesting to the registration of a solicitor or advocate registered with it and his authorisation to practise when requested to do so by that solicitor or advocate or by a competent authority in a State listed in regulation 2(4).

PART II

PRACTICE OF PROFESSIONAL ACTIVITIES BY A REGISTERED EUROPEAN LAWYER

Practice of professional activities

6.—(1) Subject to the provisions of these Regulations, a registered European lawyer shall be entitled to carry out under his home professional title any professional activities whether in Scotland or elsewhere that may lawfully be carried out by a member of the professional body with which he is registered and any enactment or rule of law or practice with regard to the carrying out of professional activities by members of that professional body shall be interpreted and applied accordingly.

(2) A registered European lawyer who is in salaried employment may carry out professional activities whether in Scotland or elsewhere under his home professional title to the same extent that an employed member of the professional body with which he is registered may do so.

Title and description to be used by a registered European lawyer

7.—(1) Where a registered European lawyer is engaged in any professional activities in pursuance of regulation 6(1) he shall comply with the requirements set out in paragraph (2).

(2) The requirements referred to in paragraph (1) are that a registered European lawyer shall–

(a) use his home professional title expressed in an official language of his home State in a manner which avoids confusion with the title of solicitor or advocate;

(b) indicate the professional organisation by which he is authorised to practise or the court of law before which he is entitled to practise in that State;

(c) indicate the professional body with which he is registered in Scotland and that he is a registered European lawyer with that body; and

(d) if applicable indicate any England and Wales or Northern Ireland solicitors' professional bodies or barristers' professional bodies with which he may be registered and that he is an England and Wales or Northern Ireland registered European lawyer with that body or those bodies.