Draft Regulations laid before Parliament under paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No.

EXITING THE EUROPEAN UNION
LEGAL PROFESSION, ENGLAND AND WALES
LEGAL PROFESSION, NORTHERN IRELAND

The Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2019

Made - - - - ***

Coming into force in accordance with regulation 1

The Lord Chancellor, in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**1**), makes the following Regulations.

In accordance with paragraph 1(3) of Schedule 7 to that Act a draft of this instrument has been laid before Parliament and approved by resolution of each House of Parliament.

PART 1

Preliminary

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2019 and, subject to paragraph (2), come into force on exit day.

(2) Paragraphs 8(2) and (4), 13(2), (4), (7)(a), (c) and (e), (8)(a) and (c) and (9)(a) and 15(2) and (4) of the Schedule come into force at the end of the transitional period.

(3) These Regulations extend to England and Wales and Northern Ireland.

(**1**) 2018 c. 16.

Interpretation

2. In these Regulations—

"the 1978 Order" means the European Communities (Services of Lawyers) Order 1978(**2**);

"the 2000 Regulations" means the European Communities (Lawyer's Practice) Regulations 2000(**3**);

"the end of the transitional period" means 11.00 p.m. on 31 December 2020 (and references to anything happening before, after or at the end of the transitional period are to be read accordingly).

PART 2

Revocation of secondary legislation

Revocation

3. The following are revoked—

(a) the 1978 Order;

(b) the 2000 Regulations.

PART 3

Transitional provision and consequential amendments

Transitional provision: the 1978 Order

4.—(1) This regulation applies where—

(a) a complaint was made under article 15(1) of the 1978 Order (professional misconduct) before exit day; and

(b) one of the following applies—

(i) the disciplinary authority had not adjudicated upon the complaint before exit day;

(ii) the disciplinary authority had adjudicated upon the complaint and an appeal had been made against that adjudication before exit day, but the appeal had not been finally determined or withdrawn before exit day; or

(iii) the disciplinary authority had adjudicated upon the complaint before exit day but an appeal against that adjudication was not made until on or after exit day.

(2) Articles 15 to 17 of the 1978 Order (and articles 2 and 3 of that Order as they apply to articles 15 to 17) continue to apply to the complaint, as if the 1978 Order had not been revoked by regulation 3, until the complaint and, if applicable, any appeal, have been finally determined or withdrawn.

Transitional provisions: the 2000 Regulations

5.—(1) This regulation applies where—

(**2**) S.I. 1978/1910, amended by S.I. 1981/228 (N.I. 8), 2003/435 (N.I. 10), 2004/1117, 2008/81 and 2013/1605.
(**3**) S.I. 2000/1119, amended by S.I. 2001/644, 2003/435 (N.I. 10), 2004/1628, 2008/81, 2009/1587, 2009/3348, 2013/534, 2013/1605, 2013/3176, 2015/401 and 2015/2059.

(a) an individual was a registered European lawyer immediately before exit day;

(b) an individual made before exit day an application for registration under regulation 16 of the 2000 Regulations (application to be entered on a register) and—

(i) that application had not been decided before exit day;

(ii) the application had been rejected, or deemed to be rejected, under regulation 19 of the 2000 Regulations (time limit for decision and notification by professional body) and an appeal against that decision had not been finally determined or withdrawn before exit day; or

(iii) the application had been rejected, or deemed to be rejected, under regulation 19 of the 2000 Regulations before exit day but an appeal against that decision was not made until on or after exit day;

(c) an individual's registration as a registered European lawyer was suspended before exit day and—

(i) that suspension does not end until on or after exit day;

(ii) an application to terminate that suspension or an appeal against that suspension had not been finally determined or withdrawn before exit day;

(iii) an appeal against any determination of an application to terminate that suspension had not been finally determined or withdrawn before exit day;

(iv) an appeal against that suspension was not made until on or after exit day; or

(v) any appeal against any determination of an application to terminate that suspension was not made until on or after exit day;

(d) an individual's registration as a registered European lawyer was withdrawn or revoked before exit day by the professional body with whom that individual had been registered and—

(i) an appeal against that withdrawal or revocation had not been finally determined or withdrawn before exit day; or

(ii) an appeal against that withdrawal or revocation was not made until on or after exit day.

(2) The provisions of the 2000 Regulations mentioned in paragraph (3) continue to have effect in relation to an individual referred to in paragraph (1) until immediately before the end of the transitional period, as if not revoked by regulation 3 but subject to any modifications specified in paragraph (3).

(3) The provisions referred to in paragraph (2) are—

(a) regulation 2 (interpretation), modified so that paragraph (1) has effect as if—

(i) in the definition of "competent authority", "to undertake the activities required by the Directive set out in that regulation" were omitted; and

(ii) the definition of "Qualifications Regulations" were omitted;

(b) regulation 3 (purpose of regulations), modified so that it has effect as if paragraphs (1) and (3) were omitted;

(c) regulation 4 (competent authorities);

(d) regulation 5(1) and (2) (exchange of information), but paragraph (1) modified so that it has effect as if for "In order to facilitate the application of the Directive and to prevent its provisions from being misapplied, a professional body" there were substituted "A professional body";

(e) regulations 6 to 9 (practice of professional activities, title to be used and joint practice);

(f) regulation 10 (notification of joint practice), modified so that it has effect as if the reference to "with which he intends to register" were a reference to "with which he has applied for registration";

(g) regulations 11 to 20 (representation in legal proceedings, property transactions, probate, legal aid and registration);

(h) regulations 23 to 27 (evidence of registration and regulation and discipline);

(i) regulation 29 (application by registered European lawyer), modified so that paragraph (1) has effect as if "under regulation 34(a) of the Qualifications Regulations" were omitted;

(j) regulations 30 to 37 (applications for exemption, practice under title of solicitor or barrister and modification of enactments);

(k) Schedules 1 to 5.

(4) In this regulation and regulation 6 "registered European lawyer" has the same meaning as in regulation 2(1) of the 2000 Regulations as it had effect immediately before exit day.

Transitional provision: offence of pretending to be a registered European lawyer

6.—(1) Regulation 21 of the 2000 Regulations (offence of pretending to be a registered European lawyer) (and regulations 2 and 17 of those Regulations as they apply to regulation 21) continues to have effect until immediately before the end of the transitional period as if not revoked by regulation 3 subject to the modifications set out in paragraph (2).

(2) Regulation 21 has effect as if paragraphs (1)(b) and (2) were omitted.

Transitional provision: disciplinary proceedings

7.—(1) This regulation applies in the situations described in paragraphs (2) to (4).

(2) The first situation is where an appropriate authority has commenced disciplinary proceedings —

(a) before exit day, in relation to an individual who—

(i) was a registered European lawyer (within the meaning of regulation 2(1) of the 2000 Regulations as it had effect immediately before exit day) at a time before exit day; but

(ii) is not an individual in relation to whom regulation 5 applies,

and those proceedings have not been determined before exit day;

(b) before the end of the transitional period, in relation to an individual who is on or after exit day an individual registered under regulation 17 of the 2000 Regulations (registration by professional body), as that regulation has effect by virtue of regulation 5 of these Regulations, and those proceedings have not been determined before the end of the transitional period.

(3) The second situation is where any appeal against the determination of disciplinary proceedings commenced by an appropriate authority has not been finally determined or withdrawn—

(a) before exit day, in relation to an individual who—

(i) was a registered European lawyer (within the meaning of regulation 2(1) of the 2000 Regulations as it had effect immediately before exit day) at a time before exit day; but

(ii) is not an individual in relation to whom regulation 5 applies;

(b) before the end of the transitional period, in relation to an individual who is on or after exit day an individual registered under regulation 17 of the 2000 Regulations, as that regulation has effect by virtue of regulation 5 of these Regulations.

(4) The third situation is where the time limit for bringing an appeal against the determination of disciplinary proceedings commenced by an appropriate authority has not yet expired—

(a) before exit day, in relation to an individual who—

(i) was a registered European lawyer (within the meaning of regulation 2(1) of the 2000 Regulations as it had effect immediately before exit day), at a time before exit day; but

(ii) is not an individual in relation to whom regulation 5 applies;

(b) before the end of the transitional period, in relation to an individual who is on or after exit day an individual registered under regulation 17 of the 2000 Regulations, as that regulation has effect by virtue of regulation 5 of these Regulations.

(5) Where this regulation applies, the provisions of the 2000 Regulations mentioned in paragraph (6) continue to have effect as if the 2000 Regulations had not been revoked by regulation 3, but subject to any modifications specified in paragraphs (6) and (7), until the disciplinary proceedings or any appeal have been finally determined or withdrawn.

(6) The provisions referred to in paragraph (5) are—

(a) regulation 26 (disciplinary proceedings applicable), modified so that it has effect as if—

(i) in paragraph (1), reference to "fails" were a reference to "failed", reference to "he is subject" were reference to "he was subject" and reference to "is registered" were a reference to "was registered";

(ii) paragraph (2) were omitted; and

(iii) in paragraph (4), reference to "is registered", in each place where it occurs, were a reference to "was registered";

(b) regulation 27(1)(c) (disciplinary proceedings brought against a registered European lawyer), modified so that it has effect as if reference to "that authority" were a reference to "the competent authority in his home State";

(c) regulation 27(4);

(d) regulation 37(3) and (4) (modification of enactments) in so far as it applies to sub-paragraphs (e) and (f) of this paragraph;

(e) Schedule 4, paragraphs 7(2), 10 and 24; and

(f) Schedule 5, paragraph 3.

(7) Any reference to "registered European lawyer" in the provisions referred to in paragraph (6) has effect as if it were a reference to an individual who was formerly a registered European lawyer.

(8) In this regulation "appropriate authority" has the same meaning as in regulation 26 of the 2000 Regulations as it had effect immediately before exit day.

Transitional provision: applications for entry into profession of solicitor or barrister

8.—(1) This regulation applies where an application under regulation 29 of the 2000 Regulations (as that regulation has effect by virtue of regulation 5 of these Regulations) for an exemption from a requirement to pass an aptitude test is made before the end of the transitional period and—

(a) that application has not been determined before the end of the transitional period;

(b) any appeal against the determination of that application has not been finally determined or withdrawn before the end of the transitional period; or

(c) the time limit for bringing an appeal against the determination of that application has not expired before the end of the transitional period.