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 (Amendment) (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.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Services of Lawyers and Lawyer's Practice (Amendment) (EU Exit) Regulations 2019 and come into force immediately before exit day.

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

Interpretation

2. In these Regulations "the Revocation Regulations" means the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2019(**2**).

Amendments to the Revocation Regulations

3.—(1) The Revocation Regulations are amended as follows.

(2) In regulation 1(2) (citation, commencement and extent), for "8(2) and (4)" substitute "8(4)".

(**1**) 2018 c.16.
(**2**) S.I. 2019/XXXX.

(3) In the heading to regulation 4, after "Order" insert "and disciplinary proceedings".

(4) In regulation 4(1)(a) (transitional provision: the 1978 Order), after "exit day" insert "against a European lawyer (within the meaning of article 2 of the 1978 Order as it had effect immediately before exit day) who is not an individual to whom regulation 4A applies".

(5) After regulation 4 insert—

"**Transitional provision: the 1978 Order and Switzerland**

4A.—(1) This regulation applies to—

(a) a European lawyer who is—

(i) a national of the United Kingdom or a Swiss national; and

(ii) established in Switzerland; or

(b) a European lawyer who is integrated into the regular labour market of Switzerland and who is posted for the provision of carrying on professional activities in England and Wales or Northern Ireland by their employer who is established in Switzerland.

(2) For the purposes of this regulation, "European lawyer" has the same meaning as in article 2 of the 1978 Order as it had effect immediately before exit day.

(3) Subject to paragraph (4), the 1978 Order continues to have effect in relation to a European lawyer to whom this regulation applies as if the Order were not revoked by regulation 3 but were subject to the modifications specified in paragraph (5) until whichever is the later of—

(a) the end of the period of five years beginning with exit day; or

(b) if the period referred to in sub-paragraph (a) is extended in accordance with Article 23(2) of the Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation following the withdrawal of the United Kingdom from the European Union and the free movement of persons agreement, the end of that period as extended(**3**).

(4) A European lawyer may only carry on professional activities in accordance with the 1978 Order—

(a) on the basis of a written contract or contracts which were concluded, and the performance of which started, before exit day; and

(b) for a period not exceeding 90 days in total in a calendar year.

(5) The modifications to the 1978 Order referred to in paragraph (3) are that article 2 (interpretation) of that Order has effect as if—

(a) for the definition of "country of origin" there were substituted—

""country of origin", in relation to a European lawyer, means the state listed in column 1 of the table in the definition of "European lawyer" in which that lawyer acquired his authorisation to pursue professional activities and if he is authorised in more than one of those states, it means any of those states;";

(b) in the definition of "own professional authority"—

(i) after "means an authority" there were inserted "in Switzerland"; and

(ii) "in his member State of origin" were omitted.".

(6) In regulation 5 (transitional provisions: the 2000 Regulations)—

(**3**) A copy of the agreement is available from Judicial and Legal Services Policy, Ministry of Justice, 102 Petty France, London SW1H 9AJ or at www.gov.uk

(a) in paragraph (1), after "This regulation applies" insert ", subject to paragraph (1A),";

(b) after paragraph (1) insert—

"(1A) This regulation does not apply where regulation 5A or 8A applies.";

(c) in paragraph (3)—

(i) in sub-paragraph (e), for "6 to 9" substitute "6, 7 and 9"; and

(ii) after sub-paragraph (e) insert—

"(ea) regulation 8 (joint practice), modified so that paragraph (a)(ii) has effect as if after "registered European lawyer" there were inserted "(including a registered European lawyer within the meaning of regulation 2(1) as it has effect by virtue of regulation 5A of the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2019)""; and

(d) in paragraph (4) omit "and regulation 6".

(7) After regulation 5 insert—

"**Transitional provision: the 2000 Regulations and Swiss lawyers**

5A.—(1) This regulation applies to a Swiss lawyer.

(2) For the purposes of this regulation, "Swiss lawyer" means a national of the United Kingdom or a Swiss national who—

(a) immediately before exit day was authorised in Switzerland to pursue professional activities under the professional title of Avocat, Advokat, Rechtsanwalt, Anwalt, Fürsprecher, Fürsprech or Avvocato; or

(b) had started but not yet completed their professional qualifications before exit day in order to be authorised in Switzerland to pursue professional activities under one of the professional titles referred to in sub-paragraph (a) but who completed their qualifications and were so authorised before the end of the period of four years beginning with exit day.

(3) The provisions of the 2000 Regulations mentioned in paragraph (6) continue, subject to paragraphs (4) and (5), to have effect in relation to a Swiss lawyer as if not revoked by regulation 3 but with the modifications specified in paragraph (6).

(4) The provisions of the 2000 Regulations referred to in paragraph (3) cease to have effect in relation to a Swiss lawyer at the end of the period of four years beginning with exit day unless—

(a) the Swiss lawyer is a registered European lawyer immediately before the end of that period;

(b) the Swiss lawyer had applied before the end of that period for registration under regulation 16 of the 2000 Regulations (as it has effect by virtue of this regulation) and—

(i) that application had not been decided before the end of that period;

(ii) the application had been rejected, or deemed to be rejected, under regulation 19 of the 2000 Regulations (as it has effect by virtue of this regulation) and an appeal against that decision had not been finally determined or withdrawn before the end of that period; or

(iii) the application had been rejected, or deemed to be rejected, under regulation 19 of the 2000 Regulations (as it has effect by virtue of this regulation) but an appeal against that decision was not made until at or after the end of that period;

(c) the Swiss lawyer's registration as a registered European lawyer was suspended before the end of the period of four years beginning with exit day and—

(i) that suspension does not end until at or after the end of that period;

(ii) an application to terminate that suspension or an appeal against that suspension had not been finally determined or withdrawn before the end of that period;

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

(iv) an appeal against that suspension was not made until at or after the end of that period; or

(v) any appeal against any determination of any application to terminate that suspension was not made until at or after the end of that period;

(d) the Swiss lawyer's registration as a registered European lawyer was withdrawn or revoked before the end of the period of four years beginning with exit day by the professional body with whom that lawyer had been registered and—

(i) an appeal against that withdrawal or revocation had not been finally determined or withdrawn before the end of that period; or

(ii) an appeal against that withdrawal or revocation was not made until at or after the end of that period.

(5) The provisions of the 2000 Regulations referred to in paragraph (3) cease to continue to have effect in relation to a Swiss lawyer where that lawyer—

(a) was a registered European lawyer before the end of the period of four years beginning with exit day, but

(b) ceases to be registered at or after the end of that period with the relevant professional body under regulation 17 of the 2000 Regulations (as it has effect by virtue of this regulation).

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

(a) regulation 2 (interpretation), modified so that—

(i) paragraph (1) has effect as if—

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

(bb) the definition of "home State" were omitted;

(cc) the definition of "home professional title" were omitted;

(dd) the definition of "Irish barrister" were omitted;

(ee) the definition of "Irish solicitor" were omitted;

(ff) the definition of "Qualification Regulations" were omitted; and

(gg) after the definition of "solicitors' professional bodies" there were inserted—

""Swiss professional title" means, in relation to a European lawyer, any of the professional titles specified in paragraph (4) under which that lawyer is authorised in Switzerland to pursue professional activities.";

(ii) paragraph (2) has effect as if—

(aa) in sub-paragraph (a), for "of a State listed in paragraph (4)" there were substituted "a Swiss national"; and

(bb) in sub-paragraph (b), for "any of the States listed in paragraph (4)" there were substituted "Switzerland" and for "that paragraph" there were substituted "paragraph (4)"; and

(iii) for paragraph (4) (including the table) there were substituted—

"(4) The professional titles referred to in the definitions of "Swiss professional title" in paragraph (1) and "European lawyer" in paragraph (2) are Avocat, Advokat, Rechtsanwalt, Anwalt, Fürsprecher, Fürsprech or Avvocato.";

(b) regulation 3 (purpose of regulations), modified so that it has effect as if—

(i) paragraph (1) were omitted; and

(ii) in paragraph (3), after "1978" there were inserted "as that Order has effect by virtue of regulation 4A of the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2019";

(c) regulation 4 (competent authorities);

(d) regulation 5 (exchange of information), modified so that it has effect as if—

(i) in paragraph (1)—

(aa) 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"; and

(bb) for sub-paragraph (c) there were substituted—

"(c) an authority in Switzerland which has been designated by Switzerland under the Directive as a competent authority in Switzerland,"; and

(ii) in paragraph (3), for "a State listed in regulation 2(4)" there were substituted "Switzerland";

(e) regulation 6 (practice of professional activities), modified so that it has effect as if for "home professional title", in both places where it occurs, there were substituted "Swiss professional title";

(f) regulation 7 (title and description to be used by a registered European lawyer), modified so that it has effect as if—

(i) in paragraph (1)(a), for "his home State" there were substituted "Switzerland"; and

(ii) in paragraph (2)—

(aa) in sub-paragraph (a), for "home professional title" there were substituted "Swiss professional title" and for "his home State" there were substituted "Switzerland"; and

(bb) in sub-paragraph (b), for "that State" there were substituted "Switzerland";

(g) regulation 8 (joint practice), modified so that it has effect as if—

(i) for "home professional title", in the first place where it occurs, there were substituted "Swiss professional title";

(ii) in paragraph (a)(ii) after "registered European lawyer" there were inserted "(including a registered European lawyer within the meaning of regulation 2(1) as it has effect by virtue of regulation 5 of the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2019)"; and