

Draft Regulations laid before the Scottish Parliament under paragraph 1(7) of schedule 7 of the European Union (Withdrawal) Act 2018, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2019 No.

EXITING THE EUROPEAN UNION LEGAL PROFESSION

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

Made - - - -

2019

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018⁽¹⁾ and all other powers enabling them to do so.

In accordance with paragraph 4(b) of schedule 2 of that Act, they have consulted with the Secretary of State.

In accordance with paragraph 1(7) of schedule 7 of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

PART 1

Preliminary

Citation, commencement and extent

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

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

Interpretation

2. In these Regulations—

(1) 2018 c.16.

“the 1978 Order” means the European Communities (Services of Lawyers) Order 1978(2),
“the 2000 Regulations” means the European Communities (Lawyer’s Practice) (Scotland) 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 (in so far as it extends to Scotland),
 - (b) the 2000 Regulations.

PART 3

Transitional and saving provision and consequential amendments

Transitional provision: the European Communities (Services of Lawyers) Order 1978

- 4.—(1) This regulation applies where—
- (a) a complaint was made under article 15(1) of the 1978 Order (professional misconduct) before exit day 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 5 applies, 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.
- (3) In this regulation “disciplinary authority” has the same meaning as in article 15 of the 1978 Order as it had effect immediately before exit day.

(2) [S.I. 1978/1910](#), amended by [S.I. 1980/1964](#), [S.S.I. 2000/121](#), [S.S.I. 2004/186](#), [S.I. 2004/1117](#), [S.S.I. 2007/359](#) and [S.S.I. 2013/177](#).

(3) [S.S.I. 2000/121](#), amended by [S.I. 2001/3649](#), [S.S.I. 2004/302](#), [S.S.I. 2007/358](#), [S.I. 2011/1043](#) and [S.S.I. 2013/177](#).

Transitional provision: the European Communities (Services of Lawyers) Order 1978 and Switzerland

5.—(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 Scotland 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 referred to in paragraph (1) 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⁽⁴⁾.

(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.

Transitional provision: the European Communities (Lawyer's Practice) (Scotland) Regulations 2000

6.—(1) Subject to paragraph (2), this regulation applies where—

- (a) an individual was a registered European lawyer immediately before exit day,
- (b) an individual made an application for registration under regulation 16 of the 2000 Regulations (application to be entered on a register) before exit day and—
 - (i) the application had not been decided before exit day,

⁽⁴⁾ 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

- (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) This regulation does not apply where regulation 7 or 11 applies.
- (3) The provisions of the 2000 Regulations mentioned in paragraph (4) 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, subject to the modifications specified in paragraph (4).
- (4) The provisions and modifications referred to in paragraph (3) are—
- (a) regulation 2 (interpretation), modified so 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 “Qualification 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 (practice of professional activities) and 7 (title and description to be used by a registered European lawyer),
 - (f) regulation 8 (joint practice), modified so that paragraph (b) 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 7 of the Services of Lawyers and Lawyer's Practice (EU Exit) (Amendment etc.) (Scotland) Regulations 2019),

- (g) regulation 9 (name of joint practice),
- (h) regulation 10 (notification of joint practice), modified so it has effect as if “with which he intends to register” were “with which he has applied for registration”,
- (i) regulations 11 (representation in legal proceedings) to 20 (appeal by European lawyer),
- (j) regulations 23 (evidence of registration) to 27 (disciplinary proceedings against a registered European lawyer),
- (k) regulation 29 (application by registered European lawyer), modified so that paragraph (1) has effect as if “under regulation 6(1)(b)(ii) of the Qualification Regulations” were omitted,
- (l) regulations 30 (decision by professional body) to 37 (modification and extension of enactments), and
- (m) schedule 2 (application, extension and modification of enactments to registered European lawyers).

(5) In this regulation “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: the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 and Swiss lawyers

7.—(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 those professional titles but who completed their qualifications and was 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 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 has 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 has 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