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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2019 No.**

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

**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an appeal had been made against that adjudication before exit day, but the appeal had not been finally determined or withdrawn before exit day, or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3 of that Order as they apply to articles 15 to 17) continue to apply to the complaint, as if the 1978 Order had not been revoked by regulation 3, until the complaint and, if applicable, any appeal, have been finally determined or withdrawn.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.

**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<sup>(1)</sup>.

(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,
  - (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,

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(1) 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](http://www.gov.uk)

- (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
    - (iii) 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) 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 is 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 has 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 has not been finally determined or withdrawn before the end of that period,
    - (iv) an appeal against that suspension is 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 is not made until at or after the end of that period,

- (d) the Swiss lawyer's registration as a registered European lawyer is 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 has not been finally determined or withdrawn before the end of that period, or
  - (ii) an appeal against that withdrawal or revocation is not made until at or after the end of that period.
- (5) The provisions of the 2000 Regulations referred to in paragraph (3) 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 “supreme court” 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 5 of the Services of Lawyers and Lawyer's Practice (EU Exit) (Scotland) (Amendment etc.) 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 paragraph (2) has effect as if—
    - (i) in sub-paragraph (a), for “home professional title” there were substituted “Swiss professional title” and for “his home State” there were substituted “Switzerland”, and
    - (ii) 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 (b) 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 6 of the Services of Lawyers and Lawyer’s Practice (EU Exit) (Scotland) (Amendment etc.) Regulations 2019”, and
    - (iii) for paragraph (b) there were substituted—
      - “(b) another European lawyer who is practising on a permanent basis under their Swiss professional title in Switzerland.”,
  - (h) regulation 9 (name of joint practice), modified so that paragraph (1) has effect as if—
    - (i) for “his home State” there were substituted “Switzerland”, and
    - (ii) for “home professional title” there were substituted “Swiss professional title”,
  - (i) regulation 10 (notification of joint practice), modified so that it has effect as if for “his home State” there were substituted “Switzerland”,
  - (j) regulation 11 (representation in legal proceedings),
  - (k) regulation 12 (property transactions), modified so that it has effect as if “unless he has a home professional title obtained in Denmark, the Republic of Ireland, Finland, Sweden, Iceland, Liechtenstein, Norway, the Czech Republic, Cyprus, Hungary or Slovakia” were omitted,
  - (l) regulation 13 (probate), modified so that it has effect as if “unless he has a home professional title obtained in Denmark, Germany, the Republic of Ireland, Austria, Finland, Sweden, Iceland, Liechtenstein, Norway, Cyprus or Slovakia” were omitted,
  - (m) regulation 14 (legal aid),
  - (n) regulation 15 (establishment and maintenance of registers of registered of European lawyers),

- (o) regulation 16 (application to be entered on a register), modified so that it has effect as if—
  - (i) in paragraph (1) for “home professional title” there were substituted “Swiss professional title”, and
  - (ii) in paragraph (2) for “each home State under whose home professional title” there were substituted “Switzerland under whose Swiss professional title”,
- (p) regulation 17 (registration by professional body), modified so that it has effect as if for “the home State of the registration” there were substituted “Switzerland”,
- (q) regulation 18 (restrictions on registration), modified so that it has effect as if paragraphs (2) and (3) were omitted,
- (r) regulation 19 (time limit for decision and notification by professional body),
- (s) regulation 20 (appeal by European lawyer),
- (t) regulation 23 (evidence of registration),
- (u) regulation 24 (publication of names of registered European lawyers),
- (v) regulation 25 (rules of professional conduct applicable), modified so that it has effect as if for “home professional title” there were substituted “Swiss professional title”,
- (w) regulation 26 (disciplinary proceedings applicable),
- (x) regulation 27 (disciplinary proceedings against 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”,
  - (ii) in paragraph (2)—
    - (aa) for “Subject to paragraph (3), where” there were substituted “Where”,
    - (bb) for “the registered European lawyer’s home State” there were substituted “Switzerland”, and
    - (cc) for “the home professional title” there were substituted “his Swiss professional title”,
  - (iii) paragraph (3) were omitted, and
  - (iv) in paragraph (4), for “the registered European lawyer’s home State” there were substituted “Switzerland”,
- (y) regulation 28 (disciplinary proceedings against a solicitor or advocate), modified so that it has effect as if—
  - (i) for “a State listed in regulation 2(4)” there were substituted “Switzerland”, and
  - (ii) for “that State” there were substituted “Switzerland”,
- (z) regulation 37 (modification and extension of enactments), and
- (aa) schedules 1 and 2.

(7) In this regulation “registered European lawyer” has the same meaning as in regulation 2(1) of the 2000 Regulations as it has effect by virtue of this regulation.

### **Saving provision: offence of pretending to be a registered European lawyer**

**8.—**(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 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**

9.—(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 6 or 7 of these Regulations 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 registered under regulation 17 of the 2000 Regulations (registration by professional body), as that regulation has effect by virtue of regulation 6 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 to whom regulation 6 or 7 of these Regulations applies,

(b) before the end of the transitional period, in relation to an individual who is on or after exit day registered under regulation 17 of the 2000 Regulations, as that regulation has effect by virtue of regulation 6 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 to whom regulation 6 or 7 of these Regulations applies,

(b) before the end of the transitional period, in relation to an individual who is on or after exit day registered under regulation 17 of the 2000 Regulations, as that regulation has effect by virtue of regulation 6 of these Regulations.

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

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

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

(i) in paragraph (1), “he is subject” were “he was subject” and “is registered” were “was registered”,

(ii) paragraph (2) were omitted, and

(iii) in paragraph (4), “is registered”, in each place where it occurs, were “was registered”,

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(2) Part IV of the 2000 Regulations makes provision concerning regulation and discipline.



- (b) regulation 27(1)(c) (disciplinary proceedings against a registered European lawyer), modified so it has effect as if “that authority” were “the competent authority in his home State”,
- (c) regulation 27(4),
- (d) regulation 37(2) (modification and extension of enactments) in so far as it applies to sub-paragraph (e) of this paragraph,
- (e) Part 1 of schedule 2, paragraph 1(6), (7) and (9).

(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 advocate**

**10.**—(1) Subject to paragraph (2), this regulation applies where an application under regulation 29 of the 2000 Regulations (as that regulation has effect by virtue of regulation 6 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.

(2) This regulation does not apply where regulation 11 applies.

(3) The provisions of the 2000 Regulations mentioned in paragraph (4) continue to have effect as if not revoked by regulation 3, subject to the modifications specified in paragraphs (4) and (5), until the application and, if applicable, any appeal has been finally determined or withdrawn.

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

- (a) regulation 30 (decision by professional body), modified so it has effect as if paragraph (2) were omitted,
- (b) regulation 31 (evidence in support of application for exemption under regulation 29(2)),
- (c) regulation 33 (meaning of “effectively and regularly pursued”),
- (d) regulation 34 (time limit for decision and notification by professional body),
- (e) regulation 35 (appeal by registered European lawyer),
- (f) regulation 36 (practice under the title of solicitor or advocate), modified so it has effect as if paragraph (4) were omitted,
- (g) regulation 37(2) (modification of enactments), and
- (h) schedule 2.

(5) Any reference to “registered European lawyer” in the provisions referred to in paragraph (4) has effect as if it were a reference to an individual who was formerly a registered European lawyer.

**Transitional provision: applications by Swiss lawyers for entry into profession of solicitor or advocate**

**11.**—(1) This regulation applies to a Swiss lawyer to whom regulation 7 applies.

(2) Part 5 of the 2000 Regulations continues to have effect in relation to a Swiss lawyer referred to in paragraph (1) as if not revoked by regulation 3, subject to paragraph (3) and the modifications specified in paragraph (4).

(3) Any application made under regulation 29 of the 2000 Regulations (as it has effect by virtue of this regulation) for an exemption from a requirement to pass an aptitude test must be made before the end of the period of four years beginning with exit day.

(4) The modifications to Part 5 of the 2000 Regulations referred to in paragraph (2) are—

(a) regulation 29 (application by registered European lawyer) is modified so as to have effect as if—

(i) in paragraph (1), “under regulation 6(1)(b)(ii) of the Qualification Regulations” were omitted, and

(ii) in paragraphs (2)(b) and (3)(b) and (c), for “home professional title” there were substituted “Swiss professional title”,

(b) regulation 36 (practice under the title of solicitor or advocate) is modified so as to have effect as if—

(i) in paragraph (2)—

(aa) for “home professional title”, in both places where it occurs, there were substituted “Swiss professional title”, and

(bb) for “his home State”, in both places where it occurs, there were substituted “Switzerland”.

### **Consequential amendments and further transitional provision**

**12.** The schedule, which makes consequential amendments and further transitional provision, has effect.