

SCHEDULE 1

Regulation 37(1)

AMENDMENTS TO THE SOLICITORS (SCOTLAND) ACT 1980

1.—(1) The Solicitors (Scotland) Act 1980 is amended as follows.

(2) After section 12, there shall be inserted—

*“Register of European lawyers*

**Keeping the register**

**12A.**—(1) The Council shall establish and maintain the register referred to in regulation 15 of the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000, and shall keep the register at the office of their secretary.

(2) The register shall consist of the names in alphabetical order of all European lawyers entered on it in accordance with regulation 17 of those regulations.

(3) Any person may inspect the register during office hours without payment.

(4) Schedule 2 (powers of Council in relation to roll of solicitors) shall apply to the register as it does to the roll and in its application to the register the words “section 7(3)” in paragraph 4 shall be read as if the words “section 12A” were substituted therefor.

**Information to be provided by registered European lawyers**

**12B.**—(1) Any registered European lawyer—

(a) shall, on registration, inform the Council in writing of the address of his place of business, his home professional title, and the name and address of the competent authority with which he is registered in his home state; and

(b) shall thereafter inform the Council of any change to the information required under paragraph (a) above.

(2) The Council shall issue a registration to any registered European lawyer who applies for it.

**Removal of name from register on request**

**12C.** A registered European lawyer who wishes his name, or any annotation made against his name under section 25A(3), to be removed from the register may make an application to the Council in that behalf, and the Council shall, on the registered European lawyer satisfying the Council that he has made adequate arrangements with respect to the business he has then in hand, remove the name of that solicitor, or, as the case may be, the annotation against his name, from the register.

**Restoration of name to register on request**

**12D.**—(1) Subject to subsection (2), a registered European lawyer whose name has been removed from the register shall be entitled to have his name restored to the register only if, on an application in that behalf made by him to the Tribunal and after such enquiry as the Tribunal thinks proper, the Tribunal so orders.

(2) On an application to the Council by a registered European lawyer whose name, or any annotation against whose name, has been removed from the register under section 12C,

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the Council may, after such inquiry as they think proper, restore the name of the registered European lawyer or, as the case may be, the annotation, to the register.

- (3) Rules made by the Tribunal under section 52 may—
  - (a) regulate the making, hearing and determining of applications under subsection (1);
  - (b) provide for payment by the applicant to the council of such fee in respect of restoration to the register as the rules may specify.”.
- (3) After section 24 there shall be inserted—

### ***“Registration certificates for registered European Lawyers***

#### **Applications for registration certificates**

**24A.**—(1) Subject to sections 24B to 24G below, the Council may make rules with respect to—

- (a) applications for;
- (b) the issue of;
- (c) the keeping of a register for and the issue of,

registration certificates for registered European lawyers as it would make rules under section 13 with respect to practising certificates for enrolled solicitors.

(2) Any person may inspect the register referred to in subsection (1)(c) during office hours without payment.

(3) The making of a false statement by a registered European lawyer in an application for a registration certificate may be treated as professional misconduct by him for the purposes of Part IV, unless he proves the statement was made without intention to deceive.

#### **Issue of registration certificates**

**24B.**—(1) The Council shall issue to a registered European lawyer on application being made by him, a registration certificate in accordance with rules made by them under section 24A.

(2) The Council shall not issue a registration certificate to a registered European lawyer while his registration is suspended or withdrawn.

#### **Discretion of Council in special cases**

**24C.**—(1) In any case where this section has effect, the applicant shall, unless the Council otherwise order, give to the Council, not less than 6 weeks before he applies for a renewal of a registration certificate, notice of his intention to do so; and the Council may in their discretion—

- (a) grant or refuse the application; or
- (b) decide to issue a registration certificate to the applicant subject to such conditions as the Council may think fit.

(2) Subject to subsections (3) and (4) below, this section shall have effect in any case where a registered European lawyer applies for a renewal of a registration certificate—

- (a) not having held a registration certificate in force within the period of 12 months following the date of his registration; or
- (b) when a period of 12 months or more has elapsed since he held a registration certificate in force; or

- (c) without having paid in full any fine imposed on him under Part IV; or
- (d) without having paid in full any expenses for which he has been found liable under section 38 or Part IV; or
- (e) when, having been suspended from practice, the period of suspension has expired; or
- (f) when, having had his registration withdrawn, he has been registered again; or
- (g) after his estate has been sequestrated or he has granted a trust deed for behoof of creditors, whether he has obtained his discharge or not; or
- (h) when, after a complaint has been made—
  - (i) relating to his conduct of the business of a client his attention has been drawn by the Council to the matter, and he has not replied or has not furnished a reply which would enable the Council to dispose of the matter; or
  - (ii) of delay in disposal of the business of a client he has not completed that business within such period as the Council may fix as being a reasonable period within which to do so,and in either case has been notified in writing by the Council accordingly; or
- (i) while any thing required to be done by him by a direction of the Council under section 42A or of the Tribunal under section 53A (including any such direction as confirmed or varied on appeal) remains undone.

(3) Where a registration certificate free of conditions is issued by the Council under subsection (1) to a registered European lawyer to whom that subsection has effect by reason of any such circumstances as are mentioned in paragraphs (a), (b), (e), (f) or (g) of subsection (2), this section shall not thereafter have effect in relation to that registered European lawyer by reason of those circumstances.

(4) Where the Council decide to issue a registration certificate subject to conditions, they may, if they think fit, postpone the issue of the registration certificate pending the hearing and determination of an appeal under section 24D.

### **Appeals from decisions of Council**

**24D.**—(1) Where—

- (a) an application for a registration certificate is duly made to the Council otherwise than in a case where section 24C has effect and the Council refuse or neglect to issue a registration certificate, the applicant;
- (b) the Council refuse to recognise a body corporate as being suitable in terms of section 34(1A) (b), the body corporate,

may apply to the court, who may make such order in the matter as it thinks fit.

(2) Where the Council in exercise of the power conferred on them by section 24C, refuse to issue a registration certificate, or issue a registration certificate subject to conditions, the applicant may appeal to the court against that decision within 14 days of being notified of it.

(3) On an appeal to the court under subsection (2) the court may—

- (a) affirm the decision of the Council; or
- (b) direct the Council to issue a registration certificate to the applicant subject to such conditions if any as the court thinks fit; or
- (c) make such order as it thinks fit.

**Date and expiry of registration certificate**

**24E.**—(1) Every registration certificate issued in November of any year shall bear the date of 1st November in that year, and every other registration certificate shall bear the date on which it was issued.

(2) Every registration certificate shall have effect from the date it bears under subsection (1).

(3) Subject to subsection (4), every registration certificate shall expire on 31st October next after it is issued.

(4) On the name of a registered European lawyer being withdrawn from the register or on a registered European lawyer being suspended from practice as a registered European lawyer, any registration certificate for the time being in force of that registered European lawyer shall cease to have effect, but in the case of suspension, if he ceases to be so suspended during the period for which the registration would otherwise have continued in force, the registration certificate shall thereupon again have effect.

**Suspension of registration certificate**

**24F.**—(1) If—

- (a) in pursuance of the Mental Health (Scotland) Act 1984<sup>(1)</sup> a registered European lawyer is, by reason of mental disorder, admitted to a hospital and becomes liable to be detained there or becomes subject to guardianship;
- (b) a *curator bonis* is appointed on the estate of a registered European lawyer;
- (c) the estate of a registered European lawyer is sequestrated;
- (d) a registered European lawyer grants a trust deed for behoof of creditors;
- (e) a judicial factor is appointed on the estate of a registered European lawyer;

any registration certificate for the time being in force of that registered European lawyer shall cease to have effect, and he shall be suspended from practice as a registered European lawyer.

(2) On the occurrence of any of the circumstances mentioned in subsection (1), the registered European lawyer in question shall intimate those circumstances to the Council in writing immediately.

(3) On the occurrence of the circumstances mentioned in paragraph (d) or (e) of subsection (1) the trustee or as the case may be the judicial factor shall intimate his appointment to the Council in writing immediately.

**Further provisions relating to suspension of registration certificate**

**24G.**—(1) The provisions of this section shall have effect in relation to a registration certificate which has ceased to have effect by virtue of section 24F during the period when that registration certificate would, but for that section, have continued in force.

(2) A registration certificate which has ceased to have effect by virtue of paragraph (c) or (d) of section 24F(1) shall again have effect on the registered European lawyer being granted his discharge.

(3) A registration certificate which has ceased to have effect by virtue of paragraph (e) of section 24F(1) shall again have effect on the judicial factor being granted his discharge.

(4) Where a registered European lawyer is suspended from practice as a registered European lawyer by virtue of paragraph (a) or (b) of section 24F(1), the period of suspension shall, for the purposes of section 24C(2)(e), expire on the registered European lawyer ceasing to be liable

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(1) 1984 c. 36.

to be detained or subject to guardianship or, as the case may be, on the *curator bonis* being discharged.

(5) Where a registered European lawyer is suspended from practice as a registered European lawyer by virtue of paragraph (c), (d) or (e) of section 24F(1), he may at any time apply to the Council to terminate the suspension.

(6) On an application under subsection (5), the Council may either—

- (a) grant the application with or without conditions; or
- (b) refuse the application.

(7) If on an application by a registered European lawyer under subsection (5) the Council refuse the application or grant it subject to conditions, the registered European lawyer may appeal against the decision to the court, who may—

- (a) affirm the decision; or
- (b) vary any conditions imposed by the Council; or
- (c) terminate the suspension either with or without conditions.”.

(4) After section 23 there shall be inserted—

**“Professional misconduct for registered European lawyer to practise without a registration certificate**

**23A.** Failure on the part of a registered European lawyer in practice to have in force a current registration certificate may be treated as professional misconduct for the purposes of Part IV.”.

(5) At the beginning of section 25A, there shall be inserted the words “Subject to regulations 6 and 11 of the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000 and”.

(6) In section 26—

- (a) in subsection (2), after the word “solicitor”, in each place where it occurs, there shall be inserted the words “or registered European lawyer pursuing professional activities within the meaning of the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000”;
- (b) at the end of subsection (3) there shall be inserted the words “or a registered European lawyer pursuing professional activities within the meaning of the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000”.

(7) In section 28, after the word “solicitor” where it first occurs, there shall be inserted—

“; or

- (c) has had his registration as a registered European lawyer withdrawn; or
- (d) has been suspended from practice as a registered European lawyer.”.

(8) In section 31(1)—

- (a) the word “unqualified”, in each place where it occurs, is repealed.
- (b) after the word “who” there shall be inserted the words “, not having the relevant qualification,”.
- (c) after paragraph (a) there shall be inserted—
  - “(aa) pretends to be a registered European lawyer; or”;and
- (d) in paragraph (b), after the word “public”, there shall be inserted “or registered European lawyer, as the case may be,”.

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(9) In section 32(1), after the word “section”, there shall be inserted the words “and regulations 6, 11, 12 and 13 of the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000”.

(10) At the beginning of section 33 there shall be inserted the words “Subject to the provisions of regulations 12 and 13 of the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000,”.

(11) In section 43–

(a) in subsection (2) after the word “solicitor” in each place where it occurs there shall be inserted the words “or registered European lawyer”.

(b) in subsection (3)–

(i) after sub-paragraph (cc), the word “or” is repealed;

(ii) at the end of paragraph (d) there shall be inserted–

“; or

(e) in respect of any default of a registered European lawyer, or any of his employees or partners, where such act or default takes place outside Scotland, unless the Council is satisfied that the act or default is closely connected with the registered European lawyer’s practice in Scotland.”.

(12) In section 65–

(a) in subsection (1), after the definition of “property” there is inserted –

““registered European lawyer” means a person registered with the Society in accordance with regulation 17 of the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000;”;

(b) at the end of subsection (2)(a) there shall be added the words “and registered European lawyers”; and

(c) in subsection (2)(e), after the word “solicitor's” there shall be inserted the words “or registered European lawyer's”.

(13) After paragraph 1 of Part 1 of Schedule 3 there shall be inserted–

**“Contributions by registered European lawyers**

**1A.**—(1) Subject to the provisions of this paragraph, paragraph (1) above shall apply to registered European lawyers as it applies to solicitors and references to a practising certificate shall include references to a registered European lawyer’s registration certificate.

(2) Where a registered European lawyer can prove that–

(a) he is covered by a guarantee provided in accordance with the professional rules of his home State; and

(b) the guarantee is equivalent in terms of the conditions and the extent of its cover to the Guarantee Fund,

then to the extent that there is such equivalence that lawyer shall be exempt from the requirements of paragraph (1).

(3) Where the equivalence under sub paragraph (2) is only partial, the Society may specify the guarantee obligations a registered European lawyer is required to meet to comply with paragraph (1).

(4) Subparagraphs (2), (6) and (8) of paragraph (1) shall not apply.

(5) For the purposes of this paragraph the words “home State” have the same meaning as provided for in regulation 2 of the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000.”

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