

2004 No. 186

LEGAL PROFESSION

**The European Communities (Services of Lawyers) Amendment
(Scotland) Order 2004**

<i>Made</i> - - - -	<i>14th April 2004</i>
<i>Laid before the Scottish Parliament</i>	<i>26th April 2004</i>
<i>Coming into force</i> - -	<i>17th May 2004</i>

At the Court at Windsor Castle, the 14th day of April 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 2(2) of the European Communities Act 1972(a) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation, commencement and extent

1.—(1) This Order may be cited as the European Communities (Services of Lawyers) Amendment (Scotland) Order 2004 and shall come into force on 17th May 2004.

(2) This Order extends to Scotland and insofar as it extends beyond Scotland it does so only as a matter of Scots law.

Amendments to the European Communities (Services of Lawyers) Order 1978

2. The European Communities (Services of Lawyers) Order 1978(b) is amended in accordance with the following articles.

3. For “an EEC lawyer” wherever it occurs, and “the EEC lawyer’s” where it occurs in article 16(1)(a), substitute “a European lawyer” and “the European lawyer’s” respectively.

4. In article 2(c)–

(a) after the definitions of “advocate”, “barrister” and “solicitor” insert–

““country of origin”, in relation to a European lawyer, means the country or countries in which he is established”;

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3).

(b) S.I. 1978/1910, amended by S.I. 1980/1964 and 1981/228.

(c) Article 2 was amended by S.I. 1980/1964, which inserted a reference to the Hellenic Republic.

- (b) for the definition of “EEC lawyer” substitute–
 ““European lawyer” means a person entitled to pursue his professional activities in a state in column 1 using the designation referred to in column 2–

<i>State</i>	<i>Designation(s)</i>
Austria	Rechtsanwalt
Belgium	Avocat/Advocaat
Cyprus	Δικηγόρος
Czech Republic	Advokát
Denmark	Advokat
Estonia	Vandeadvokaat
Finland	Asianajaja/Advokat
France	Avocat
Germany	Rechtsanwalt
Hellenic Republic	Dikegoros
Hungary	Ügyvéd
Iceland	Lögmaður
Republic of Ireland	Barrister/solicitor
Italy	Avvocato
Latvia	Zvērināts advokāts
Liechtenstein	Rechtsanwalt
Lithuania	Advokatas
Luxembourg	Avocat
Malta	Avukat/Prokuratur Legali
Netherlands	Advocaat
Norway	Advokat
Poland	Adwokat/Radca prawny
Portugal	Advogado
Slovakia	Advokát/Komerčný právnik
Slovenia	Odvetnik/Odvetnica
Spain	Abogado/Avocat/Avogado/Abokatu
Sweden	Advokat
Switzerland	Avocat/Advokat/Rechtsanwalt/Anwalt/ Fürsprecher/Fürsprech/Avvocato

and

- (c) omit the definition of “member State of origin”.

5. In article 11–

- (a) omit “member”; and
 (b) for “State” in each place where it appears, substitute “country”.

6. In article 18–

- (a) in paragraph (2), for “the Solicitors (Scotland) Act, 1933” substitute “the Solicitors (Scotland) Act 1980”(a); and

(a) 1980 (c.46).

- (b) in paragraph (3), for “section 42 of the Solicitors (Scotland) Act 1933” substitute “section 33 of the Solicitors (Scotland) Act 1980”(a).

7. In the Schedule–

- (a) in Part 1, for “Legal Aid (Scotland) Act 1967 (c.43)” substitute “Legal Aid (Scotland) Act 1986 (c.47)”;
- (b) in Part 2, for “Solicitors (Scotland) Act 1933 (c.21), section 39” substitute “Solicitors (Scotland) Act 1980 (c. 46), section 32”(b); and
- (c) in Part 3, for “Solicitors (Scotland) Act 1933 (c.21), sections 37, 38” substitute “Solicitors (Scotland) Act 1980 (c. 46), section 26”(c).

A. K. Galloway
Clerk of the Privy Council

(a) Section 33 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73) (“the 1985 Act”), Schedule 1, Part I, paragraph 10, the Solicitors (Scotland) Act 1988 (c.42) (“the 1988 Act”), Schedule 1, paragraph 8 and Schedule 2, the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40) (“the 1990 Act”), Schedule 8, paragraph 29(7) and the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000 (S.S.I. 2000/121) (“the 2000 Regulations”), Schedule 1, paragraph 1(10).

(b) Section 32 was amended by the 1985 Act, Schedule 1, Part I, paragraph 9, the 1988 Act, Schedule 1, paragraph 7, the 1990 Act, Schedule 8, paragraph 29(6) and the 2000 Regulations, Schedule 1, paragraph 1(9).

(c) Section 26 was amended by the 1985 Act, Schedule 1, Part I, paragraph 4, the 1990 Act, Schedule 8, paragraph 29(5)(c) and the 2000 Regulations, Schedule 1, paragraph 1(6).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the European Communities (Services of Lawyers) Order 1978 (S.I. 1978/1910) (“the 1978 Order”). The 1978 Order implemented Council Directive No. 77/249/EEC, dated 22nd March 1977, to facilitate the effective exercise by lawyers of the freedom to provide services (“the Directive”).

The amendments made by this Order are mainly consequential on adaptations to the Directive resulting from—

- (a) the Treaty concerning the accession of Spain and Portugal to the European Community signed at Madrid and Lisbon on 12th June 1985 (O.J. No. L 302, 15.11.1985, p.160);
- (b) the Treaty concerning the accession of Austria, Finland and Sweden to the European Community signed at Corfu on 24th June 1994 (O.J. No. C 241, 29.8.1994, p.21);
- (c) the Agreement between the European Community and its Member States and the Swiss Confederation, on the free movement of persons, signed at Brussels on 21st June 1999 (which is designated a Community Treaty by the European Communities (Definition of Treaties) (Agreement between the European Community and its Member States and the Swiss Confederation on the Free Movement of Persons) Order 2000 (S.I. 2000/3269)) (O.J. No. L 114, 30.4.2002, p.45);
- (d) the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, by which Iceland, Liechtenstein and Norway joined the EEA (Annex VIIB provides for the mutual recognition of professional qualifications) (O.J. No. L 001, 3.1.1994, p.371); and
- (e) the Treaty concerning the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union, signed at Athens on 16th April 2003 (O.J. No. L 236, 23.9.2003, p.179).

Those adaptations confer certain rights to practise on a permanent basis as a lawyer on nationals of, and lawyers professionally qualified in, the affected countries.

Article 2 of the 1978 Order is amended so that the definition of “EEC lawyer” is replaced by a definition of “European Lawyer” which refers to EU Member States, EEA countries and Switzerland, and the national designations of lawyers in those countries (article 4). Further consequential changes are made by articles 3 and 5.

References to Scottish enactments in the 1978 Order are updated (articles 6 and 7).

£3.00

© Crown Copyright 2004

Printed in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, the Queen’s Printer for Scotland
150 04/04 19593

