

Draft Order laid before Parliament under section 120(4) of the Courts and Legal Services Act 1990 and under section 206(4) and (5) of the Legal Services Act 2007, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No.xx

LEGAL PROFESSION, ENGLAND AND WALES

The Registered Foreign Lawyers Order 2009

Made - - - - *****

Coming into force in accordance with article 1

This Order is made in exercise of the powers conferred by section 89(5) and (6) of the Courts and Legal Services Act 1990(1) and section 208(2) and (3) of the Legal Services Act 2007(2).

A draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament pursuant to section 120(4) of the Courts and Legal Services Act 1990 and section 206(5) of the Legal Services Act 2007.

Accordingly, the Lord Chancellor makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Registered Foreign Lawyers Order 2009 and comes into force on the same day as paragraph 9 of Schedule 16 to the Legal Services Act 2007.

(2) In this Order—

- (a) “the 1974 Act” means the Solicitors Act 1974(3);
- (b) “the 1985 Act” means the Administration of Justice Act 1985(4);
- (c) “the 1990 Act” means the Courts and Legal Services Act 1990.

(1) 1990 c. 41. Section 89(5) and (6) was amended by section 177(c) of, and paragraphs 124 and 125(c) to (e) of Schedule 16 to, the Legal Services Act 2007 (c. 29). There are earlier amendments, but none is relevant. Paragraphs 1, 2, 3, 5, 6, 7, 8, 14, 15, 16 and 17 of Schedule 14 were amended by section 177(c) of, and paragraphs 126 to 138 of Schedule 16 to, the Legal Services Act 2007. The Legal Services Act 2007 also inserts new paragraph 2A. Paragraph 5 of Schedule 14 was amended by section 67(1) of, and paragraph 35(1) and (3) of Schedule 6 to, the Mental Capacity Act 2005 (c. 9) and the Legal Services Act 2007. Paragraph 9 of Schedule 14 was repealed by S.I. 2001/3649. There are earlier amendments, but none is relevant.

(2) 2007 c. 29.

(3) 1974 c. 47. The Legal Services Act 2007 amends sections 11, 13, 13A, 13B, 16, 28, 32, 33A, 41, 42, 44B, 44C and 47, and paragraph 1 of Schedule 1. It also inserts new sections 44D and 44E. Section 33A was inserted by section 48 of, and paragraph 3 of Schedule 7 to, the Access to Justice Act 1999 (c. 22).

(4) 1985 c. 61. Section 177(b) of, and paragraphs 80, 96(b) and 97(c) of Schedule 16 to, the Legal Services Act 2007 insert new paragraphs 9(3) and 10(3) of Schedule 2.

Revocation

2. The Registered Foreign Lawyers Order 1991(5) is revoked.

Solicitors Act 1974

3.—(1) The provisions of the 1974 Act listed in paragraph (2) have effect with respect to registered foreign lawyers as they have effect with respect to solicitors, subject to the modifications specified in the Schedule to this Order.

(2) Those provisions are—

- (a) section 11(2) to (4) (fee payable on issue of practising certificates);
- (b) section 13(2), (3) and (5) to (7) (appeals etc in connection with the issue of practising certificates);
- (c) section 13A(9) to (12) (imposition of conditions while practising certificates are in force);
- (d) section 13B (suspension of practising certificates where solicitors convicted of fraud or serious crime);
- (e) section 16(3) (except paragraphs (a), (c) and (d)) and (4) to (7) (duration of suspension of practising certificates);
- (f) section 32(4) (accounts rules and trust accounts rules);
- (g) section 33A (inspection of practice bank accounts etc);
- (h) section 34(9) (accountants' reports);
- (i) section 44B (except subsection (2)(b)) (provision of information and documents by solicitors etc);
- (j) section 44C(1) to (4) (power to charge for costs of investigations);
- (k) section 44D (disciplinary powers of the Society);
- (l) section 44E (except subsections (4)(e) and (5)) (appeals against disciplinary action under section 44D);
- (m) section 47(1) (except paragraphs (a), (b) and (d) to (f)) (jurisdiction and powers of Tribunal);
- (n) section 68 (power of court to order solicitor to deliver bill, etc);
- (o) section 83 (power of Society to inspect file of proceedings in bankruptcy of solicitor);
- (p) section 84 (service of documents at solicitor's place of business); and
- (q) paragraph 1(1) of Schedule 1 (except paragraphs (a) to (b) and (d) to (m)) (intervention in solicitor's practice).

4. The power to make regulations under section 28 of the 1974 Act, so far as that power relates to the matters mentioned in subsection (3B)(k) of that section, has effect with respect to registered foreign lawyers as it has effect with respect to solicitors, except that the reference in paragraph (k) to practising certificates is to be read as a reference to registration in the register of foreign lawyers.

5. The following provisions of the 1974 Act have effect with respect to registered foreign lawyers as follows—

- (a) section 34(10) (accountants' reports: no contravention of duty when making a report to the Society) with the modification that the reference to subsection (9) is to be read as including a reference to that subsection as it has effect by virtue of article 3;
- (b) section 41 (employment by solicitor of person struck off or suspended)—

- (i) with the modification that in subsection (1) reference to a person who is disqualified from practising as a solicitor by reason of a fact mentioned in section 41(1)(a) to (c) of the 1974 Act is to be read as including a reference to a foreign lawyer whose name has been struck off the register of foreign lawyers or whose registration in that register is suspended;
 - (ii) with the modification that in subsection (1A)(6) reference to a person in relation to whom there is a direction in force under section 47(2)(g) is to be read as including a reference to a foreign lawyer who is subject to an order under paragraph 15(4) of Schedule 14 to the 1990 Act prohibiting that lawyer's restoration to the register of foreign lawyers except by further order of the Tribunal;
- (c) section 42 (failure to disclose fact of having been struck off or suspended)—
- (i) with the modification that in subsection (1) reference to a person who is disqualified from practising as a solicitor by reason of a fact mentioned in section 42(1)(a) to (c) of the 1974 Act is to be read as including a reference to a foreign lawyer whose name has been struck off the register of foreign lawyers or whose registration in that register is suspended;
 - (ii) with the modification that in subsection (1A)(7) reference to a person in relation to whom there is a direction in force under section 47(2)(g) is to be read as including a reference to a foreign lawyer who is subject to an order under paragraph 15(4) of Schedule 14 to the 1990 Act prohibiting that lawyer's restoration to the register of foreign lawyers except by further order of the Tribunal;
- (d) section 44BA (power to require explanation of document or information) with the modification that reference to section 44B is to be read as including a reference to that section as it has effect by virtue of article 3; and
- (e) section 44BC (information offences)—
- (i) with the modification that reference to section 44B is to be read as including a reference to that section as it has effect by virtue of article 3;
 - (ii) with the modification that reference to section 44BA is to be read as including a reference to that section as it has effect by virtue of paragraph (d).

Administration of Justice Act 1985

6. The following provisions of the 1985 Act have effect with respect to registered foreign lawyers as follows—

- (a) paragraph 9 of Schedule 2 (restriction on employment of person struck off roll or suspended) has effect with the modifications that—
 - (i) in sub-paragraph (3)(a) reference to a person who is disqualified from practising as a solicitor by reason of a fact mentioned in section 41(1)(a) to (c) of the 1974 Act is to be read as including a reference to a foreign lawyer whose name has been struck off the register of foreign lawyers or whose registration in that register is suspended;
 - (ii) in sub-paragraph (3)(b) reference to a person in respect of whom there is a direction in force under section 47(2)(g) is to be read as including a reference to a foreign lawyer who is subject to an order under paragraph 15(4) of Schedule 14 to the 1990 Act prohibiting that lawyer's restoration to the register of foreign lawyers except by further order of the Tribunal;

(6) Subsection 1A was inserted by section 125(3) of, and paragraph 14 of Schedule 18 to, the Courts and Legal Services Act 1990 (c. 41).

(7) Subsection 1A was inserted by section 125(3) of, and paragraph 15 of Schedule 18 to, the Courts and Legal Services Act 1990 (c. 41).

- (b) paragraph 10 of Schedule 2 (failure to disclose fact of having been struck off or suspended) has effect with the modifications that—
- (i) in sub-paragraph (3)(a) reference to a person who is disqualified from practising as a solicitor by reason of a fact mentioned in section 41(1)(a) to (c) of the 1974 Act is to be read as including a reference to a foreign lawyer whose name has been struck off the register of foreign lawyers or whose registration in that register is suspended;
 - (ii) in sub-paragraph (3)(b) reference to a person in respect of whom there is a direction in force under section 47(2)(g) is to be read as including a reference to a foreign lawyer who is subject to an order under paragraph 15(4) of Schedule 14 to the 1990 Act prohibiting that lawyer's restoration to the register of foreign lawyers except by further order of the Tribunal.

Courts and Legal Services Act 1990

7. Paragraph 14(1) of Schedule 14 to the 1990 Act is amended as follows—
- (a) omit the “or” at the end of paragraph (c), and
 - (b) at the end of paragraph (d) add—
 - “; or—
 - (e) a decision of the Society to remove his name from the register.”.

Signed by authority of the Lord Chancellor

Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

SCHEDULE

Article 3

Modifications of the 1974 Act in relation to registered foreign lawyers

<i>Provision of the 1974 Act</i>	<i>Modification</i>
Section 11(2)	Reference to fees which are specified is to be read as a reference to fees which are prescribed under paragraph 2(1)(b) of Schedule 14 to the 1990 Act.
Section 11(3)	Reference to an application for a practising certificate is to be read as a reference to an application for registration or renewal of registration in the register of foreign lawyers.
Section 11(3)(b)	Reference to a practising certificate not having been issued since the Society became aware of the failure is to be read as a reference to a registration in the register of foreign lawyers not having been entered or renewed since the Society became aware of the failure.
Section 13(2)	Reference to a practising certificate is to be read as a reference to a registration in the register of foreign lawyers. Reference to a condition within section 10(4)(b) is to be read as a condition imposed under paragraph 2A(2)(a) of Schedule 14 to the 1990 Act which prohibits the taking of any steps specified in the condition, except with the approval of the Society.
Section 13(3)	Reference to an application under section 9 is to be read as a reference to an application under paragraph 2(1) of Schedule 14 to the 1990 Act.
Section 13(5)(b)	Reference to a condition within section 10(4)(b) is to be read as a reference to a condition imposed under paragraph 2A(2)(a) of Schedule 14 to the 1990 Act which prohibits the taking of any steps specified in the condition, except with the approval of the Society.
Section 13A(9)	Reference to a solicitor who holds a practising certificate subject to a condition imposed under section 13A(1) which prohibits that solicitor from taking any steps specified in the condition, except with the approval of the Society, is to be read as a reference to a registered foreign lawyer whose registration is subject to a condition imposed under paragraph 2A(2)(b) of Schedule 14 to the 1990 Act prohibiting the taking of any steps specified in the condition, except with the approval of the Society.
Section 13B(1)	Reference to an application to the Tribunal under section 47 is to be read as a reference to an application to the Tribunal under paragraph 15(2) of Schedule 14 to the 1990 Act. Reference to a practising certificate is to be read as reference to a foreign lawyer's registration. The provision is to be read as if reference to a sole solicitor endorsement were omitted.
Section 13B(6)	Reference to suspension of a solicitor from practice is to be read as reference to the suspension of a foreign lawyer's registration.

- The provision is to be read as if reference to practice as a sole solicitor were omitted.
- Section 13B(8)(b) Reference to a certificate is to be read as reference to a foreign lawyer's registration.
- The provision is to be read as if reference to a sole solicitor endorsement were omitted.
- Section 16(3) Reference to suspension of a solicitor's practising certificate is to be read as reference to the suspension of a foreign lawyer's registration.
- Reference to expiry of a certificate is to be read as reference to the expiry of a foreign lawyer's registration.
- Section 16(3)(b) Reference to section 15(1) is to be read as a reference to paragraph 10(1) of Schedule 14 to the 1990 Act.
- Section 32(4) The provision is to be read as if the reference to an employee of a solicitor were omitted.
- Section 44B(3)(b) The provision is to be read as if the reference to an employee of a solicitor were omitted.
- Reference to a failure to comply with any requirements imposed by or by virtue of the 1974 Act or any rules made by the Society is to be read as a reference to a failure to comply with any requirements imposed by or by virtue of that Act, the 1990 Act or any rules made by the Society.
- Section 44C(2)(b) Reference to a failure or apprehended failure to comply with any requirement imposed by or by virtue of the 1974 Act or any rules made by the Society is to be read as a reference to a failure to comply with any requirement imposed by or by virtue of that Act, the 1990 Act or any rules made by the Society.
- Section 44D(1)(a) The provision is to be read as if the reference to an employee of a solicitor were omitted.
- Reference to a failure to comply with a requirement imposed by or by virtue of the 1974 Act or any rules made by the Society is to be read as a reference to a failure to comply with a requirement imposed by or by virtue of that Act, the 1990 Act or any rules made by the Society.
- Section 44E(4)(d) Reference to the matters mentioned in paragraphs (a) to (d) of section 47(2) is to be read as a reference to the matters mentioned in paragraph 15(4)(a) to (c) of Schedule 14 to the 1990 Act.
- Section 47(1)(c) Reference to a former solicitor is to be read as a reference to a foreign lawyer who was formerly on the register.
- Reference to removal of a solicitor's name from the roll or striking a solicitor's name off the roll is to be read as a reference to removal of a foreign lawyer's name from the register or striking the name of a foreign lawyer off the register of foreign lawyers.

- Paragraphs 15(1), 16 and 17 of Schedule 14 to the 1990 Act apply in relation to an application under section 47(1)(c) as applied to registered foreign lawyers.
- Section 84 Reference to a practising certificate is to be read as reference to registration in the register of foreign lawyers.
- Reference to any notice or other document required or authorised by or by virtue of the 1974 Act is to be read as a reference to any notice or other document required or authorised by or by virtue of the 1974 Act or the 1990 Act.
- Reference to a practising solicitor is to be read as a reference to a registered foreign lawyer.
- Paragraph 1(1) of Schedule 1 Reference to the powers conferred by Part 2 of the Schedule is to be read as reference to the powers conferred by Part 2 of the Schedule as they apply to registered foreign lawyers by virtue of paragraph 5(1), (2) and (6) to (9) of Schedule 14 to the 1990 Act.
- The provision is to be read as if the reference to sections 32 and 37(2)(c) were omitted.

EXPLANATORY NOTE

(This note is not part of the Order)

Section 89 of the Courts and Legal Services Act 1990 (c.41) (“the 1990 Act”) provides for the maintenance of a register of foreign lawyers and empowers the Law Society to make rules to regulate matters such as professional practice, the keeping of accounts, the delivery of accountants’ reports and the maintenance of professional indemnity cover by registered foreign lawyers who are members, with solicitors, of multi-national partnerships or managers of recognised bodies. Section 89(5) and (6) of the 1990 Act empowers the Lord Chancellor by order to provide that certain enactments or instruments shall have effect with respect to registered foreign lawyers as they have effect with respect to solicitors, subject to such additions, omissions or other modifications as the Lord Chancellor sees fit to specify in the Order. The term “registered foreign lawyer” is defined in section 89(9) of the 1990 Act.

This Order, made under section 89(5) and (6) of the 1990 Act, revokes the Registered Foreign Lawyers Order 1991 (S.I.1991/2831) and provides for certain provisions in the Solicitors Act 1974 (c.47) to apply to registered foreign lawyers as they apply to solicitors. It also provides for certain provisions in the Administration of Justice Act 1985 (c.61) to apply where recognised bodies employ registered foreign lawyers. This Order is required to acknowledge changes to the regulation of legal services and the structure of legal practices which arise as a consequence of the coming into force of certain provisions in the Legal Services Act 2007 (c. 29).

Section 208(2) and (3) of the Legal Services Act 2007 (c.29) empower the Lord Chancellor to make provision amending an Act passed before the Legal Services Act 2007. This Order amends Schedule 14 to the 1990 Act, thereby giving registered foreign lawyers a right of appeal to the High

Court in circumstances where the Society has removed their registration in the register of foreign lawyers.