

**EXPLANATORY MEMORANDUM TO**  
**THE EUROPEAN COMMUNITIES (LAWYER'S PRACTICE AND SERVICES**  
**OF LAWYERS) (AMENDMENT) REGULATIONS 2008**

**2008 No. 81**

1. This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1. These Regulations amend the European Communities (Services of Lawyers) Order 1978 (the Services Order 1978) and the European Communities (Lawyer's Practice) Regulations 2000 (the Establishment Regulations 2006). The Services Order 1978 implemented Council Directive No 77/249/EEC (the Services Directive), dated 22 March 1977. The Establishment Regulations 2000 implemented Council Directive 98/5/EC (the Establishment Directive), dated 16 February 1998. A Transposition Note is attached to this memorandum at Annex A.

2.2. These Regulations give effect to the Treaty concerning the Accession of Bulgaria and Romania to the EU and will allow lawyers in Bulgaria and Romania to practise those professional activities for which they are authorised in their home jurisdiction, in England and Wales, and in Northern Ireland, including on a permanent basis. This will bring them into line with lawyers of other Member States who wish to practise in England and Wales on a temporary or permanent basis.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Background**

4.1. The Services Directive applies to lawyers of the states of the European Union (EU) and the European Economic Area (EEA) and Switzerland, and ensures that such lawyers are permitted to provide legal services under their home country professional title in other Member States.

4.2. The Establishment Directive applies to lawyers of the states of the EU and the EEA and Switzerland who are of EU, EEA or Swiss nationality, and ensures that such lawyers are permitted to become established under their home country professional title in other Member States.

**5. Extent**

5.1.These Regulations apply to England and Wales and Northern Ireland.

## **6. European Convention on Human Rights**

6.1.As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy Background**

7.1 The Services Directive aims to facilitate the effective exercise by lawyers of freedom to provide services so temporary services can be provided when acting under the home professional title in a Member State other than the one in which the lawyer was qualified/authorized. The Establishment Directive aims to facilitate the practice of the profession of lawyer on a permanent basis in a Member State other than the one in which the qualification was obtained. These Regulations maintain the UK's compliance with European law but extend the rights provided by the two Directives to Romanian and Bulgarian lawyers following those countries accession to the EU.

## **8. Impact**

8.1.A Regulatory Impact Assessment has not been prepared for this instrument as these Regulations simply extend the rights to practise to lawyers from those EU countries which have recently joined the EU.

## **9. Contact**

9.1.Any enquiries about the contents of this Memorandum should be addressed to:

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## Annex A

### **TRANSPOSITION NOTE FOR COUNCIL DIRECTIVE 2005/36/EC ADAPTING CERTAIN DIRECTIVES IN THE FIELD OF FREEDOM OF MOVEMENT OF PERSONS BY REASON OF THE ACCESSION OF BULGARIA AND ROMANIA**

The European Communities (Lawyer's Practice and Services of Lawyers) (Amendment) Regulations 2008 (2008 Regulations) implement in part Council Directive 2006/100/EC ('the 2006 Directive') in relation to legal professions.

The 2006 Directive amends Article 1(2) of Council Directive 77/249/EEC ('the Services Directive') and Article 1(2)(a) of Council Directive 98/5/EC ('the Establishment Directive') by adding references to Bulgaria and Romania and the home professional titles of lawyers from those countries to the lists of other Member States and lawyer home professional titles in the Services and Establishment Directives. For ease of reference, this Transposition Note briefly sets out the background to these Directives.

The Services Directive aims to facilitate the effective exercise by lawyers of freedom to provide services. The Services Directive was implemented in the UK by the European Communities (Services of Lawyers) Order 1978 (SI 1978/1910), ('the Services Order 1978'). The Services Order 1978 governs the temporary provision of services in the UK by lawyers qualified/authorised in another Member State when acting under their home professional title. It covers solicitor and barrister equivalents only and the rules of professional conduct of the UK apply.

The Establishment Directive aims to facilitate the practice of the profession of lawyer on a permanent basis in a Member State other than the one in which the qualification was obtained. The Establishment Directive was implemented by the European Communities (Lawyer's Practice) Regulations 2000 (SI 2000/1119), ('the Establishment Regulations 2000'). The Establishment Regulations 2000 enable a national of a Member State to practise as a lawyer on a permanent basis in England and Wales and Northern Ireland under his home professional title and also by conferral of authorisation to become a solicitor or barrister by virtue of assimilation after a three year adaptation period in England and Wales and Northern Ireland. Lawyers must register with the relevant professional regulatory bodies and are subject to their rules of professional conduct. It covers barrister and solicitor equivalents. Scotland has independently implemented the Establishment Directive by way of the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 (SSI 2000/121).

The 2008 Regulations implement the 2006 Directive in England and Wales and Northern Ireland, including making consequential transitional changes to domestic legislation.

The following Table sets out the generally applicable Articles of the 2006 Directive and also the part of the Annex to that Directive which is relevant to legal professions with reference to the implementing Regulations.

<b>Article</b>	<b>Objectives</b>	<b>Implementation</b>	<b>Responsibility</b>
	TITLE 1: GENERAL PROVISIONS		

1	Sets out the Directives which are required to be amended as prescribed in the Annex to the 2006 Directive.		
2	<p>Requires Member States to implement the necessary laws, regulations and administrative provisions to comply with the 2006 Directive by the date of accession of Bulgaria and Romania to the European Union. .</p> <p>Requires Member States to communicate to the Commission the text of those provisions and a correlation table between the implementing provisions and the 2006 Directive.</p> <p>Requires Member States to communicate to the Commission the text of the main provisions of national law which is adopted in the field covered by the 2006 Directive.</p> <p>Requires the Member State to include a reference to the 2006 Directive in the adopted provisions.</p>	<p>Paragraph 1 of the Explanatory Note to the 2008 Regulations makes reference to the 2006 Directive.</p>	<p>Lord Chancellor</p> <p>Lord Chancellor</p> <p>Lord Chancellor</p> <p>Lord Chancellor</p>
ANNEX Part II 1	Amends the list in Article 1(2) of CD 77/249/EEC (the Services Directive) to include Bulgaria and Romania and the relevant legal professional titles.	Regulation 2 implements this provision.	Lord Chancellor
ANNEX Part II 2	Amends the list in Article 1(2)(a) of D 98/5/EC (the Establishment Directive) to include Bulgaria and Romania and the relevant legal professional titles.	Regulation 3 implements this provision.	Lord Chancellor
		Regulation 4 makes transitional provision as to the application of the Establishment Regulations 2000 to	Lord Chancellor

		<p>lawyers authorised to practice in and who are nationals of Bulgaria or Romania. In particular it applies the original transitional provisions in Regulation 1(2) to (5) of the Establishment Regulations 2000 so that Bulgarian and Romanian lawyers have a 6 month lead time to apply for and obtain the prescribed registration. In consequence of this, Regulation 4 of the 2008 Regulations transitionally disapplies Regulation 21(1)(b), 21(2) (criminal sanctions for providing services when unregistered) and Regulation 22 (non recoverability of costs and fees when providing services whilst unregistered) of the Establishment Regulations 2000 for the 6 month period.</p>	
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