
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

**The Civil and Family Justice (EU Exit)
(Scotland) (Amendment etc.) Regulations 2020**

PART 5

Legal Services

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

15.—(1) The Services of Lawyers and Lawyer’s Practice (EU Exit) (Scotland) (Amendment etc.) Regulations 2019⁽¹⁾ are amended as follows.

- (2) In each of the following provisions, for “exit day”, substitute “IP completion day”—
- (a) regulation 4 (transitional provision: the European Communities (Services of Lawyers) Order 1978),
 - (b) regulation 5 (transitional provision: the European Communities (Services of Lawyers) Order 1978 and Switzerland),
 - (c) regulation 6 (transitional provision: the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000),
 - (d) regulation 7 (transitional provision: the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000 and Swiss Lawyers),
 - (e) regulation 9 (transitional provision: disciplinary proceedings),
 - (f) regulation 11 (transitional provision: applications by Swiss lawyers for entry into profession of solicitor or advocate).
- (3) For regulation 5(3)(b), substitute—
- “(b) if the period referred to in sub-paragraph (a) is extended in accordance with Article 23(2) of the Swiss citizens’ rights agreement (as that agreement is defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020⁽²⁾), the end of that period as extended.”.
- (4) For regulation 6, substitute—

**“Transitional provision: the European Communities (Lawyer’s Practice) (Scotland)
Regulations 2000**

6.—(1) This regulation applies to a professional body in relation to a solicitor or advocate in the situations described in paragraphs (2) or (3).

(2) The first situation is where the solicitor or advocate has a pending application under Article 10(1), (3) and (4) of the Directive as referred to in Article 28 of the withdrawal

(1) S.S.I. 2019/127.
(2) 2020 c.1.

agreement or Article 27 of the EEA EFTA separation agreement (as those agreements are defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020).

(3) The second situation is where Article 30(2), 31(1) (to the extent it applies Articles 2 and 10 of the Directive) or (2), or 32(3) or (4) of the Swiss citizens' rights agreement (as that agreement is defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020) applies to a solicitor or advocate.

(4) Where this regulation applies, the provisions of the 2000 Regulations mentioned in paragraph (5) continue to have effect as if they had not been revoked by regulation 3, but with the modifications specified in that paragraph.

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

(a) regulation 2 (interpretation),

(b) regulation 4(1)(b) and (d) and (2)(b) and (d) (competent authorities),

(c) regulation 5 (exchange of information), modified so that it has effect as if—

(i) for paragraph (1) there were substituted—

“(1) In order to facilitate compliance with Article 29 of the withdrawal agreement, Article 28 of the EEA EFTA separation agreement and Article 33 of the Swiss citizens' rights agreement (as those agreements are defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020), a professional body must cooperate with any authority in any of the States listed in regulation 2(4) which has been designated under the Directive by that State as a competent authority in that State and supply or receive from any such authority, information relating to a solicitor or advocate, or to any person with whom that solicitor or advocate jointly practices.”, and

(ii) in paragraph (2) the reference to “European lawyer” were a reference to “solicitor or advocate”,

(d) regulation 28 (disciplinary proceedings against a solicitor or advocate).

(6) In this regulation the terms “advocate”, “Directive”, “professional body” and “solicitor” have the same meaning as in regulation 2(1) of the 2000 Regulations as it had effect immediately before IP completion day.”.

(5) For regulation 7(5), substitute—

“(5) The provisions of the 2000 Regulations referred to in paragraph (3) cease to continue to have effect in relation to an individual where that individual ceases to be registered with one of the relevant professional bodies under regulation 17 of the 2000 Regulations (as it has effect by virtue of this regulation) at or after the end of the period of 4 years beginning with IP completion day and that individual—

(a) was a registered European lawyer before the end of the period of 4 years beginning with IP completion day,

(b) is a Swiss lawyer of the description in paragraph (4)(b) who became a registered European lawyer at or after the end of the period of 4 years beginning with IP completion day,

(c) is a Swiss lawyer of the description in paragraph (4)(c) whose suspension as a registered European lawyer ended or was terminated at or after the end of the period of 4 years beginning with IP completion day, or

(d) is a Swiss lawyer of the description in paragraph (4)(d) whose registration as a registered European lawyer was restored at or after the end of the period of 4 years beginning with IP completion day following the final determination of an appeal.”.

(6) For regulation 7(6)(d), substitute—

“(d) except where regulation 11(4)(a) (transitional provision: applications by Swiss lawyers for entry into profession of solicitor or advocate) of these Regulations applies, regulation 5 (exchange of information), modified so that it has effect as if—

(i) for paragraph (1) there were substituted—

“(1) In order to facilitate the application of the Directive and to prevent its provisions from being misapplied, and to facilitate compliance with Article 33 of the Swiss citizens’ rights agreement (as that agreement is defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020), a professional body must cooperate with any authority which has been designated by Switzerland under the Directive as a competent authority in Switzerland and supply or receive any information relating to a European lawyer, or to any person with whom that European lawyer jointly practices, with other professional bodies, the Faculty of Advocates or Law Society of Scotland or an authority which has been designated by Switzerland under the Directive as a competent authority in Switzerland.”, and

(ii) paragraph (3) were omitted.”.

(7) For regulation 7(6)(g), substitute—

“(g) regulation 8 (joint practice), modified so that it has effect as if for it there were substituted—”

“**Joint Practice**

8. A registered European lawyer may carry out professional activities under that lawyer’s Swiss professional title as part of a joint practice—

(a) to the same extent and in the same manner as a member of the professional body with which the lawyer is registered may do so, with—

(i) a member of the professional body with which the lawyer is registered,

(ii) a registered European lawyer who is registered with the same professional body, or

(iii) any other person permitted by the professional body with which the lawyer is registered, or

(b) with another individual who is—

(i) a national of the United Kingdom, a member State of the European Union, Iceland, Liechtenstein, Norway or Switzerland, and

(ii) practising on a permanent basis under that individual’s Swiss professional title in Switzerland.”.

(8) In regulation 9—

(a) in paragraphs (2)(a)(ii), (3)(a)(ii) and (4)(a)(ii), for “regulation 6 or 7”, substitute “regulation 7”,

(b) omit paragraphs (2)(b), (3)(b) and (4)(b),

(c) in paragraph (6), before paragraph (a) insert—

“(aa) regulation 2 (interpretation).”.

(9) In regulation 10—

(a) for paragraph (1), substitute—

“(1) This regulation applies where an application under regulation 29 of the 2000 Regulations (as that regulation had effect immediately before IP completion day) for an

exemption from a requirement to pass an aptitude test is made before IP completion day and—

- (a) that application has not been determined before IP completion day,
- (b) any appeal against the determination of that application has not been finally determined or withdrawn before IP completion day, or
- (c) the time limit for bringing an appeal against the determination of the application has not expired. ”.

(b) before paragraph (4)(a) insert—

- “(aa) regulation 2 (interpretation),
- (bb) regulation 4(1)(b) and (d) and (2)(b) and (d) (competent authorities),
- (cc) regulation 5 (exchange of information), modified so that it has effect as if for paragraph (1) there were substituted—

“(1) In order to facilitate compliance with Article 29 of the withdrawal agreement and Article 28 of the EEA EFTA separation agreement (as those agreements are defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020), a professional body must cooperate with any authority in any of the States listed in regulation 2(4) which has been designated under the Directive by that State as a competent authority in that State and supply or receive any information relating to a European lawyer or to any person with whom that European lawyer jointly practices.”.

(10) In regulation 11—

(a) for paragraph (2), substitute—

“(2) Where this regulation applies, regulation 5 (exchange of information) and Part 5 (entry into the profession of solicitor or advocate) of the 2000 Regulations continue 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).”.

(b) for paragraph (4), substitute—

“(4) The modifications to the 2000 Regulations referred to in paragraph (2) are—

(a) regulation 5 is modified so that it has effect as if for paragraph (1) there were substituted—

“(1) In order to facilitate compliance with Article 33 of the Swiss citizens’ rights agreement (as that agreement is defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020), a professional body must cooperate with an authority which has been designated by Switzerland under the Directive as a competent authority in Switzerland and may supply to or receive from any such authority, information relating to a European lawyer or to any person with whom that European lawyer jointly practices.”.

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

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

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

(c) 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”, and

(ii) in paragraph (3) for “home professional title”, in both places where it occurs, there were substituted “Swiss professional title”.

(11) In the schedule, for paragraph 2(1), substitute—

“(1) The provisions of the Solicitors (Scotland) Act 1980(3) mentioned in paragraph (2) continue to have effect on and after IP completion day, as applied by regulation 37(2) and schedule 2 of the 2000 Regulations as if the 2000 Regulations had not been revoked by regulation 3, in relation to an individual who—

(a) was a registered European lawyer (within the meaning of regulation 2(1) of the 2000 Regulations as it had effect immediately before IP completion day), registered with the Law Society of Scotland, at a time before IP completion day, but

(b) is not a Swiss lawyer to whom regulation 7 applies,

as those provisions had effect before IP completion day in relation to an individual who had ceased to be registered with the Law Society of Scotland under regulation 17 of the 2000 Regulations.”.

(3) [1980 c.46](#), as relevantly amended by section 56 and schedule 1, paragraphs 12, 21, 22, 23, 24, 26, 27, 28, 29 and 35 of the Law Reform (Miscellaneous Provisions) (Scotland) Act [1985 c.73](#), sections 21B and 31(3), schedule 8, paragraphs 29(9), 29(10), 29(12), 29(17)(a)(i) to (iii), 29(17)(b) to (e), 29(17)(f)(ii), and 29(17)(g), 31(3)(b) and schedule 9 of, the Law Reform (Miscellaneous Provisions) (Scotland) Act [1990 c.40](#), [S.I. 1992/2890](#), [S.I. 1999/1042](#), [S.I. 1999/1820](#), [S.S.I. 2000/121](#), [S.I. 2001/3649](#), section 2(3) to, the Enterprise Act [2002 c.40](#), sections 13(b) and (c)(i) to the Public Appointments and Public Bodies etc. (Scotland) Act [2003 \(asp 4\)](#), [S.S.I. 2004/383](#), sections 56(1) to (2), 57(1), 58(2) to (6), 60(2), and schedule 5, paragraphs 1(6), 1(13), 1(14), 1(15), 1(16), 1(17), 1(18)(a) to (c), (19), (20), (21) and (26) of, the Legal Profession and Legal Aid (Scotland) Act [2007 \(asp 5\)](#), schedule 23, paragraph 1, of the Legal Services Act [2007 \(c.29\)](#), [S.S.I. 2008/332](#), 124(2)(a), 128(1) to (2), 129(1), 130(a), 136(2) and 139 of, the Legal Services (Scotland) Act [2010 \(asp 16\)](#), [S.S.I. 2011/235](#), [S.I. 2017/692](#), [S.I. 2018/1337](#), and schedule 1, paragraph 4 of, the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act [2018 \(asp 10\)](#). There are other amending instruments not relevant to these Regulations.