
SCOTTISH STATUTORY INSTRUMENTS

2000 No. 121

LEGAL PROFESSION

The European Communities (Lawyer's Practice) (Scotland) Regulations 2000

Made - - - - 27th April 2000
Laid before the Scottish
Parliament - - - - 28th April 2000
Coming into force in accordance with regulation 1

The Scottish Ministers, in exercise of the powers conferred upon them by section 2(2) of the European Communities Act 1972⁽¹⁾ and all other powers enabling them in that behalf, hereby make the following Regulations:

PART I
INTRODUCTORY

Citation, commencement, transitional and extent

1.—(1) These Regulations may be cited as the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 and shall come into force on 22nd May 2000, except for regulations 21 and 22, which shall come into force on 22nd November 2000.

(2) Where, on 22nd May 2000, a European lawyer is practising professional activities under his home professional title on a permanent basis in Scotland or commences such practice by 21st November 2000, he shall apply to be registered in accordance with regulation 16 by 21st November 2000 where he intends to practise those activities on a permanent basis after that date.

(3) On or after 22nd November 2000, a European lawyer shall not practise as referred to in paragraph (2) without being registered in accordance with regulation 16, unless he was already practising before that date and has made an application for registration which has not been determined.

(4) In paragraphs (3) and (5), an application for registration shall, as at a particular date, be taken not to have been determined if as at that date the applicant—

(1) 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

- (a) has not received a rejection of his application and the period for such a rejection or a deemed rejection has not yet expired; or
 - (b) is appealing against a rejection of the application (including a deemed rejection) and the appeal has not been determined.
- (5) Regulations 21(1)(b) and 22 shall not apply to a European lawyer whilst that lawyer satisfies all the following conditions–
- (a) immediately before 22nd November 2000 he was practising on a permanent basis in any part of the United Kingdom;
 - (b) before 22nd November 2000 he applied for registration to any of the barristers' professional bodies or England and Wales or Northern Ireland solicitors' professional bodies, or to the Faculty of Advocates or the Law Society of Scotland; and
 - (c) his application for registration has not yet been determined.
- (6) These Regulations extend to Scotland and insofar as they extend beyond Scotland they do so only as a matter of Scots law.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires–

- “advocate” means a member of the Faculty of Advocates;
- “barrister” means a person who is a barrister of England and Wales or, as the case may be, Northern Ireland, and practising as such;
- “barristers' professional bodies” means the Inns of Court and the General Council of the Bar of England and Wales and the Executive Council of the Inn of Court of Northern Ireland;
- “competent authority”, in relation to Scotland, means either of the bodies designated as a competent authority by regulation 4 to undertake the activities required by the Directive set out in that regulation;
- “the Directive” means of the European Communities Parliament and Council Directive No.98/5/EC to facilitate practice of the profession of lawyer on a permanent basis in certain states other than the State in which the professional qualification was obtained⁽²⁾;
- “England and Wales or Northern Ireland registered European lawyer” means a European lawyer who is registered with one of the barristers' professional bodies or England and Wales or Northern Ireland solicitors' professional bodies and whose registration has not been withdrawn or suspended;
- “England and Wales or Northern Ireland solicitors' professional bodies” means the Law Society and the Law Society of Northern Ireland respectively;
- “European lawyer” has the meaning given in paragraphs (2) and (3);
- “home State” means the State in paragraph (4) in which a European lawyer acquired his authorisation to pursue professional activities and, if he is authorised in more than one of those States, it shall mean any of those States;
- “home professional title” means, in relation to a European lawyer, the professional title or any of the professional titles specified in relation to his home State in paragraph (4) under which he is authorised in his home State to pursue professional activities;
- “Irish barrister” means a European lawyer who is authorised in the Republic of Ireland to pursue professional activities under the professional title of barrister and whose home State is the Republic of Ireland;

(2) O.J. L77, 14.3.98, p.36.

“Irish solicitor” means a European lawyer who is authorised in the Republic of Ireland to pursue professional activities under the professional title of solicitor and whose home State is the Republic of Ireland;

“member of the professional body” means a practising solicitor or advocate, as the case may be;

“professional body” means the Law Society of Scotland or the Faculty of Advocates;

“Qualification Regulations” means the European Communities (Recognition of Professional Qualifications) Regulations 1991⁽³⁾;

“registered European lawyer” means a European lawyer who is registered with a professional body in accordance with regulation 17 and whose registration has not been withdrawn or suspended;

“solicitor” shall have the same meaning as in section 65(1) of the Solicitors (Scotland) Act 1980⁽⁴⁾;

“supreme court” means the Court of Session, the High Court of Justiciary, the Lands Valuation Appeal Court, the House of Lords (hearing an appeal from the Court of Session) or the Judicial Committee of the Privy Council (hearing a reference or an appeal under the Scotland Act 1998).

(2) In these Regulations, “European lawyer” means a person who is—

- (a) a national of the United Kingdom or of a State listed in paragraph (4);
- (b) authorised in any of the States listed in paragraph (4) to pursue professional activities under any of the professional titles appearing in that paragraph; and
- (c) subject to paragraph (3), not a solicitor or advocate, or under the law of England and Wales or Northern Ireland, a solicitor or barrister.

(3) Where a person is a European lawyer registered with more than one of the following—

- (a) the Law Society of Scotland or the Faculty of Advocates; or
- (b) the England and Wales or Northern Ireland solicitors' professional bodies or the barristers' professional bodies,

and subsequently acquires the title used by members of one of the bodies referred to in sub paragraph (b) then notwithstanding paragraph (2)(c), that person shall continue to fall within the definition of a European lawyer in relation to the relevant professional body referred to in sub paragraph (a) for the period that he remains registered with that other professional body.

(4) The States and professional titles referred to in the definition of European lawyer in paragraph (1) are as follows—

| <i>State</i> | <i>Professional titles</i> |
|---------------------|---------------------------------|
| Belgium | Avocat/Advocaat/Rechtsanwalt |
| Denmark | Advokat |
| Germany | Rechtsanwalt |
| Greece | Dikegoros |
| Spain | Abogado/Advocat/Avogado/Abokatu |
| France | Avocat |
| Republic of Ireland | Barrister/Solicitor |
| Italy | Avvocato |

(3) S.I.1991/824.

(4) 1980 c. 46.

| <i>State</i> | <i>Professional titles</i> |
|--------------|----------------------------|
| Luxembourg | Avocat |
| Netherlands | Advocaat |
| Austria | Rechtsanwalt |
| Portugal | Advogado |
| Finland | Asianajaja/Advokat |
| Sweden | Advokat |

(5) For the purposes of regulations 4(2)(d), 5(3) and 24(1) registration with the Faculty of Advocates shall be construed as membership of it.

(6) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation, Part or Schedule is a reference to a regulation or Part of, or a Schedule to, these Regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation.

Purpose of Regulations

3.—(1) The purpose of these Regulations is to implement the Directive in or as regards Scotland.

(2) The provisions of these Regulations shall have effect for the purpose of facilitating the practice of the profession of lawyer on a permanent basis by a European lawyer registered or registering in Scotland.

(3) References in these regulations to practice or professional activities shall not include the provision of services by lawyers within the meaning of the European Communities (Services of Lawyers) Order 1978(5).

Competent authorities

4.—(1) The Law Society of Scotland is designated as the competent authority for the purposes of—

- (a) receiving applications for registration by European lawyers under Part III of these Regulations;
- (b) receiving applications from registered European lawyers for entry into the profession of solicitor;
- (c) the regulation of registered European lawyers registered with it; and
- (d) the provision of certificates attesting to registration of solicitors with it.

(2) The Faculty of Advocates is designated as the competent authority for the purposes of—

- (a) receiving applications for registration by European lawyers under Part III of these Regulations;
- (b) receiving applications from registered European lawyers for entry into the profession of advocate;
- (c) the regulation of registered European lawyers registered with it; and
- (d) the provision of certificates attesting to registration of advocates with it.

Exchange of information

5.—(1) In order to facilitate the application of the Directive and to prevent its provisions from being misapplied, a professional body may supply to or receive from—

- (a) another professional body;
- (b) the England and Wales or Northern Ireland solicitors' professional bodies or barristers' professional bodies; or
- (c) an authority in any of the States listed in regulation 2(4) which has been designated by that State under the Directive as a competent authority in that State,

any information relating to a European lawyer or to any person with whom he jointly practises.

(2) Subject to paragraph (1) or as otherwise required by law in the interests of justice, a professional body shall preserve the confidentiality of any information received in accordance with paragraph (1) relating to a European lawyer or to any person with whom he jointly practises.

(3) A competent authority in Scotland shall provide a certificate attesting to the registration of a solicitor or advocate registered with it and his authorisation to practise when requested to do so by that solicitor or advocate or by a competent authority in a State listed in regulation 2(4).

PART II

PRACTICE OF PROFESSIONAL ACTIVITIES BY A REGISTERED EUROPEAN LAWYER

Practice of professional activities

6.—(1) Subject to the provisions of these Regulations, a registered European lawyer shall be entitled to carry out under his home professional title any professional activities whether in Scotland or elsewhere that may lawfully be carried out by a member of the professional body with which he is registered and any enactment or rule of law or practice with regard to the carrying out of professional activities by members of that professional body shall be interpreted and applied accordingly.

(2) A registered European lawyer who is in salaried employment may carry out professional activities whether in Scotland or elsewhere under his home professional title to the same extent that an employed member of the professional body with which he is registered may do so.

Title and description to be used by a registered European lawyer

7.—(1) Where a registered European lawyer is engaged in any professional activities in pursuance of regulation 6(1) he shall comply with the requirements set out in paragraph (2).

- (2) The requirements referred to in paragraph (1) are that a registered European lawyer shall—
 - (a) use his home professional title expressed in an official language of his home State in a manner which avoids confusion with the title of solicitor or advocate;
 - (b) indicate the professional organisation by which he is authorised to practise or the court of law before which he is entitled to practise in that State;
 - (c) indicate the professional body with which he is registered in Scotland and that he is a registered European lawyer with that body; and
 - (d) if applicable indicate any England and Wales or Northern Ireland solicitors' professional bodies or barristers' professional bodies with which he may be registered and that he is an England and Wales or Northern Ireland registered European lawyer with that body or those bodies.

Joint practice

8. Where a registered European lawyer carries out professional activities in pursuance of regulation 6(1) under his home professional title as part of a joint practice he shall do so to the same extent and in the same manner as a member of the professional body with which he is registered may do so, with—

- (a) a member of the professional body with which he is registered;
- (b) a registered European lawyer who is registered with the same professional body; or
- (c) any other person permitted by the professional body with which he is registered.

Name of joint practice

9.—(1) Subject to paragraph (2), where a registered European lawyer is a member of a joint practice in his home State, he may use the name of that practice with his home professional title when practising as a registered European lawyer.

(2) Rules of conduct of the professional body with which a registered European lawyer is registered may prohibit the use by him of the name of the joint practice of which he is a member in the home State to the extent that—

- (a) that name is also used by persons who are not European lawyers or solicitors of any part of the United Kingdom; and
- (b) those rules prohibit members of that professional body (whether or not practising as such) from using that name.

Notification of joint practice

10.—(1) Where a European lawyer is a member of a joint practice in his home State, he shall inform the professional body with which he intends to register and provide it with the following information:—

- (a) the name of the joint practice;
- (b) his place of business;
- (c) the name and place of business of any member of his joint practice;
- (d) any other relevant information about the joint practice requested by the professional body.

(2) A European lawyer shall notify that professional body of any changes in the information whether before or after registration.

Representation in legal proceedings

11.—(1) Subject to paragraphs (2) and (4), no enactment or rule of law or practice shall prevent a registered European lawyer from pursuing professional activities relating to the representation of a client in any proceedings before any court, tribunal or public authority (including addressing the court, tribunal or public authority) only because he is not a solicitor or advocate.

(2) In proceedings referred to in paragraph (1), where the professional activities in question may (but for these Regulations) be lawfully provided only by a solicitor or advocate, a registered European lawyer shall act in conjunction with a solicitor or advocate who is entitled to practise before the court, tribunal or public authority concerned and who could lawfully provide those professional activities.

(3) The solicitor or advocate referred to in paragraph (2) shall, where necessary, be answerable to the court, tribunal or public authority concerned in relation to the proceedings.

(4) A registered European lawyer shall not have a right of audience in a supreme court unless he has completed the course of training in evidence, pleading and practice in relation to that court which must be completed by any member of the professional body with which he is registered who seeks a right of audience in that court.

Property transactions

12. A registered European lawyer is not entitled, by virtue of regulation 6(1), to prepare for remuneration any deed creating or transferring an interest in land unless he has a home professional title obtained in Denmark, the Republic of Ireland, Finland or Sweden.

Executries

13. A registered European lawyer is not entitled, by virtue of regulation 6(1), to prepare for remuneration any deed for obtaining title to administer the estate of a deceased person unless he has a home professional title obtained in Denmark, Germany, the Republic of Ireland, Austria, Finland or Sweden.

Legal aid

14. A registered European lawyer may provide professional activities by way of legal advice and assistance or legal aid under the Legal Aid (Scotland) Act 1986(6) and references to a solicitor, counsel or legal representative in that and any other enactment relating to legal advice and assistance or legal aid shall be interpreted accordingly.

PART III

REGISTRATION

Establishment and maintenance of registers of registered European lawyers

15. Each of the professional bodies shall establish and maintain a register of registered European lawyers.

Application to be entered on a register

16.—(1) Subject to paragraph (6) and regulation 18, a European lawyer who wishes to pursue professional activities under his home professional title on a permanent basis in Scotland or any other part of the United Kingdom shall apply to be entered on the register maintained by a professional body under regulation 15.

(2) A European lawyer who wishes to register with a professional body in accordance with paragraph (1) shall provide the professional body with certificates confirming his registration with the competent authority in each home State under whose home professional title he intends to practise.

(3) A professional body may require that the certificate referred to in paragraph (2) shall not have been issued more than three months before the date of the application under this regulation.

(4) An application for registration under this regulation shall comply with any applicable rules or regulations made by the relevant professional body and shall be accompanied by the appropriate fee.

(6) 1986 c. 47.

(5) Subject to regulation 18, an application for registration under this regulation shall not be affected by any other application or registration with the barristers' professional bodies or the England and Wales or Northern Ireland solicitors' professional bodies.

(6) Paragraph (1) shall not apply to a European lawyer who wishes to pursue professional activities under his home professional title on a permanent basis in Scotland or any other part of the United Kingdom where that lawyer is an England and Wales or Northern Ireland registered European lawyer.

Registration by professional body

17.—(1) Subject to regulation 18, a professional body shall enter on its register the name of a European lawyer who applies to it in accordance with regulation 16.

(2) Where a professional body registers a European lawyer in accordance with paragraph (1), it shall inform the competent authority in the home state of the registration.

Restrictions on registration

18.—(1) A European lawyer shall not be registered at the same time both with the Law Society of Scotland and the Faculty of Advocates.

(2) An Irish solicitor shall not be entered on a register maintained under regulation 15 by the Faculty of Advocates.

(3) An Irish barrister shall not be entered on a register maintained under regulation 15 by the Law Society of Scotland.

(4) A European lawyer registered with any of the barristers' professional bodies shall not be entered on a register maintained under regulation 15 by the Law Society of Scotland.

(5) A European lawyer registered with any of the England and Wales and Northern Ireland solicitors' professional bodies shall not be entered on a register maintained under regulation 15 by the Faculty of Advocates.

Time limit for decision and notification by professional body

19.—(1) A professional body shall consider an application for registration under regulation 16 as soon as is reasonably practicable, and shall notify the European lawyer of its decision, and if the application is rejected, or granted subject to conditions, the reasons upon which the rejection or the imposition of conditions is based, within four months of receipt of an application complying with regulation 16(2) and (4).

(2) Where the professional body fails to take a decision and notify the European lawyer within four months in accordance with paragraph (1), it shall be deemed to have taken a decision to reject his application and to have notified it to him on the last day of that period.

(3) Where the professional body withdraws or suspends a registration, it shall notify the European lawyer of its decision and the reasons upon which the withdrawal or suspension is based.

Appeal by European lawyer

20.—(1) Within three months of the notification to him of the professional body's decision, or later with the permission of the Court of Session, the European lawyer may appeal against the decision by appeal in Form 41.19 to the Court of Session⁽⁷⁾.

(2) The Court of Session may, for the purpose of determining any appeal under this Part—

(7) See Part III of Chapter 41 of the Rules of the Court of Session 1994, S.I. 1994/1413.

- (a) order the professional body to register the European lawyer;
 - (b) refuse the appeal; or
 - (c) remit the matter to the professional body with such directions as it sees fit.
- (3) The Court of Session shall give reasons for its decision.

Offence of pretending to be a registered European lawyer

21.—(1) A person who without being a registered European lawyer,

- (a) wilfully pretends to be a registered European lawyer or takes or uses any name, title, designation or description implying that he is a registered European lawyer whether in Scotland or elsewhere; or
- (b) subject to paragraph (2), carries on professional activities in Scotland under one of the professional titles listed in regulation 2(4) or under any name, designation or description implying that he is entitled to pursue those activities under one of those professional titles;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) Paragraph (1)(b) shall not apply to a person who satisfies any of the following conditions—

- (a) he is not a national of the United Kingdom or of any of the States listed in regulation 2(4);
- (b) he is a solicitor or advocate under the law of Scotland or a solicitor or barrister under the law of England and Wales or Northern Ireland;
- (c) he is an England and Wales or Northern Ireland registered European lawyer; or
- (d) he is providing services within the meaning of the European Communities (Services of Lawyers) Order 1978(8).

Fees, rewards, outlays and expenses of an unregistered European lawyer.

22. Where a European lawyer is carrying on professional activities under his home professional title in Scotland any fees, rewards, outlays or expenses in respect of those activities shall not be recoverable by him or any other person unless that European lawyer is a registered European lawyer, or an England and Wales or Northern Ireland registered European lawyer.

Evidence of registration

23. Any certificate purporting to be signed by an officer of a professional body and stating that a person—

- (a) is, or is not, registered as a European lawyer with that professional body; or
- (b) was, or was not, registered with that professional body during a period specified in the certificate,

shall, unless the contrary is proved, be evidence of that fact and be taken to have been so signed.

Publication of names of registered European lawyers

24.—(1) Where a professional body publishes the names of solicitors or advocates registered with it, it shall also publish the names of any European lawyers registered with it.

(2) In this regulation, “publishes” or “publish” includes the provision of information to a legal publisher.

PART IV

REGULATION AND DISCIPLINE

Rules of professional conduct applicable

25. Where a registered European lawyer is practising under his home professional title whether in Scotland or elsewhere, he shall be subject to the same rules of professional conduct as a member of the professional body with which he is registered.

Disciplinary proceedings applicable

26.—(1) Where it is alleged that a registered European lawyer has failed to comply with the rules of professional conduct to which he is subject under regulation 25, he shall be subject to the same rules of procedure, penalties and remedies as a member of the professional body with which he is registered and shall, if appropriate, be subject to disciplinary proceedings brought by an appropriate authority.

(2) Any sanction against a registered European lawyer in relation to disciplinary proceedings may include withdrawal or suspension of his registration.

(3) The appropriate authority shall give reasons for its decision.

(4) In this regulation, an appropriate authority means—

- (a) where the registered European lawyer is registered with the Law Society of Scotland, the Scottish Solicitors' Discipline Tribunal;
- (b) where the registered European lawyer is registered with the Faculty of Advocates, that body.

Disciplinary proceedings against a registered European lawyer

27.—(1) Where a professional body intends to begin disciplinary proceedings against a registered European lawyer, it shall—

- (a) inform the competent authority in his home State as soon as possible of the intention to begin those proceedings and furnish it with all the relevant details;
- (b) co-operate with that authority throughout those proceedings; and
- (c) inform that authority of the decision reached in those proceedings including the decision in any appeal, as soon as practicable after the decision is given.

(2) Subject to paragraph (3), where the competent authority in the registered European lawyer's home State withdraws his authorisation to practise under the home professional title either temporarily or permanently, his registration with the professional body shall be automatically withdrawn to the same extent.

(3) Where a registered European lawyer is authorised to practise under a home professional title in two or more home States, his registration shall be withdrawn in accordance with paragraph (2) if his authorisation to practise under a home professional title has been withdrawn in one or more of those home States.

(4) Where there is an appeal against a decision in disciplinary proceedings against a registered European lawyer, the body responsible for hearing the appeal shall afford the competent authority in the registered European lawyer's home State an opportunity to make representations in relation to that appeal.

Disciplinary proceedings against a solicitor or advocate

28. Where a professional body intends to begin disciplinary proceedings against a solicitor or advocate practising in a State listed in regulation 2(4), it shall inform the competent authority in that State of—

- (a) the intention to begin those proceedings and furnish it with all of the relevant details; and
- (b) the decision reached in those proceedings, including the decision in any appeal, as soon as practicable after the decision is given.

PART V

ENTRY INTO THE PROFESSION OF SOLICITOR OR ADVOCATE

Application by registered European lawyer

29.—(1) Where a registered European lawyer applies to the professional body with which he has been registered to become a solicitor or advocate, as the case may be, and that professional body requires him to pass an aptitude test under regulation 6(1)(b)(ii) of the Qualification Regulations, he may apply to the professional body for an exemption from that requirement on the grounds that he falls within paragraph (2) or (3) of this regulation.

(2) A person falls within this paragraph if—

- (a) he is a European lawyer and has been registered with that professional body for at least three years; and
- (b) he has for a period of at least three years effectively and regularly pursued in Scotland professional activities, in accordance with regulation 6, under his home professional title in the law of Scotland including Community law.

(3) A person falls within this paragraph if—

- (a) he is a European lawyer and has been registered with that professional body for at least three years;
- (b) he has for a period of at least three years effectively and regularly pursued in Scotland professional activities, in accordance with regulation 6, under his home professional title; and
- (c) he has for a period of less than three years effectively and regularly pursued in Scotland, professional activities, in accordance with regulation 6, under his home professional title in the law of Scotland.

Decision by professional body

30.—(1) Subject to paragraph (3), the professional body shall grant an exemption applied for under regulation 29 if it considers that the requirements under paragraph (2) or (3) of regulation 29 have been met.

(2) The registration of a registered European lawyer shall cease from the date he is granted entry into the profession of solicitor or advocate.

(3) The professional body may refuse to grant an exemption if it considers that the registered European lawyer would be unfit to practise as a solicitor or advocate.

Evidence in support of application for exemption under regulation 29(2)

31.—(1) Where a registered European lawyer makes an application under paragraph (2) of regulation 29, he shall provide the professional body with any relevant information and documentation which it may reasonably require.

(2) The professional body may verify the effective and regular nature of the professional activity pursued and may, if necessary, request the registered European lawyer to provide, orally or in writing, clarification of, or further details on, the information and documentation referred to in paragraph (1)

Evidence in support of application for exemption under regulation 29(3)

32.—(1) Where a registered European lawyer makes an application under paragraph (3) of regulation 29, he shall provide the professional body with any relevant information and documentation it may reasonably require.

(2) In deciding whether to grant an application under paragraph (3) of regulation 29, the professional body shall take into account the professional activities the registered European lawyer has pursued during the period he has been registered and any knowledge and professional experience he has gained of, and any training he has received in, the law of Scotland, and the rules of professional conduct of the profession concerned.

(3) Subject to paragraph (4), in the case of an application under paragraph (3) of regulation 29, the professional body shall, by means of an interview, assess and verify the registered European lawyer's effective and regular professional activity and his capacity to continue that activity.

(4) Where a professional body believes that an interview is unnecessary and intends to grant an application under paragraph (3) of regulation 29, it may dispense with that requirement.

Meaning of “effectively and regularly pursued”

33. For the purposes of regulations 29 to 32 activities shall be regarded as effectively and regularly pursued if they are actually exercised without any interruption other than that resulting from the events of everyday life.

Time limit for decision and notification by professional body

34.—(1) A professional body shall consider an application under regulation 29 as soon as is reasonably practicable, and shall notify the applicant of its decision and, if the application is rejected, the reasons for the rejection, within four months of receipt of all the relevant information and documentation required under regulations 31 and 32.

(2) Where the professional body fails to take a decision and notify the registered European lawyer within four months in accordance with paragraph (1), it shall be deemed to have taken a decision to reject his application and to have notified it to him on the last day of that period.

Appeal by registered European lawyer

35.—(1) Within three months of the notification to him of the professional body's decision, or later with the permission of the Court of Session, the registered European lawyer may appeal against the decision by appeal in Form 41.19 to the Court of Session.

(2) The Court of Session may, for the purpose of determining any appeal under this Part—

- (a) grant the exemption applied for;
- (b) refuse the appeal; or
- (c) remit the matter to the professional body with such directions as the appeal body sees fit.

(3) The Court of Session shall give reasons for its decision.

Practice under the title of solicitor or advocate

36.—(1) This regulation applies where a registered European lawyer (“the lawyer”) is granted entry into the profession of solicitor or advocate.

(2) Subject to paragraph (3), the lawyer shall be entitled to continue to practise in Scotland or elsewhere under his home professional title, and to use his home professional title, expressed in an official language of his home State, alongside the title of solicitor or advocate as the case may be, provided that he continues to be authorised in his home State to pursue professional activities under that title.

(3) For the purposes of rules of professional conduct, including those relating to disciplinary and complaints procedures, the lawyer’s continuing practice in Scotland or elsewhere under his home professional title insofar as it relates to that lawyer’s practice as a solicitor or advocate shall be deemed to form part of his practice as a solicitor or advocate, and those rules shall apply to his practice under his home professional title as they do to his practice as a solicitor or advocate.

(4) Where this regulation applies, a lawyer’s registration in accordance with regulation 17 with the professional body whose title he has acquired shall cease from the date he is entitled to use that title.

PART VI

SUPPLEMENTARY PROVISIONS

Modification and extension of enactments

37.—(1) Schedule 1, which makes amendments to the Solicitors (Scotland) Act 1980, shall have effect.

(2) Schedule 2, which applies enactments, with modifications and extensions shall have effect in relation to registered European lawyers.

St Andrew’s House,
Edinburgh
27th April 2000

James Wallace
A member of the Scottish Executive

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,

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

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- (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⁽⁹⁾ 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

(9) 1984 c. 36.

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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,”.

(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.”

SCHEDULE 2

Regulation 37(2)

APPLICATION, EXTENSION AND MODIFICATION OF
ENACTMENTS TO REGISTERED EUROPEAN LAWYERS

PART I

SOLICITORS (SCOTLAND) ACT 1980

1.—(1) The provisions of the Solicitors (Scotland) Act 1980 shall have effect in relation to registered European lawyers as modified or extended by the provisions mentioned in these subparagraphs.

(2) Subsections (1) and (3) of section 2 shall apply to registered European lawyers as they apply to solicitors and any reference to a solicitor's practising certificate shall include reference to a registered European lawyer's registration certificate.

(3) The power to make regulations under section 5 shall also be exercisable in relation to registered European lawyers.

(4) The power to make rules under the following provisions:—

- (a) section 34 (rules as to professional practice, conduct and discipline);
- (b) section 35 (accounts rules);
- (c) section 36 (interest on client's money);
- (d) section 37 (accountant's certificates);
- (e) section 44 (professional indemnity);
- (f) section 52(2) (procedure on complaints to Tribunal) ;
- (g) paragraph 4(1) and (4) of Part I of Schedule 3;

shall also be exercisable in relation to registered European lawyers and a reference in any of these provisions to a solicitor shall include a reference to a registered European lawyer and any references to a solicitor's practising certificate shall include references to a registered European lawyer's registration certificate.

(5) Any of the powers referred to in subparagraph (4) may be exercised so as to make different provision with respect to different categories of registered European lawyers and in different circumstances.

(6) Sections 20, 21, 30, 33A, 38 to 42, 42B, 42C, 51, 52(1), 53A to 54, 56, 56A, 60A to 64, Schedule 1 and paragraph 5 of Part II of Schedule 3 shall apply to registered European lawyers as they apply to solicitors and any references to a solicitor's practising certificate shall include references to a registered European lawyer's registration certificate.

(7) Sections 42A, 45, 46, 47 and 55 shall apply to registered European lawyers as they apply to solicitors and references in those sections to—

- (a) the roll shall for this purpose include references to the register of European lawyers; and
- (b) being struck off the roll shall for this purpose include references to being removed from the register of European lawyers.

(8) Section 43 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 and references to the roll shall include references to the register of European lawyers and references to being struck off the roll shall include being removed from that register.

(9) Sections 53 and 55 and Schedule 4 shall apply to registered European lawyers as they apply to solicitors and any references in those sections and that Schedule to—

- (a) solicitors shall include registered European lawyers;
- (b) a solicitor's practising certificate shall include reference to a registered European lawyer's registration certificate;
- (c) the roll shall include the register of European lawyers;
- (d) enrolment shall include registration on the register of European lawyers; and
- (e) being struck off the roll shall include being removed from that register.

PART II

OTHER ENACTMENTS AND PROVISIONS

1. In the Rehabilitation of Offenders Act 1974 (Exceptions Order) 1975⁽¹⁰⁾ the reference to “solicitor” and “advocate” in Part 1 of Schedule 1 to the Order shall include reference to a registered European lawyer.

2. In the Estate Agents Act 1979⁽¹¹⁾ the reference to a practising solicitor in section 1(2)(a) (which exempts solicitors from that Act) shall include a reference to a registered European lawyer, and the partner of a registered European lawyer providing professional services in accordance with rules made under section 34 of the Solicitors (Scotland) Act 1980.

3. For the purpose of enabling the Law Society of Scotland to issue certificates under Part I of the Financial Services Act 1986⁽¹²⁾ (regulation of investment business) to a registered European lawyer, a partnership in which a registered European lawyer is a partner or a recognised body in the management and control of which a registered European lawyer is concerned –

- (a) the Law Society of Scotland shall be taken as the appropriate professional body for that purpose;
- (b) the registered European lawyer and any partner shall be treated—
 - (i) as if they were members of the Law Society of Scotland; and
 - (ii) as if they were solicitors for the purposes of paragraph 2(3) of Schedule 3 to the Financial Services Act 1986 (requirements for recognition of professional body).

4. For the purposes of section 391 of the Insolvency Act 1986⁽¹³⁾ (recognised professional bodies for insolvency practitioners) registered European lawyers and their partners shall be deemed to be—

- (a) part of the solicitors' profession; and
- (b) subject to the Law Society of Scotland's rules on the practice of their profession.

5. In the Banking Act 1987 (Exempt Transactions) Regulations 1988⁽¹⁴⁾, the reference in regulation 8(1) to a solicitor shall be interpreted as including a reference to a registered European lawyer, and the partner of a lawyer in the course of providing professional services in accordance with rules made under section 34 of the Solicitors (Scotland) Act 1980.

⁽¹⁰⁾ S.I. 1975/1023.

⁽¹¹⁾ 1979 c. 38.

⁽¹²⁾ 1986 c. 60.

⁽¹³⁾ 1986 c. 45.

⁽¹⁴⁾ S.I. 1988/646.

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6.—(1) The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990⁽¹⁵⁾ shall be modified as follows.

(2) In section 33(5) in the definition of “practitioner” the references to “an advocate” and “a solicitor” shall be interpreted as including references to a registered European lawyer;

(3) In section 34(9) the references to “advocates” and “solicitors” shall be interpreted as including references to a registered European lawyer.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which are made under section 2(2) of the European Communities Act 1972, give effect to European Communities Parliament and Council Directive No. [98/5/EC](#) of 16 February 1998 (OJEC L77, 14.3.98, P36). The purpose of the Directive is to facilitate the practice of the profession of lawyer on a permanent basis in a member State of the European Community other than the State in which the qualification was obtained.

Under the conditions specified in or permitted by the Directive, a European lawyer may carry out professional activities otherwise reserved to solicitors or advocates and may apply to become a solicitor or advocate.

Part I makes general provision including interpretation, extent and purpose (regulations 2 and 3) and in particular it provides—

- (a) that the Regulations shall come into force on 22 May 2000 and that there shall be a transitional period from that date to 22 November 2000 to enable European lawyers practising in Scotland to apply for registration under the Regulations. During that transitional period the offence provision (regulation 21) and the provision in relation to non entitlement to fees (regulation 22) shall not apply (regulation 1);
- (b) for the competent authorities for the purposes of registration of European lawyers to be the Law Society of Scotland and the Faculty of Advocates (“the professional bodies”) (regulation 4);
- (c) for information to be exchanged in relation to European lawyers registering with one of the professional bodies (regulation 5).

Part II makes provision for the practice of professional activities by registered European lawyers (regulation 6). It provides for the title and description which a registered European lawyer may use (regulation 7). Provision is also made in relation to joint practice (regulations 8 to 10) and the areas of work in which a registered European lawyer may practise (regulations 11 to 14).

Part III makes provision for registration. In particular it provides—

- (a) that the professional bodies shall register a European lawyer who has a certificate confirming registration with the competent authority in the lawyer’s home State and who has completed an application and provided the appropriate fee (regulations 16 and 17);

⁽¹⁵⁾ 1990 c. 40.

- (b) that inter alia a European lawyer may not be registered with both the Law Society of Scotland and the Faculty of Advocates or barristers' professional bodies and vice versa (regulation 18);
- (c) the time limit for considering applications and appeal procedure (regulation 19 and 20);
- (d) for the creation of an offence of pretending to be a registered European lawyer (regulation 21);
- (e) for non recovery of fees etc where the lawyer is not appropriately registered (regulation 22); and
- (f) for the issue of certificates of registration and the publication of the names of registered European lawyers (regulations 23 and 24).

Part IV makes provision for regulation and discipline of registered European lawyers.

Part V makes provision for entry into the profession of solicitor and advocate. In particular it provides—

- (a) that a registered European lawyer may be exempted from the requirements of the European Communities (Recognition of Professional Qualifications) Regulations 1991 (regulations 29 to 35); and
- (b) for the effect of entry into the profession of solicitor or advocate (regulation 36).

Consequential amendments and modifications are made to the Solicitors (Scotland) Act 1980 and other enactments that make specific provision in relation to solicitors (regulation 37 and schedules 1 and 2).