

**EXPLANATORY MEMORANDUM TO**  
**THE EUROPEAN COMMUNITIES (LAWYER'S PRACTICE AND**  
**SERVICES OF LAWYERS) (AMENDMENT) REGULATIONS 2013**

**2013 No. 1605**

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

2. **Purpose of the instrument**

2.1 These Regulations amend the European Communities (Services of Lawyers) Order 1978 (the Services Order) and the European Communities (Lawyer's Practice) Regulations 2000 (the Establishment Regulations) following the accession of the Republic of Croatia to the European Union (EU) on 1 July 2013. They will confer certain rights to permanently practise as a lawyer in England and Wales and Northern Ireland on lawyers who are authorised to practise in Croatia (and who are nationals of an European Economic Area (EEA) state, EU state or Switzerland), as well as on lawyers who are Croatian nationals and who are authorised to practise in one of those states. It will also allow lawyers authorised to practise in Croatia to practise in England and Wales and Northern Ireland on a temporary basis. This will bring them into line with lawyers of other Member States who wish to practise in England and Wales and Northern Ireland on a temporary or permanent basis.

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

3.1 None

4. **Legislative Context**

4.1 The Treaty concerning the accession of the Republic of Croatia to the European Union was signed on 9 December 2011. As a consequence of this Council Directive 2013/25/EU, adapting certain directives in the field of right of establishment and freedom to provide services, was adopted on 13 May 2013 following scrutiny and agreement of the UK Government. Further, the European Scrutiny Committee considered and cleared the proposed Directive during its meeting of 6 March 2013.

4.2 The Directives adapted by Directive 2013/25/EU include Directives 77/249/EEC and 98/5/EC. Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (the Services Directive) applies to lawyers authorised to practise in any of the EU states, EEA states or Switzerland, and ensures that such lawyers are permitted to provide legal services under their home country professional title in other Member States. Directive 98/5/EC of the European Parliament and of the

Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (the Establishment Directive) applies to persons who are nationals of an EU state, EEA state or Switzerland and who are authorised to practise in one of those states and ensures that such lawyers are permitted to become established under their home country professional title in other Member States. A transposition note is attached at Annex C.

4.3 The Services and Establishment Directives were implemented by the Services Order and the Establishment Regulations respectively.

## **5. Territorial Extent and Application**

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 negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

*What is being done and why*

7.1 These Regulations are necessary to comply with European law. Regulations 2(1) and 3 amend the Services Order and Establishment Regulations to extend the rights provided by the Services and Establishment Directives to Croatian-qualified lawyers and Croatian nationals authorised to practise in another EU state, EEA state or in Switzerland, following Croatia's accession to the EU.

7.2 Under the Establishment Regulations, those lawyers who wish to practise on a permanent basis under their home jurisdiction title in England and Wales or Northern Ireland may do so provided they are registered as a European lawyer with the relevant professional body. The professional bodies for England and Wales and Northern Ireland are the Law Society of England and Wales (via its regulatory arm the Solicitors Regulation Authority); the General Council of the Bar of England and Wales (via its regulatory arm the Bar Standards Board); the Law Society of Northern Ireland and the Bar Council of Northern Ireland. Once registered, a lawyer is permitted to undertake under their home professional title any work that may lawfully be carried out by a member of the professional body with which they are registered. They are also required to comply with the rules and regulations of that professional body. The Establishment Regulations also enable such lawyers to apply to be registered as a solicitor or barrister where they have been registered with that professional body and practised professional activities under their home professional title in England and Wales or Northern Ireland for a period of three years.

7.3 Under the Services Order, there is no such requirement to register where lawyers are providing services on a temporary or visiting basis.

7.4 Regulation 2(2) of this instrument makes amendment to the Services Order to enable European Lawyers to provide services by way of legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (the 2012 Act). This is in connection with the replacement of the legal aid scheme under Part 1 of the Access to Justice Act 1999 by the provisions of Part 1 of the 2012 Act. This is a consequential amendment, correcting an oversight at the time of implementing the 2012 Act and applying to European Lawyers generally.

7.5 Regulation 4 makes transitional provision as to the application of the Establishment Regulations to ensure that lawyers who are nationals of Croatia and/or are authorised to practise in Croatia or another Member State have a period of time in which to apply for registration in the jurisdiction in which they wish to practise.

7.6 There has been media interest in the accession of Croatia and of the free movement of peoples in general, but not specifically on legal services. There are around 4,000 advocates (Odvjetnik and Odvjetnica) registered with the Croatian Bar Association and the impact is not anticipated to be as wide as for less skilled professions. Reciprocal arrangements are in place for lawyers in England and Wales and Northern Ireland to practise in other EU states, EEA states and Switzerland.

### *Consolidation*

7.7 We do not plan to consolidate these amending regulations, however this may be considered at the next appropriate time.

## **8. Consultation outcome**

8.1 A formal consultation has not been carried out as we are obliged to implement Council Directive 2013/25/EU. We have consulted the General Council of the Bar of England and Wales, the Bar Standards Board, the Law Society of England and Wales, the Solicitors Regulation Authority, and the Northern Ireland Executive in the drafting of these Regulations, all of whom are content.

## **9. Guidance**

9.1 We will not be issuing guidance as the legal profession in England and Wales and Northern Ireland is independent of Government; however the relevant legal regulators (Bar Standards Board, Solicitors Regulation Authority, the Law Society of Northern Ireland and the Bar Council of Northern Ireland) provide guidance in respect of EU lawyers.

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies in respect of these Regulations.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for these Regulations since they simply extend the rights to practise to lawyers from Croatia following its accession to the EU.

## **11. Regulating small business**

11.1 This legislation does not apply to small business.

## **12. Monitoring & review**

12.1 This is a minor amendment to existing domestic legislation and a review would be undertaken only if there were proposed changes to the Services and Establishment Directives.

## **13. Contact**

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

Pete Cade, Professional Regulation, Ministry of Justice. Tel: 020 3334 2643,  
Email: [peter.cade@justice.gsi.gov.uk](mailto:peter.cade@justice.gsi.gov.uk)