

2004 No. 383

LEGAL PROFESSION

**The Solicitors (Scotland) Act 1980 (Foreign Lawyers and
Multi-national Practices) Regulations 2004**

Made - - - - - *8th September 2004*

Laid before the Scottish Parliament *9th September 2004*

Coming into force - - - *1st October 2004*

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

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations 2004 and shall come into force on 1st October 2004.

(2) These Regulations extend to Scotland and insofar as they extend beyond Scotland they do so only as a matter of Scots law.

(3) Expressions used in these Regulations have the same meanings as they have in the Solicitors (Scotland) Act 1980(b).

Amendment and modification of the 1980 Act

2. The Solicitors (Scotland) Act 1980 is amended and applied in accordance with these Regulations.

New section 23B

3. After section 23A(c) insert—

“**23B.** Failure on the part of a registered foreign lawyer in practice to have in force a current registration certificate may be treated as professional misconduct for the purposes of Part IV.”.

(a) 1972 c.68; section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The function conferred on a Minister of the Crown by section 2(2), in so far as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) 1980 c.46.

(c) Section 23A was inserted by the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000 (S.S.I. 2000/121) (“the 2000 Regulations”), Schedule 1, paragraph 1(4).

Amendment of section 26

4. In section 26 (offence for solicitors to act as agents for unqualified persons)–
- (a) in subsection (2)(a), after “solicitor” in both places where it appears, insert “, registered foreign lawyer”;
 - (b) in subsection (3), after “incorporated practice” insert “, registered foreign lawyer, multi-national practice”.

Amendment of section 28

5. In section 28(b) (offence for solicitors who are disqualified to seek employment without informing employer)–
- (a) after paragraph (d) insert–
 - “; or
 - (e) has had his registration as a registered foreign lawyer withdrawn; or
 - (f) has been suspended from practice as a registered foreign lawyer,”;
 - (b) after “incorporated practice” insert “or multi-national practice”.

Amendment of section 31

6. In section 31(1)(c) (offence for unqualified persons to pretend to be solicitor or notary public)–
- (a) after paragraph (aa) insert–
 - “(ab) pretends to be a registered foreign lawyer; or”;
 - (b) in paragraph (b), for “or registered European lawyer” substitute “, registered European lawyer or registered foreign lawyer”.

Amendment of section 32

7. After section 32(3) (offence for unqualified person to prepare certain documents) insert–
“(4) For the purposes of this section, “unqualified person” includes a registered foreign lawyer.”.

New section 33B

8. After section 33A(d) (privilege of incorporated practice from disclosure etc.) insert–
- “**33B.**—(1) Any communication made to or by a registered foreign lawyer in the course of his actings as such for a client shall in any legal proceedings be privileged from disclosure in like manner as if the registered foreign lawyer had at all material times been a solicitor acting for a client.
- (2) Any enactment or instrument making special provision in relation to a solicitor or other legal representative as to the disclosure of information, or as to the production, seizure or removal of documents, with respect to which a claim to professional privilege could be maintained, shall, with any necessary modifications, have effect in relation to a registered foreign lawyer as it has effect in relation to a solicitor.”.

(a) Section 26(2) and (3) was amended by the 2000 Regulations, Schedule 1, paragraph 1(6).
(b) Section 28 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73) (“the 1985 Act”), Schedule 1, paragraph 6, and the 2000 Regulations, Schedule 1, paragraph 1(7).
(c) Section 31(1) was amended by the 1985 Act, Schedule 1, paragraph 8, and the 2000 Regulations, Schedule 1, paragraph 1(7) and (8).
(d) Section 33A was inserted by the 1985 Act, Schedule 1, paragraph 11.

Amendment of section 34

9. After section 34(1A)(a) (rules as to professional practice, conduct and discipline) insert–

“(1B) Rules made under this section may–

- (a) prevent a solicitor from entering a multi-national practice without the approval of the Council; and
- (b) make different provision for the regulation of solicitors and registered foreign lawyers in a multi-national practice in the following different cases–
 - (i) where the principal place of business of the practice is outside Scotland and it has a place of business in Scotland;
 - (ii) where the principal place of business of the practice is in Scotland and it has a place of business outside Scotland;
 - (iii) where the principal place of business of the practice is in Scotland and it has no place of business outside Scotland.

(1C) For the purposes of subsection (1B)(b), the principal place of business of a multi-national practice shall be determined by the Council who shall take into account factors set out in rules which may be made under this section.”.

Amendment of section 43

10. In section 43(b) (Guarantee Fund)–

- (a) in subsection (2)(a), after “solicitor” in each place where it appears insert “, registered foreign lawyer”; and
- (b) in subsection (3)–
 - (i) at the end of paragraph (d) omit “or”; and
 - (ii) after paragraph (e) insert–

“;
 - (f) in respect of any act or default of a registered foreign 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 foreign lawyer’s practice, or any of his partners’ practice, in Scotland; or
 - (g) in respect of any act or default of any member, director, manager, secretary or other employee of an incorporated practice which is a multi-national practice, where such act or default takes place outside Scotland, unless the Council is satisfied that the act or default is closely connected with the incorporated practice’s practice in Scotland.”.

Amendment of section 60A

11. In section 60A(c) (multi-national practices)–

- (a) in subsection (2), after paragraph (a) insert–

“(aa) the information which shall accompany such applications;”;
- (b) after subsection (4) insert–

“(4A) Any person may inspect the register of foreign lawyers during office hours without payment.

(4B) A registered foreign lawyer who wishes his name to be removed from the register of foreign lawyers may make an application to the Council in that behalf, and the Council

(a) Section 34 (1A) was inserted by the 1985 Act, Schedule 1, paragraph 12.

(b) Section 43 was amended by the 1985 Act, Schedule 1, paragraph 21 and the 2000 Regulations, Schedule 1, paragraph 1(11).

(c) Section 60A was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40) (“the 1990 Act”), section 32.

shall, if the registered foreign lawyer satisfies the Council that he has made adequate arrangements with respect to the business that he has then in hand, remove the name of that foreign lawyer from the register of foreign lawyers.

(4C) On an application to the Council by a foreign lawyer whose name has been removed from the register of foreign lawyers under subsection (4B), the Council may, after such inquiry as they think proper, restore the name of the foreign lawyer to the register of foreign lawyers.

(4D) A foreign lawyer whose name has been removed (other than pursuant to an application made under subsection (4B)) from the register of foreign lawyers shall have his name restored to that register only if, on an application in that behalf made by him to the Tribunal and after such inquiry as the Tribunal thinks proper, the Tribunal so orders.

(4E) Rules made by the Tribunal under section 52(a) (procedure on complaints to the Tribunal) may—

- (a) regulate the making, hearing and determining of applications under subsection (4D); and
- (b) provide for payment by the applicant to the Council of such fee in respect of restoration to the register of foreign lawyers as the rules may specify.

(4F) Where, following an application under subsection (4), the Council decide not to enter the name of a foreign lawyer in the register of foreign lawyers the applicant may, within three months of the notification to him of the Council's decision (or later with the permission of the court), appeal to the court against the decision and, on such an appeal, the court may—

- (a) order the Council to register the foreign lawyer;
- (b) refuse the appeal; or
- (c) remit the matter to the Council with such directions as it sees fit.

(4G) Sections 24A to 24G(b) (registration certificates for registered European lawyers) shall apply to registered foreign lawyers as they apply to registered European lawyers and any reference in those sections (as so applied) to a registration certificate shall be construed as a reference to a registration certificate for a registered foreign lawyer.”; and

- (c) in subsection (5), omit paragraph (a).

Amendment of Schedule 3

12. After paragraph 1A(c) of Schedule 3, insert—

“Contributions by registered foreign lawyers

1B.—(1) Subject to the provisions of this paragraph, paragraph 1 above shall apply to registered foreign lawyers as it applies to solicitors and in that paragraph as so applied references to a practising certificate shall be construed as references to a registered foreign lawyer's registration certificate.

(2) Where a registered foreign lawyer can prove that—

- (a) he is covered by a guarantee provided in accordance with the rules of the legal profession of which he is a member; 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.

(a) Section 52 was amended by the 1985 Act, Schedule 1, paragraph 27 and the Solicitors (Scotland) Act 1988 (“the 1988 Act”), Schedule 1, paragraph 15.

(b) Sections 24A to 24G were inserted by the 2000 Regulations, Schedule 1, paragraph 1(3).

(c) Schedule 3, paragraph 1A, was inserted by the 2000 Regulations, Schedule 1, paragraph 1(13).

(3) Where the equivalence referred to in sub-paragraph (2) is only partial, the Society may specify the guarantee obligations a registered foreign lawyer is required to meet to comply with paragraph 1.

(4) The Council may, where it is satisfied that any acts or defaults on the part of a registered foreign lawyer would not result in a grant being made from the Guarantee Fund held under section 43, exempt that lawyer from the requirements of paragraph 1.

(5) Sub-paragraphs (2), (6) and (8) of paragraph 1 shall not apply to registered foreign lawyers.”.

Modification of provisions of the 1980 Act

13. Sections(a) 30, 37, 38, 39, 39A, 40, 41, 42, 42A, 42B, 42C, 43, 45 (except subsection (4)), 47, 51 (except the references to a solicitor appointed under subsections (1) and (4)), 52(1), 53 (except subsections (2)(g), (6B) and (8)(b)), 53A, 53B, 53C, 54, 55 (except subsections (1)(ba) and (bb) and (3A)), 56, 56A, 61, 61A, 62A (except the references in that section to section 46), 63 and 64, paragraph 5 of Schedule 3 and Schedule 4 shall apply to registered foreign lawyers as they apply to solicitors and any reference in those sections as so applied—

- (a) to a solicitor’s practising certificate shall be construed as a reference to a registered foreign lawyer’s registration certificate;
- (b) to the roll shall be construed as a reference to the register of foreign lawyers;
- (c) to enrolment shall be construed as a reference to registration on the register of foreign lawyers; and
- (d) to being struck off the roll shall be construed as a reference to being removed from the register of foreign lawyers.

Rule-making powers

14.—(1) The power to make rules under—

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

the 1980 Act shall also be exercisable in relation to registered foreign lawyers and a reference in any of those provisions—

- (i) to a solicitor shall include a reference to a registered foreign lawyer; and
- (ii) to a solicitor’s practising certificate shall include a reference to a registered foreign lawyer’s registration certificate.

(a) The 1985 Act, Schedule 1, amended or inserted sections 30, 37 to 39, 39A, 40 to 42, 43, 45, 47, 51, 52(1), 53, 54, 61, 62A and 64 and Schedule 4. The 1990 Act, Schedule 8, amended or inserted sections 42A, 51, 53, 55, 56A, 63 and Schedule 4. The 1990 Act, section 36, inserted section 61A. The 2000 Regulations, Schedule 1, amended section 43. The 1988 Act, Schedules 1 and 2, amended sections 38, 40, 41, 42, 51, 53 and Schedule 4; section 1 and 2 of that Act inserted sections 42A to 42C; section 3 of that Act inserted sections 53A to 53C and section 4 of that Act inserted section 39A. The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55) (“the 1980 Act”), section 25, amended section 42 and Schedule 3 of that Act amended section 51. Section 51 was amended by the Legal Aid (Scotland) Act 1986 (c.47) (“the 1986 Act”), Schedule 3 and S.I. 1999/1042, Schedule 2. Schedule 4 was amended by S.I. 1999/1820, Schedule 2.

(b) Section 34 was amended by the 1985 Act, Schedule 1 and the 1990 Act, section 31(3).

(c) Section 35 was amended by the 1985 Act, Schedule 1, the 1988 Act, Schedules 1 and 2, the Banking Act 1987 (c.22), Schedule 6 and the 1986 Act, Schedule 3.

(d) Section 36 was amended by the 1980 Act, section 25, the 1985 Act, Schedule 1 and the 1988 Act, Schedules 1 and 2.

(e) Section 44 was amended by the 1985 Act, Schedule 1.

(2) Any of the powers referred to in paragraph (1) may be exercised so as to make different provision with respect to—

- (a) different categories of registered foreign lawyer;
- (b) different categories of incorporated practice; and
- (c) different circumstances.

Modification of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

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

Modification of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

16. Sections 33(5) and 34(9) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(b) shall apply to registered foreign lawyers as they apply to solicitors.

St Andrew’s House,
Edinburgh
8th September 2004

CATHY JAMIESON
A member of the Scottish Executive

(a) S.I. 1975/1023, amended by S.I. 1986/1249 and 2268, 2000/1119, 2001/1149, 1192, 3640, 3650, and 3816, 2002/441, 2003/1590 and S.S.I. 2000/121, the Osteopaths Act 1993 (c.21) and the Chiropractors Act 1994 (c.17).
(b) 1990 c.40.

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, amend and modify the Solicitors (Scotland) Act 1980 (c.46) (“the 1980 Act”), and other enactments, to allow Scottish solicitors and incorporated practices and lawyers from jurisdictions outside Scotland (“foreign lawyers”) to enter into multi-national practices. The Regulations implement for Scotland the commitments on free movement of legal services made by the European Community under the General Agreement on Trade and Services (GATS) (see the Marrakesh Agreement, Annex 1B, European Communities and their Member States – Schedule of Specific Commitments, II 1A(a)). The Marrakesh Agreement, which established GATS, is a Community Treaty for the purposes of section 1(2) of the European Communities Act 1972, by virtue of the European Communities (Definition of Treaties) (The Agreement Establishing the World Trade Organisation) Order 1995 (S.I. 1995/265).

The Regulations supplement the provisions contained in section 60A of the 1980 Act (multi-national practices). Regulations 3 to 12 amend that Act so that–

- (a) failure on the part of a registered foreign lawyer to have in force a current registration certificate may be treated as professional misconduct (regulation 3);
- (b) it shall not be an offence for a solicitor or an incorporated practice to act as an agent for a registered foreign lawyer or a multi-national practice (regulation 4);
- (c) it shall be an offence for a registered foreign lawyer who is disqualified from practice to seek or accept employment without informing his or her employer (regulation 5);
- (d) it shall be an offence for an unqualified person to pretend to be a registered foreign lawyer (regulation 6);
- (e) it shall be an offence for a registered foreign lawyer to prepare certain documents relating to heritable or moveable estate, court proceedings or a grant of confirmation in favour of executors (regulation 7);
- (f) a registered foreign lawyer will enjoy the same rights of professional privilege from disclosure of communications with clients as are enjoyed by a solicitor (regulation 8);
- (g) rules made by the Council of the Law Society of Scotland may require a solicitor to receive approval before entering a multi-national practice and may make different provision for the regulation of solicitors and registered foreign lawyers in a multi-national practice depending on where that multi-national practice has its principal place of business (regulation 9);
- (h) the Scottish Solicitors Guarantee Fund applies to registered foreign lawyers (regulations 10 and 12);
- (i) section 60A makes additional provision for the registration of foreign lawyers and the issue of registration certificates (regulation 11(a) and (b));
- (j) a restriction on the order-making power at section 60A(5) of the 1980 Act is removed to make the power exercisable in relation to an enactment or instrument made or passed after the commencement of that section (regulation 11(c)).

Regulation 13 modifies various provisions of the 1980 Act so that those provisions apply to registered foreign lawyers as they apply to solicitors.

Regulation 14 provides that various rule-making powers in the 1980 Act shall be exercisable in relation to registered foreign lawyers and different categories of incorporated practice.

Regulations 15 and 16 modify certain provisions of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 so that they apply to registered foreign lawyers as they apply to solicitors.

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