

EXPLANATORY MEMORANDUM

Title:

The European Communities (Lawyer's Practice) (Amendment) Regulations 2004
No.1628

Laying Authority and Purpose:

This explanatory memorandum is laid before Parliament by Command of Her Majesty.

Department Responsible:

The Department for Constitutional Affairs.

Description:

These Regulations amend the European Communities (Lawyer's Practice) Regulations 2000. The 2000 Regulations implemented Council Directive No. 98/5/EC, dated 16 February 1998.

These Amendment Regulations give effect to amendments to the Directive made by:

- The Agreement between the European Community and its Member States and the Swiss Confederation, on the free movement of persons;
- Annex VIIB to the Agreement on the European Economic Area; and,
- The treaty concerning the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the EU.

The 2004 amendment Regulations will allow lawyers in Switzerland, Iceland, Liechtenstein, Norway, the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to practice those professional activities they currently do in their home jurisdiction, on a permanent basis in the UK.

Extent:

The Regulations relate to England and Wales and Northern Ireland.

Scotland will also be laying Regulations that amend the European Communities (Lawyer's Practice) (Scotland) Regulations 2000.

These Regulations are to be laid and brought into effect in England and Wales at the same time as they are laid and brought into effect in Scotland. If this were not done, EC lawyers may have different rights in Scotland as they would in England and Wales.

The reason for the delay between the date the Regulations will be laid and the date they will come into force reflects the difference between the English and Scottish systems. In Scotland, negative SI's cannot come into force during recess.

Policy background:

The policy objective of Council Directive 98/5/EC is to facilitate the practice of the profession of lawyer on a permanent basis in certain States other than the State in

which the professional qualification was obtained. These amending Regulations extend this facility to lawyers in EU States not covered by the 2000 Regulations.

Impact:

These Regulations simply extend the rights of EU lawyers to practice in the UK to those Member States who have recently joined the EU. No Regulatory Impact Assessment has been conducted.

Not commencing these Regulations could mean that the UK is in breach of the European Community Treaty (by permitting lawyers from some states to do work which, on a discriminatory basis, have been prohibited to lawyers from other states).

Contact:

Mark Cooper, Professional Regulation, 54 Victoria Street, London, SW1E 6QW. Tel: 020 7210 8677 Fax: 020 7210 0613.

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