



The Law Society

Overseas lawyers in England & Wales

International Unit

January 2003

This briefing has been produced by the Law Society's International Unit to provide a detailed and comprehensive description of the rights of foreign lawyers to practise in England & Wales. It also describes in detail how the European Directives on the practice of lawyers, which have created a free well-regulated market for legal services in the European Union, have been incorporated into the regulatory system of England & Wales. The Law Society has been instrumental in promoting this European system for the regulation of lawyers and believes it assists the growth and development of legal services for the benefit of clients everywhere.

While every effort has been made to ensure the accuracy of the information contained in this briefing, the Law Society cannot accept responsibility for any errors or omissions, or for any consequences resulting therefrom.

Note that the European Economic Area (EEA) comprises the European Union (EU) plus Iceland, Liechtenstein and Norway. [These notes take into account the extension of the Establishment of Lawyers Directive 98/5/EC to Iceland, Liechtenstein and Norway, although this does not take effect until 1 March 2003].

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Introduction

THE PRACTICE OF LAW IN ENGLAND AND WALES BY FOREIGN LAWYERS

England and Wales, and London in particular, is one of the world's most cosmopolitan legal environments and is home to lawyers from at least 50 countries. They practise English law, European law, public and private international law, and the law of their state/jurisdiction of origin to provide a local and global service for their clients.

Foreign lawyers can do so, as nobody needs to be a solicitor, barrister or other recognised professional to practise law in England and Wales. Nor do legal practitioners have to be British nationals. Anyone is free to offer legal advice and services in England and Wales, with the following restrictions:

- only those duly qualified and certificated as solicitors or barristers in England and Wales can call themselves by those titles
- certain limited areas are reserved to nationally qualified solicitors and barristers (and, in some cases, European lawyers registered under the Establishment of Lawyers Directive 98/5/EC). These areas include conducting litigation, drawing up court documents, rights of audience, property transfers and succession. Special rules also apply for all persons seeking to offer financial advice
- immigration advice and immigration services are reserved to nationally qualified solicitors (and their partners and employees), barristers and legal executives, European lawyers registered in the UK under the Establishment Directive, other EU lawyers, and persons (including foreign lawyers) who are registered with the Office of the Immigration Services Commissioner.

There are a number of ways in which foreign lawyers can practise law in England and Wales on the basis of their overseas qualification:

- as a sole practitioner
- in a partnership of foreign lawyers,
- as an assistant or consultant with a firm of foreign lawyers
- in partnership with English solicitors (but only if registered with the Law Society as a “registered foreign lawyer” or a “registered European lawyer”)
- employed by English solicitors
- in employment as an in-house lawyer (e.g. in the legal department of a commercial company).

Alternatively, a foreign lawyer may re-qualify as an English solicitor or barrister.

Persons who are not EU, EEA or Swiss nationals and who wish to practise, work or train in England and Wales are subject to immigration procedures. These are the responsibility of the Home Office’s Immigration and Nationality Directorate and not the Law Society.

SECTION 1: IMMIGRATION AND ACCESS ISSUES

Immigration is a matter for the Government not the Law Society. Nationals of some countries may require visas for entry to the UK for any purpose as well as the requirements outlined below.

1.1 Conferring with clients by way of business visits

Lawyers who are not EU, EEA or Swiss nationals but who are nationals of non-visa countries can normally enter the United Kingdom as visitors for immigration purposes if they are coming to confer with legal colleagues or clients. When they arrive at Immigration Control in UK, they should state the nature of their visit. They will need to satisfy Immigration that they are not intending to establish themselves in employment or self-employment in the UK and are here purely to confer with legal colleagues or clients before returning home.

1.2 Court and other hearings

A foreign lawyer does not have rights of audience unless he or she is an EU, EEA or Swiss lawyer exercising rights under the Lawyers' Services Directive 77/249/EEC or the Establishment of Lawyers Directive 98/54/EC.

In county and magistrates' courts, rights of audience are usually restricted to the parties, their barrister or solicitor, though any person may be heard at the discretion of the court.

In most tribunals (such as employment tribunals) and public enquiries there are no restrictions on rights of audience. However, this does not apply to the Employment Appeals Tribunal or the Solicitors' Disciplinary Tribunal, which are equivalent to courts. Nor does it apply to Adjudicators or the Immigration Appeals Tribunal, where rights of audience are restricted to nationally qualified solicitors (and their partners and employees), barristers, legal executives, European lawyers registered in the UK under the Establishment Directive (and their partners and employees), other EU lawyers, persons (including foreign lawyers) who are registered with the Office of the Immigration Services Commissioner, and the employees of registered persons.

Foreign lawyers coming to the UK to represent clients in court or other hearings or proceedings may seek entry as business visitors, provided that this is in relation to business overseas. They will need to satisfy the immigration officer that they are not intending to establish themselves in employment or self-employment in the UK and are here purely to represent and provide legal counsel for their clients before returning home.

1.3 Arbitration

There is no restriction on rights to represent parties at arbitration proceedings conducted in England and Wales.

Foreign lawyers coming to the UK to represent clients in arbitration proceedings may seek entry as business visitors, provided that this is in relation to their business overseas. They will need to satisfy the immigration officer that they are not intending to establish themselves in employment or self-employment in the UK and are here purely to represent and provide legal counsel for their clients before returning home.

1.4 Private Practice

A foreign lawyer who wishes to practise law in a self-employed capacity can do so in the following ways:

- as a sole practitioner
- as a partner with a firm of foreign lawyers
- in partnership with English solicitors (but this will only be possible if he or she registers with the Law Society as a “registered foreign lawyer” or a “registered European lawyer”; for details see Section 2 and 6)

All lawyers who are not EU, EEA or Swiss nationals and who wish to come to the UK to practise as above should before their arrival in UK be in possession of a current ‘entry clearance’ issued for this purpose (this includes Commonwealth citizens).

In the case of visa nationals an entry clearance (visa) is normally issued in the applicant’s country of residence.

To get an entry clearance two applications are required:

- 1) Application to the Law Society of England and Wales for their ‘letter of no objection,’ which is issued automatically on receipt of the required documents. (See below for detailed requirements). This is a Government requirement designed to prove that the applicant is a bona fide qualified lawyer.
- 2) Application to the nearest British Embassy, High Commission or Consulate for an entry clearance, with evidence of financial standing (see below for detailed requirements)

1.5 Proof of Financial Good Standing

Foreign lawyers wishing to set up a new practice in the UK are expected to provide evidence that the firm has sufficient funds to establish the new practice and that the practitioner/s have sufficient means to maintain themselves and their dependants without recourse to public funds. The evidence of means may take various forms, such as a bank letter confirming a firm's financial standing, or the firm's annual accounts. In the case of individuals, evidence may be bank statements over a 12-month period or deposits in building society accounts.

Foreign lawyers joining an existing partnership must show that they will receive a share of the firm's profits, by providing a written statement of the terms on which they are to join the partnership.

The normal entry requirements of a minimum financial investment of £200,000 and the creation of two new UK jobs do not apply to foreign lawyers with self-employed status.

1.6 Proof of Professional Qualifications and Good Standing

In order to assess an application, the Law Society needs to receive the following documents and information (with certified English translations where appropriate).

- 1) A certificate of good standing signed by the authorised officer of the lawyer's Bar, Law Society or regulatory state authority certifying:

- the applicant's professional qualification and authorisation to practise
- the applicant's date of admission
- that the applicant is in good standing and
- that there are no disciplinary matters outstanding against the applicant.

Should the applicant be a member of the legal profession in more than one jurisdiction, then a certificate is requested from each Bar, Law Society or regulatory state authority. Certificates should not be more than 3 months old.

2) A brief curriculum vitae, including:

- date and place of birth
- particulars of any previous employment, whether as a lawyer or otherwise,
- if the applicant has been a member of a firm of lawyers outside the UK, the curriculum vitae should state the name and address of the firm, whether the applicant is/was a partner or associate and the length of time the applicant has been associated with the firm.

3) A signed undertaking in the prescribed form to the Chief Executive of the Law Society that the applicant will conform to the standards of legal practice in the United Kingdom, and will not hold him or herself out as a solicitor. Conforming to the UK standards of practice means acting as befits a lawyer, rather than complying with all local rules. An applicant who is dually qualified as an English solicitor should delete the undertaking not to hold him or herself out as a solicitor. An applicant who is a solicitor of another jurisdiction should modify the undertaking to say that he or she will not hold him or herself out a solicitor except as a New Zealand solicitor, or as appropriate.

4) Where, in England and Wales, the lawyer intends to practise.

5) The names and addresses of two British referees, unrelated to the applicant, of whom at least one must be a solicitor admitted in England and Wales.

6) A non-refundable fee of currently £235 (including VAT) is charged by the Law Society for processing applications.

If a renewal letter is required for extensions of stay, the applicant will need to supply:

- a new certificate of good standing from your home Bar, Law Society or regulatory state authority and
- a cheque, credit card payment or telegraphic transfer for currently £46.50 (including VAT).

After examining the documentation, the Law Society will inform the applicant of the outcome and supply to the applicant or his/her representative a letter addressed to the Home Office stating whether or not there is any objection to the application for entry being granted.

The Law Society consent is given as a matter of course to any lawyer who is in good standing with his or her home bar and agrees to observe the conditions relating to use of home title and appropriate standards of conduct.

1.7 Employment as a Lawyer

Foreign lawyers may also be

- employed as a consultant or associate by a foreign law firm in the UK, or
- employed by a professional firm or by a company in the UK.

For qualified foreign lawyers who are not EU, EEA or Swiss nationals and intend to work in England and Wales in any of the above capacities, the following applies. The prospective employer must firstly obtain permission from Work Permits (UK), who are part of the Home Office. This permission will normally be in the form of a work permit. In addition to a work permit, certain nationalities require a visa before they can enter Great Britain.

A work permit for employment as an employee, consultant or associate in foreign law, this does not authorise a foreign lawyer to enter into private practice as a lawyer on his or her own account or into any other self-employed activities. If foreign lawyers wish to change their employment once they have commenced their employment on a work permit in England and Wales, the new employer will first have to obtain permission from Work Permits (UK).

1.8 Training and Work Experience

When an employer wishes to provide training or work experience to a foreign lawyer who is not an EU, EEA or Swiss national, the employer must first obtain permission from Work Permits (UK) in the form of a Training and Work Experience work Permit.

SECTION 2: PRACTICE ISSUES FOR FOREIGN LAWYERS IN ENGLAND AND WALES

In common with most jurisdictions, certain types of legal work in England and Wales are reserved to solicitors, barristers or other recognised professionals. The reserved areas of legal work include rights of audience, the conduct of litigation, the drawing of court documents, the conveyancing of land, the drawing of trust deeds, and the preparation of applications to administer a deceased's estate.

2.1 Rights of audience, conduct of litigation and drawing court documents

Foreign lawyers do not have rights of audience in the courts, or the right to conduct litigation, or the right to draw court documents. There are important exceptions for EU lawyers providing services in the UK on a temporary or occasional basis under the Lawyers' Services Directive 77/249/EEC, and for "registered European lawyers" established in the UK under the Establishment of Lawyers Directive 98/5/EC.

In most tribunals (such as employment tribunals), there are no restrictions on rights of audience. However, this does not apply to the Employment Appeals Tribunal or the Solicitors' Disciplinary Tribunal, which are equivalent to courts. Nor does it apply to Immigration Adjudicators or the Immigration Appeals Tribunal, where rights of audience are restricted to nationally qualified solicitors (and their partners and employees), barristers, legal executives, European lawyers registered in the UK under the Establishment Directive (and their partners and employees), other EU lawyers, and persons (including foreign lawyers) who are registered with the Office of the Immigration Services Commissioner.

There is no restriction on rights to represent parties at arbitrations conducted in England and Wales.

2.2 Land and Succession

The Solicitors Act 1974 reserves the following activities to solicitors and other specified professionals:

- drawing or preparing any instrument of transfer or charge for the purpose of the Land Registration Act 1925, or making any application or lodging any document for registration under that Act at the Land Registry;
- drawing or preparing any other instrument relating to real or personal estate, except a will or other testamentary instrument, an agreement not under seal, a letter or power of attorney, or a transfer of stock containing no trust or limitation; and
- drawing or preparing papers on which to found or oppose a grant of probate of a will or of letters of administration of the deceased's estate.

In relation to the conveyancing of land and applications for probate or letters of administration, certain "registered European lawyers" established in the UK under the Establishment Directive are permitted to do such reserved work.

In relation to trust deeds conferring interests in assets other than land, any EU, EEA or Swiss lawyer providing services in the UK on a temporary or occasional basis, and

any “registered European lawyer” established in the UK under the Establishment Directive, may do such reserved work.

These exceptions for European lawyers are set out in further detail in Section 6 below.

2.3 Financial Services

Under the Financial Services and Markets Act 2000, the Financial Services Authority (FSA) is the regulator for investment business. Solicitors and “registered European lawyers”, and their partners, are permitted to carry on certain categories of investment business without authorisation from the FSA. Other foreign lawyers will require authorisation if they are to do any investment business.

2.4 Immigration advice and immigration services

Under the Immigration and Asylum Act 1999 the Office for the Immigration Services Commissioner (OISC) is the regulator for immigration advice and immigration services. Foreign lawyers who are partners or employees of solicitors; European lawyers registered in the UK under the Establishment Directive and their partners and employees; and other EU lawyers and their employees; are permitted to provide immigration advice and immigration services without registering with OISC. Other foreign lawyers will have to be registered with OISC if they are to provide immigration advice or immigration services.

2.5 Foreign lawyers practising with solicitors in England and Wales

English solicitors may practise in partnership or corporate practice with foreign lawyers who are registered with the Law Society as registered foreign lawyers or as registered European lawyers (RELS).

A partnership of solicitors (and/or RELs) and registered foreign lawyers is known as a multi-national partnership (MNP). The rules of conduct applicable to solicitors apply also to an MNP. An MNP can employ practising solicitors and RELs.

A mixed corporate practice is also permitted between solicitors (and/or RELs) and registered foreign lawyers. Such a corporate practice can be either a company or a limited liability partnership (LLP). Before commencing practice in England and Wales the company or LLP must gain recognition from the Law Society as a “recognised body” under section 9 of the Administration of Justice Act 1985.

The structure of a “recognised body” must comply with the Solicitors’ Incorporated Practice Rules 2004. The rules of conduct applicable to solicitors apply also to a “recognised body”. A recognised body can employ practising solicitors and RELs.

2.6 Employment of an English solicitor by a Foreign Lawyer

The professional rules by which solicitors in England and Wales are bound prevent a practising solicitor from taking employment with a foreign lawyer or foreign law firm, unless the employer is to be the solicitor's only client. Practising solicitors employed by a foreign lawyer would be in breach of the professional rules if they did any work for clients of their employer.

A non-practising solicitor may be employed by a foreign lawyer or foreign law firm to do work for the employer and for clients of the employer, provided the solicitor is not

held out as a solicitor or lawyer (or, if so, always as a “non-practising solicitor” or “non-practising lawyer”), and provided he or she does no reserved work, either for the employer or for the employer’s clients.

The above restrictions do not apply to employment of a solicitor by an MNP, or by a “recognised body”, or by RELs, or if the solicitor is practising abroad. They are also currently under review by the Law Society.

2.7 Employment of Foreign Lawyers by Solicitors

Subject to their home rules, foreign lawyers may practise in the employment of solicitors, RELs, MNPs or recognised bodies.

2.8 Sharing of Facilities

The sharing of facilities in solicitors’ offices by a foreign lawyer and the appearance of a foreign lawyer’s name as a consultant or as an associated practice on a solicitor’s professional stationery or name plate or brochure is permissible, but the foreign lawyer must not be improperly held out as a partner, or held out as a solicitor, or as qualified to act as a solicitor. The solicitor will have an obligation to ensure that any sharing of facilities will not give rise to a breach of client’s confidentiality and to ensure compliance with the Solicitors’ Practice Rules.

2.9 Other Professional Arrangements

Foreign lawyers, wherever based, are entitled to enter into professional arrangements with solicitors. The Solicitors’ Practice Rules 1990 and the home rules of foreign lawyers, if relevant, will govern these arrangements. Specifically, the Solicitors’ Practice Rules provide that:

- a foreign lawyer may enter into an arrangement with a solicitor to introduce clients to the solicitor.
- a solicitor may agree to refer clients to a foreign lawyer.
- a solicitor may agree to share his professional fees with a practising lawyer of a jurisdiction other than England and Wales.

2.10 Relations between foreign lawyers and barristers

The rules for foreign lawyers in Chambers in England and Wales are set out in Annex 15 of the ‘Code of Conduct for the Bar of England and Wales’, issued by the Bar Council.

SECTION 3: PROFESSIONAL CONDUCT AND DISCIPLINE FOR FOREIGN LAWYERS IN ENGLAND AND WALES

3.1 Professional Title

Section 21 of the Solicitors Act 1974 prohibits an unqualified person from taking or using any name, title or description implying that he/she is qualified to act as a solicitor. The object of the following guidelines (which are obligatory in the case of the notepaper of RELs, and of foreign lawyers practising together with solicitors or RELs) is to inform members of the public of the status of the foreign lawyer concerned in a way that distinguishes foreign lawyers from members of the local profession. This avoids the inadvertent commission of a criminal offence, or of unfair trading practices.

Foreign lawyers from non-EU jurisdictions should describe themselves on office stationery, business cards, nameplates and in all communications and publications (including law lists, telephone, telex and street directories, professional journals and conference brochures) either by their own untranslated professional title or by the word “lawyer”, together with a reference to the country or jurisdiction of their qualification, for example: “abogado, Argentina”, or “Argentine lawyer”; “New York attorney” or “U.S. Lawyer”; “solicitor, New South Wales”, “Australian lawyer” or “Australian solicitor”.

An EU, EEA or Swiss lawyer or notary should always use his or her untranslated professional title, together with a reference to the European jurisdiction (local or national as appropriate) under whose professional title he or she is practising, for example: “advocaat, Brussels”, or “Belgian advocaat (Brussels)”; “advokat, Denmark” or “Danish advokat”, “solicitor, Irish Republic” or “Irish solicitor”. A European lawyer registered in the UK under the Establishment Directive should add: “registered with the Law Society”, “registered with the Bar Council”, etc.

3.2 Rules of Professional Conduct

Foreign lawyers establishing offices or providing legal services in England and Wales are expected to observe the standards which apply to the legal profession in England and Wales. This is so whether or not the rules of conduct and disciplinary procedures of the foreign lawyer’s home Bar apply to practice. Observing ethical standards means acting as befits a lawyer, rather than complying with all local rules.

As noted above, lawyers in England and Wales do not have a monopoly of legal services. Subject to the restricted (reserved) areas of work, foreign lawyers in England and Wales are free to practise the law of their choosing including English law. However, no lawyer should undertake work unless it can be handled promptly and with due competence.

The position is different for EU, EEA or Swiss lawyers (see Section 6 below).

SECTION 4: RELATIONS WITH THE LAW SOCIETY OF ENGLAND AND WALES

4.1 Registration with the Law Society

Unless they wish to enter a multi-national partnership, or multi-national corporate practice, together with solicitors (see Section 2), or unless they are EU, EEA or Swiss lawyers of EU, EEA or Swiss nationality established in the UK, foreign lawyers practising in England and Wales do not have to register with the Law Society or notify the Law Society of their presence.

However, the Law Society welcomes contact with foreign lawyers in England and Wales and cordially invites them to notify their presence and apply for affiliate status.

4.2 Affiliate Status with the Law Society

Any foreign lawyer, wherever based, may apply for Affiliate Status with the Law Society on payment of an annual fee. The status does not confer any professional title. Affiliate Status confers members' privileges in respect of access to the Law Society's facilities, including use of its library and premises in the heart of 'legal London', receipt of the Society's weekly Gazette and participation in the Society's activities and specialist groups.

Affiliate status is free for "registered foreign lawyers" resident in England and Wales. "Registered European lawyers" are entitled to full membership of the Society, free of charge.

SECTION 5: RE-QUALIFICATION AS A SOLICITOR OR BARRISTER

Subject to complying with the relevant training requirements, a foreign lawyer may seek to be admitted as a solicitor or called as a barrister in England and Wales. It is not necessary to have British nationality to qualify or practise as a solicitor or barrister, but normal immigration requirements would apply in respect of training, practice or employment (see Section 1 above).

Lawyers from The European Union, the European Economic Area, Switzerland, and certain Commonwealth and Common Law jurisdictions may qualify as solicitors in England and Wales on the basis of their overseas qualification and passing one or more heads of the Qualified Lawyers Transfer Test.

EU lawyers of EU nationality who have been established in the UK for at least three years practising UK law (including Community law) may apply for admission as solicitors under article 10 of the Establishment of Lawyers Directive 98/5/EC without taking a test (see Section 6.12 below).

SECTION 6: EUROPEAN LAWYERS IN ENGLAND AND WALES

6.1 The European legal framework for lawyers practice in the EU

In European law, a lawyer (who is an EU citizen and qualified in the EU) may either “provide services” in another Member State on a temporary or occasional basis; or he or she may be “established” in another Member State on a permanent basis. There is no overlap between these two categories.

The Lawyers’ Services Directive¹ was implemented in the UK by the European Communities (Services of Lawyers) Order 1978 (S.I. 1978 No. 1910). The Services Directive applies to lawyers of the states of the European Union (EU) and the European Economic Area (EEA) and Switzerland, and ensures that such lawyers are permitted to provide services under home country professional title in another of those states.

The Establishment of Lawyers Directive 98/5/EC² was implemented in the UK by the European Communities (Lawyer’s Practice) Regulations 2000 (S.I. 2000 No. 1119) and the European Communities (Lawyer’s Practice) (Scotland) Regulations (S.S.I. 2000 No. 121). The Establishment Directive applies to lawyers of the states of the EU and the EEA and Switzerland who are of EU, EEA or Swiss nationality, and ensures that such lawyers are permitted to become established under home country professional title in another of those states.

6.2 CCBE Code of Conduct

The Code of Conduct for Lawyers in the European Union, issued by the CCBE (Council of the Bars and Law Societies of the European Union) applies to lawyers of other EU or EEA states or Switzerland providing services in the UK, and to lawyers of EU or EEA states or Switzerland established in the UK (whether or not under the Establishment Directive).

6.3 Scope of Practice under the Directives

The Services Directive does not lay down the scope of the services which a lawyer may provide in a host state. Reference in article 1.1 is to “the activities of lawyers”. It would seem that the scope of practice of a lawyer providing services under the Services Directive is defined by the scope of legal practice in the lawyer’s home state, subject to the right of the host state to impose conditions on doing reserved litigation and advocacy work, and to impose a prohibition on undertaking reserved conveyancing and probate work.

The scope of practice for an established lawyer under the Establishment Directive (see article 5) is, by contrast, the scope of practice of a host state lawyer, subject to the right of the host state to impose conditions on doing reserved litigation and advocacy work, and to impose a prohibition on lawyers from notarial countries undertaking reserved conveyancing and probate work. Similarly, under article 8 the scope of practice for an established salaried lawyer is the same as the scope of

¹ Council Directive (EEC) 77/249 of the 22nd of March 1977 to facilitate the effective exercise by lawyers of freedom to provide services.

² 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.

practice for a salaried lawyer of the host state – this applies both to an assistant lawyer in private practice and to an in-house lawyer or private enterprise.

6.4 Professional Title

Both the Services Directive (article 3) and the Establishment Directive (article 4) require the EU lawyer to use his or her own professional title, expressed in a language of the home state. The Services Directive also requires an indication of the lawyer's home Bar. The Establishment Directive allows such a requirement, and a requirement to indicate the body with whom the lawyer is registered in the host state – the UK imposes these additional requirements.

6.5 Reserved Activities – Contentious Matters

The UK permits a European lawyer providing services under the Services Directive, to do reserved litigation and advocacy work, provided he or she is instructed with and acts in conjunction with a UK lawyer who could properly provide the service in question. This condition is allowed under article 5 of the Services Directive. The requirement to act in conjunction with a UK lawyer does not mean that the local lawyer must be present throughout the hearing.

The UK permits a European lawyer established under the Establishment Directive to do reserved litigation and advocacy work, provided:

- a) a member of the profession with which the European lawyer is registered could properly provide the service in question (i.e. a lawyer registered with the Law Society has the same rights of litigation and advocacy as an English solicitor) - see article 5.1 on scope of practice; and
- b) the European lawyer is instructed with and acts in conjunction with a UK lawyer who could properly provide the service in question - this condition is allowed under article 5.3. The requirement to act in conjunction with a UK lawyer does not, for instance, mean that the local lawyer must be present throughout the hearing.

6.6 Reserved Activities – Non-contentious Matters

Lawyers providing services in the UK under the Services Directive are prohibited from doing reserved conveyancing or probate work in the UK, although they are permitted to draw trust deeds in relation to assets other than land.

Lawyers of countries with notarial conveyancing or probate systems, established in the UK under the Establishment Directive, are prohibited from doing reserved conveyancing or probate work in the UK, although established lawyers from countries with non-notarial systems are permitted to do this work. There is no restriction on EU lawyers established under the Directive drawing trust deeds in relation to assets other than land.

The restrictions are allowed under article 1.1 of the Services Directive and article 5.2 of the Establishment Directive.

6.7 Professional Conduct

The position as regards the professional rules applicable to lawyers practising under one or other of the Directives is somewhat complex. This indeed was one of the reasons the CCBE decided to promulgate its own Code of Conduct, with a view *inter alia* to progressively harmonising professional rules across Europe.

6.7.1 Services Directive – contentious matters

In contentious matters, primacy under the Services Directive is given to host state rules.

Article 4.1 of the Services Directive requires that, in contentious matters, the European lawyer must meet the conditions laid down for lawyers of the host state, with the exception of any conditions requiring residence, or registration with a professional organisation, in that state.

Article 4.2 of the Services Directive requires the European lawyer, in contentious matters, to observe the professional rules of the host state, “without prejudice to his obligations in the Member State from which he comes”. This last provision is taken to mean that the lawyer must also continue to comply with the rules of his or her home bar (at least to the extent that they do not conflict with the host state rules).

6.7.2 Services Directive – non-contentious matters

In non-contentious matters, by contract, primacy under the Services Directive is given to home state rules.

Article 4.4 of the Services Directive requires that, in non-contentious matters, the European lawyer remains subject to the conditions and rules of professional conduct of his or her home bar, “without prejudice to respect for the rules” of the host state. “Respect” for host state rules is taken to imply a more relaxed standard than necessarily having to comply with those rules.

6.7.3 Establishment Directive – all matters

Under the Establishment Directive, primacy in all matters is given to host state rules.

Article 6.1 of the Establishment Directive provides that the established European lawyer shall be subject to the same rules of professional conduct as host state lawyers. This is stated to be “irrespective of the rules of professional conduct to which he is subject in his home Member State”. This is taken to mean that the lawyer must also continue to comply with the rules of his or her home bar (at least to the extent that they do not conflict with the host state rules).

Article 6.2 requires the host state to give established European lawyers certain exemptions or partial exemptions from any requirements it may lay down for its own legal profession in respect of professional indemnity insurance.

Article 11(5) specifically allows a host state which prohibits multi-disciplinary practice for its own lawyers to impose the same restrictions on established European lawyers.

Subject to article 11(5), the rest of article 11 requires host states to permit established European lawyers the same rights to association, partnership or

corporate practice as host state lawyers, and in addition to permit the European lawyers, under article 11(1), to set up in the host state a branch or agency of the grouping under which they practise in the home state.

6.8 Legal Aid

Under the implementing legislation for England and Wales – article 10 of the European Communities (Services of Lawyers) Order 1978 and regulation 14 of the European Communities (Lawyer's Practice) Regulations 2000 – services may be provided under the legal aid scheme by European lawyers practising in accordance with the Services Directive or the Establishment Directive.

6.9 Discipline

Under the Services Directive (article 7.2) and the Establishment Directive (article 7.1) the disciplinary procedures of the host Member State are applied to lawyers “providing services” or “established” under the Directives. The implementing legislation for England and Wales – article 15 of the European Communities (Services of Lawyers) Order 1978 and regulation 26 of the European Communities (Lawyer's Practice) Regulations 2000 – gives jurisdiction to the Solicitors' Disciplinary Tribunal. Under the Services Directive, the Tribunal must report any finding of misconduct to a lawyer's home Bar. Under the Establishment Directive the Law Society must keep a lawyer's home Bar informed prior to and throughout any disciplinary proceedings.

6.10 Registration

An EU, EEA or Swiss lawyer of EU, EEA or Swiss nationality wishing to be established in the UK must first become registered under article 3 of the Establishment Directive with one of the professional bodies for lawyers in the UK. Most such European lawyers have chosen to register with the Law Society.

There is no registration requirement under the Services Directive.

6.11 Membership of Professional Bodies

Under article 6 of the Establishment Directive, registered European lawyers must be granted appropriate representation in the professional associations of the host state. The Law Society admits registered European lawyers to full membership of the Society free of charge on the same basis as solicitors, and with the same voting rights and the same rights of election to the Council of the Society.

Lawyers “providing services” under the Services Directive have no such rights. The Law Society admits such lawyers to affiliate status (including full access to the members' facilities) on payment of a fee.

Registered European lawyers must pay an annual registration fee and compensation fund contribution.

6.12 Admission as a Lawyer of the Host State

Article 10 of the Establishment Directive gives special rights to registered European lawyers to gain admission to the host state's legal profession under defined circumstances without having to take an aptitude test under article 4(1)(b) of the Recognition of Diplomas Directive 89/48/EEC.

Under article 10.1 of the Establishment Directive, admission to the solicitors' (or barristers') profession may be claimed by a registered European lawyer "who has effectively and regularly pursued for a period of at least three years an activity in the host Member State in the law of that State including Community law".

Under article 10.3 of the Establishment Directive, admission to the solicitors' (or barristers') profession may be requested by a registered European lawyer "who has effectively and regularly pursued a professional activity in the host Member State for a period of at least three years but for a lesser period in the law of that Member State".

No parallel provisions exist in the Services Directive – a European lawyer "providing services" under that Directive has to rely on his or her rights under the Recognition of Diplomas Directive 89/48/EEC.

6.13 CCBE Professional Identity Card

In order to assist lawyers who are members of legal professions of the EU or EEA when they appear before the official authorities or in legal proceedings in any member state or the Court of Justice of the European Union in Luxembourg, the CCBE has recommended that Bars and Law Societies of the EU and EEA should use the common form of professional identity card drawn up by the CCBE.

Some Bars and Law Societies have adopted the CCBE lawyers' professional identity card and issue it to all their members upon admission to the bar. The Law Society issues the card to solicitors who apply for it subject to certain conditions.