Draft Order laid before Parliament under section 206(4) and (5) of the Legal Services Act 2007 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No. xxxx

LEGAL PROFESSION, ENGLAND AND WALES

The Legal Services Act 2007 (Registered European Lawyers) Order 2009

Made - - - - ***

Coming into force in accordance with article 1

The Lord Chancellor makes the following Order in exercise of the powers conferred on him by section 208(3) of the Legal Services Act 2007(**a**).

A draft of this Order has been approved by a resolution of each House of Parliament pursuant to section 206(5) of the Legal Services Act 2007.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Legal Services Act 2007 (Registered European Lawyers) Order 2009 and comes into force—

(a) for the purposes of article 2(6), on the same day as section 13 of the Legal Services Act 2007 comes into force;

(b) for the purposes of article 3(7)(c)(ii), on the same day as paragraph 39 of Schedule 16 to the Legal Services Act 2007 comes into force;

(c) for all other purposes, on the same day as paragraph 9 of Schedule 16 to the Legal Services Act 2007 comes into force.

(2) In this Order—

(a) "the 1974 Act" means the Solicitors Act 1974(**b**);

(b) "the 2000 Regulations" means the European Communities (Lawyer's Practice) Regulations 2000(**c**);

(**a**) 2007 c. 29.

(**b**) 1974 c. 47. Sections 13B and 37A were inserted by the Courts and Legal Services Act 1990 (c. 41); sections 33A and 44C were inserted by the Access to Justice Act 1999 (c. 22); section 44B was inserted by the Administration of Justice Act 1985 (c. 61). The Legal Services Act 2007 (c. 29) amends sections 9, 10, 11, 13, 13A, 13B, 15, 16, 17, 18, 28, 31, 32, 33, 33A, 34, 36, 41, 43, 44, 44B, 44C, 47 and 56, and paragraph 1 of Schedule 1. It also inserts new sections 1B, 10A, 13ZA, 13ZB, 17A, 17B, 34A, 34B, 36A, 44BA, 44BC, 44D and 44E.

(**c**) S.I. 2000/1119. This instrument has been amended by the European Communities (Lawyer's Practice) (Amendment) Regulations 2001 (S.I. 2001/644), the European Communities (Lawyer's Practice) (Amendment) Regulations 2004 (S.I. 2004/1628) and the European Communities (Lawyer's Practice and Services of Lawyers) (Amendment) Regulations 2008 (S.I. 2008/81).

Amendment of the European Communities (Lawyer's Practice) Regulations 2000

2.—(1) The 2000 Regulations are amended in accordance with paragraphs (2) to (6).

(2) In regulation 2(1) (interpretation)—

(a) at the appropriate place add—

""the 1974 Act" means the Solicitors Act 1974;";

(b) for the definition of "Qualification Regulations" substitute—

""Qualification Regulations" means the European Communities (Recognition of Professional Qualifications) Regulations 2007(**a**);".

(3) In regulation 11 after paragraph (3) insert—

"(4) Paragraph (2) does not apply to professional activities relating to the representation of a client in proceedings before the Asylum and Immigration Tribunal or the Asylum Support Tribunal, or any tribunal hearing an appeal from those tribunals.".

(4) In regulation 29(1) for "regulation 6(1)(b)(ii) of the Qualification Regulations" substitute "regulation 26(a) of the Qualification Regulations".

(5) In Schedule 1—

(a) in the title for "regulation 6(1)(b)(ii)" substitute "regulation 26(a)";

(b) in Column 2 of the table for the entry "The Master of the Rolls" substitute "The High Court".

(6) In Schedule 3—

(a) in Part 2, omit the entries for the 1974 Act and the Courts and Legal Services Act 1990(**b**);

(b) in Part 3, omit the entry for the 1974 Act.

3.—(1) Schedule 4 to the 2000 Regulations is amended in accordance with paragraphs (2) to (18).

(2) In paragraph 1(2)—

(a) for "section 28(5)" substitute "section 28(1)(c) to (d)";

(b) for the words from "any appeals" to the end substitute "registered European lawyers as it is in relation to solicitors, subject to the modifications specified in the Table and subject to paragraph 7(1A).".

(3) After paragraph 1(2) insert—

"(2A) Section 28(3B) to (3G) of the 1974 Act has effect with respect to registered European lawyers as it has effect with respect to solicitors, subject to the modifications specified in the Table and subject to paragraph 7(1A).".

(4) In paragraph 1(3) omit from ", and for the purposes" to the end.

(5) Omit paragraph 1(4).

(6) Omit paragraphs 3 to 6.

(7) In paragraph 7—

(a) for sub-paragraph (1) substitute—

"(1) Subject to sub-paragraph (1A), the provisions of sections 1B, 9, 10, 10A, 11, 13, 13ZA, 13ZB, 13A, 13B, 15, 16, 17, 17A, 17B, 18 and 84 of the 1974 Act shall apply to registered European lawyers as they apply to solicitors subject to the modifications specified in the Table.";

(b) after sub-paragraph (1) insert—

(**a**) S.I. 2007/2781. Schedule 5 of this instrument has been amended by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008 (S.I. 2008/2683).

(**b**) 1990 c. 41.

"(1A) An appeal by a European lawyer in respect of the following decisions of the Law Society is to be made under regulation 20 and not under section 13 or 13B(7) of the 1974 Act or under regulations made under section 28(3D) of the 1974 Act—

(a) refusal of initial registration;

(b) grant of initial registration whilst refusing sole practitioner endorsement;

(c) grant of initial registration subject to a condition;

(d) refusal to renew a registration;

(e) failure to take a decision on an application for initial registration within the statutory time limit;

(f) withdrawal or revocation of a registration;

(g) suspension of a registration.";

(c) in sub-paragraph (2)—

(i) for "Sections 32(4), 33, 33A(2), 37A, 40, 44B, 44C, 56(2), 56(7)," substitute "Sections 31(2), 32(3) and (4), 33, 33A, 34(6) and (9), 34A, 34B, 37A, 38, 40, 44B, 44BA, 44BC, 44C, 44D, 44E, 56(1)(f), (2) and (4) to (7),";

(ii) omit "37A," and ", and Schedule 1A to,";

(iii) for "that Act" substitute "the 1974 Act";

(iv) for the words from "and the definitions of" to the end substitute "subject to the modifications specified in the Table.";

(d) after sub-paragraph (2) insert—

"(2A) The following provisions of the 1974 Act have effect as follows—

(a) in section 34(10) the reference to subsection (9) is to be read as including a reference to that subsection as it has effect by virtue of sub-paragraph (2);

(b) section 56(1)(a) to (e) to the extent necessary to give effect to section 56(1)(f) as it has effect by virtue of sub-paragraph (2).";

(e) in sub-paragraph (3)—

(i) for "that Act" substitute "the 1974 Act";

(ii) for the words from ", and references in those sections" to the end substitute "subject to the modifications specified in the Table.";

(f) in sub-paragraph (4) for "that Act" substitute "the 1974 Act".

(8) In paragraph 8—

(a) in sub-paragraph (1)—

(i) for "sub-paragraphs (2) to (4), section 36 of that Act" substitute "sub-paragraph (1A), sections 36 and 36A of the 1974 Act";

(ii) for "it applies" substitute "they apply";

(b) after sub-paragraph (1) insert—

"(1A) The Society may make different provision with respect to registered European lawyers, and European lawyers making an application for initial registration, from the provision made with respect to solicitors.";

(c) omit sub-paragraphs (2) to (4).

(9) In paragraph 9—

(a) for sub-paragraph (a) substitute—

"(aa) reference to the roll is to be read as a reference to the register of European lawyers;

(ab) reference to a solicitor suspended from practice is to be read as a reference to a European lawyer whose registration is suspended;

(ac) in paragraph 1(1)(k) of Schedule 1 to the 1974 Act, reference to a person acting as a solicitor when he did not have a practising certificate which was in force is to be read as a reference to a European lawyer or registered European lawyer who has committed an offence under regulation 21 of these Regulations;";

(b) for sub-paragraph (c) substitute—

"(c) reference to a sole solicitor is to be read as a reference to a sole practitioner;"; and

(c) omit sub-paragraph (d).

(10) In paragraph 10—

(a) for ", 55, 78(1) and 78(2)" substitute "and 55";

(b) for the words from "and references in those sections" to the end substitute "subject to the modifications specified in the Table.".

(11) For paragraph 11 substitute—

"**11.** Part XX of the Financial Services and Markets Act 2000(**a**), including the definition of "members" in section 325(2), has effect in relation to registered European lawyers as it has in relation to solicitors.".

(12) Omit paragraph 15.

(13) In paragraph 17 after "the Solicitors Act 1974" insert "or section 9 of the Administration of Justice Act 1985(**b**)".

(14) Omit paragraph 18.

(15) In paragraph 20 after "The Solicitors (Non-Contentious Business) Remuneration Order 1994" insert "and any other order made under section 56 of the 1974 Act".

(16) Omit paragraph 23.

(17) For paragraph 24 substitute—

"**24.**—(1) The provisions of sections 40 and 43 of the Administration of Justice Act 1985 apply to registered European lawyers as they apply to solicitors, and for this purpose the reference to a person's solicitor in section 40(1) is to be read as a reference to a registered European lawyer acting for a person.

(2) In Schedule 2 to that Act the provisions of paragraphs 7, 9(3), 10(3), 18A(2), 18A(3), 20, 21(1) and 25(1) apply to registered European lawyers as they apply to solicitors, subject to the following modifications—

(a) in paragraphs 9(3), 10(3) and 21(1) reference to the roll is to be read as a reference to the register of European lawyers;

(b) in paragraph 18A(2)(c) reference to a person who is not a solicitor is to be read as a reference to a person who is neither a solicitor nor a registered European lawyer;

(c) in paragraph 21(1)(b) reference to suspension from practice as a solicitor is to be read as a reference to a European lawyer's suspension from the register of European lawyers.".

(18) After that paragraph insert—

"**Table**

Provision of the 1974 Act	*Modification*
Section 1B	Reference to a sole solicitor is to be read as a reference to a sole

(**a**) 2000 c. 8.

(**b**) 1985 c. 61. Section 9 has been amended as follows: subsections (1) and (8) are amended by the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119); subsection (8) is further amended by the Courts and Legal Services Act 1990 (c. 41) and the Limited Liability Partnerships Regulations 2001 (S.I. 2001/1090); subsection (2)(g) was repealed by the Access to Justice Act 1999 (c. 22). Other amendments and repeals are made to section 9 by the Legal Services Act 2007 (c. 29).

	practitioner.
Section 1B(1)(a)	Reference to a practising certificate in force is to be read as a reference to a European lawyer's registration.
Section 1B(1)(b)	Reference to a certificate is to be read as a reference to a European lawyer's registration. Reference to a sole solicitor endorsement is to be read as a reference to a sole practitioner endorsement.
Section 9(1)	Reference to a person whose name is on the roll is to be read as a reference to a European lawyer, as defined by regulation 2(1) to (4) of these Regulations. Reference to the issuing of a practising certificate is to be read as a reference to initial registration or renewal of registration in the register of European lawyers.
Section 9(2)	Reference to a sole solicitor endorsement is to be read as a reference to a sole practitioner endorsement.
Section 9(4)(a)	Reference to a practising certificate is to be read as a reference to a European lawyer's registration.
Section 10(1) to (4)	Reference to the issuing of a practising certificate is to be read as a reference to initial registration or renewal of registration in the register of European lawyers. Reference to suspension from practice is to be read as a reference to suspension from the register of European lawyers.
Section 10(4)(a)	Reference to a sole solicitor endorsement is to be read as a reference to a sole practitioner endorsement. Reference to a sole solicitor is to be read as a reference to a sole practitioner.
Section 10(5)	Reference to a practising certificate is to be read as a reference to a European lawyer's registration.
Section 10A	Reference to solicitors who hold practising certificates is to be read as a reference to registered European lawyers.
Section 10A(2)(b)	Reference to a sole solicitor endorsement is to be read as a reference to a sole practitioner endorsement.
Section 11(1)	Reference to the issuing of a practising certificate is to be read as a reference to initial registration or renewal of registration.
Section 11(3)	Reference to a practising certificate is to be read as a reference to a European lawyer's registration.
Section 11(3)(b)	Reference to a practising certificate not having been issued since the Society became aware of the failure is to be read as a reference to a registration in the register of European lawyers not having been entered or renewed since the Society became aware of the failure.
Section 13	Section 13 is to be read as if subsection (1)(a) were omitted.
Section 13(1)(b) and (4)(b) and (f)	Reference to a sole solicitor endorsement or endorsement is to be read as a reference to a sole practitioner endorsement. Reference in section 13(1)(b) to an application for a solicitor endorsement being refused is not to be read as a reference to an application for initial registration including a sole solicitor endorsement.
Section 13(1)(c) and (4)(b) to (f)	Reference to the issuing of a practising certificate is to be read as a reference to renewal of registration. Reference to a practising certificate or certificate is to be read as a reference to a registration in the register of European lawyers.
Section 13(2)	Reference to a person who holds a practising certificate is to be read as a person who is registered in the register of European lawyers.
Section 13(3)	Reference to any application under section 9 is to be read as any

	application for renewal of registration in the register of European lawyers.
Section 13ZA(1)	Reference to a practising certificate being in force (a "current certificate") is to be read as a reference to a registered European lawyer's registration.
Section 13ZA(1), (2), (5) and (8)(b)	Reference to a sole solicitor endorsement or endorsement is to be read as a reference to a sole practitioner endorsement.
Section 13ZA(3)	Reference to suspension from practice as a sole solicitor is to be read as a reference to suspension of a sole practitioner endorsement.
Section 13ZA(2), (5), (6)(b) and (8)(c)	Reference to a practising certificate is to be read as a reference to a registered European lawyer's registration.
Section 13ZB	Reference to a sole solicitor endorsement or endorsement is to be read as a reference to a sole practitioner endorsement.
Section 13A(1), (2) and (7)(b)	Reference to a practising certificate being in force (a "current certificate") is to be read as a reference to a European lawyer's registration.
Section 13A(2)(a)	Reference to a sole solicitor endorsement is to be read as a reference to a sole practitioner endorsement.
Section 13A(9)	Reference to a solicitor who holds a practising certificate is to be read as a European lawyer who is registered in the register of European lawyers.
Section 13B(1) and (8)(b)	References to a practising certificate or the appellant's certificate are to be read as references to a registered European lawyer's registration.
	Reference to a sole solicitor endorsement is to be read as a reference to a sole practitioner endorsement.
Section 13B(6)	Reference to a solicitor's suspension from practice or from practice as a sole solicitor is to be read as a reference to a European lawyer's suspension from the register of European lawyers or suspension of a sole practitioner endorsement.
Section 15	Reference to a practising certificate is to be read as a reference to a European lawyer's registration.
	Reference in subsection (1) to suspension from practice is to be read as a reference to a European lawyer's suspension from the register of European lawyers.
Section 16	Reference to a practising certificate or certificate is to be read as a reference to a registration in the register of European lawyers.
	Reference to a solicitor's suspension from practice or suspension is to be read as reference to the suspension of a European lawyer's registration.
	Reference in subsections (1) and (3) to expiry of a certificate is to be read as expiry of a European lawyer's registration.
Section 17	Reference to suspension of a solicitor's practising certificate is to be read as reference to the suspension of a European lawyer's registration.
	Reference to a note against a solicitor's name on the roll is to be read as reference to a note against a European lawyer's name on the register of European lawyers.
Section 17A	Reference to a sole solicitor endorsement is to be read as a reference to a sole practitioner endorsement.
	Reference to suspension from practice as a sole solicitor is to be read as a reference to a European lawyer's suspension from practice as a sole practitioner.
Section 17B	Reference to suspension of a sole solicitor endorsement is to be read as a reference to suspension of a sole practitioner endorsement.

	Reference to a note against a solicitor's name on the roll is to be read as reference to a note against a European lawyer's name on the register of European lawyers.
Section 18	References to the register kept under section 10A are to be read as a reference to the register of European lawyers. Subsection (1) is to be read as if reference to an extract from the roll were omitted. Section 18 is to be read as if subsection (2)(a) were omitted.
Section 28(1)(c) to (d)	Reference in subsection (1)(c) to a practising certificate is to be read as a reference to a European lawyer's registration. Reference in subsection (1)(ca) to a sole solicitor endorsement is to be read as a reference to a sole practitioner endorsement. Reference in subsection (1)(d) to the register kept under section 10A is to be read as a reference to the register of European lawyers.
Section 28(3B) to (3G)	Reference to a practising certificate is to be read as a reference to a European lawyer's registration. Reference to a sole solicitor endorsement is to be read as a reference to a sole practitioner endorsement. Reference in subsection (3B)(d) and (e) to the issuing of a practising certificate is to be read as a reference to initial registration or renewal of registration. Reference in subsection (3B)(f) to a sole solicitor endorsement being made after a practising certificate was issued is to be read as a reference to a sole practitioner endorsement being made after registration in the register of European lawyers. Subsection (3B)(i) is to be read as if reference to replacement were omitted. Reference in subsection (3B)(k) to solicitors who hold practising certificates is to be read as reference to registered European lawyers. Reference in subsection (3C) to the register under section 10A is to be read as a reference to the register of European lawyers.
Section 41	Reference to a solicitor is to be read as to include a reference to a registered European lawyer. Reference in subsections (1)(a) and (4)(a) to the roll is to be read as to include a reference to the register of European lawyers. Reference in subsections (1)(b) and (4)(b) to suspension from practising as a solicitor is to be read as to include a reference to suspension from the register of European lawyers. Reference in subsection (1)(c) to a practising certificate being suspended is to be read as to include a reference to a European lawyer's registration being suspended. Reference in subsection (1B) to the "employed solicitor" is not to be read as a reference to an employed European lawyer.
Section 42	In subsection (1) reference to a person who is disqualified from practising as a solicitor by reason of a fact mentioned in paragraphs (a) to (c) is to be read as to include a reference to a European lawyer whose name has been struck off the register of European lawyers or whose registration in that register is suspended.
Section 43	In section 43(1) reference to a person who is not a solicitor is to be read as a reference to a person who is neither a solicitor nor a registered European lawyer.
Section 44	Reference to section 43(2) is to be read as to include a reference to that section as it has effect by virtue of these Regulations.
Section 47	Reference to the roll is to be read as reference to the register of

	European lawyers. Reference in section 47(1)(d) and (2)(b) and (e) to suspension from practice is to be read as a reference to suspension from the register of European lawyers. Reference in section 47(1)(ea) and (2)(bb) and (ea) to suspension from practice as a sole solicitor is to be read as a reference to a European lawyer's suspension from practice as a sole practitioner. Reference in section 47(2)(ba) to a sole solicitor endorsement is to be read as a reference to a sole practitioner endorsement. Reference in section 47(2A)(a) to another solicitor is to be read as to include a reference to a solicitor or a registered European lawyer. Reference in section 47(2B) to a firm of solicitors is to be read as a reference to a firm of solicitors and/or registered European lawyers. Reference to an employee who is not a solicitor is to be read as a reference to an employee who is neither a solicitor nor a registered European lawyer
Section 51	Reference in section 51(1) and (3)(b) to the striking off of a name from the roll is to be read as reference to striking a European lawyer's name from the register of European lawyers.
Section 52	Reference to the striking off of a name from the roll is to be read as reference to striking a European lawyer's name from the register of European lawyers.
Section 53	Reference to the striking off of a name from the roll is to be read as reference to striking a European lawyer's name from the register of European lawyers. Reference to suspension from practice is to be read as a reference to suspension from the register of European lawyers. Reference to a note of the order on the roll is to be read as reference to a note on the register of European lawyers.
Section 55	Reference to the striking off of a name from the roll is to be read as reference to striking a European lawyer's name from the register of European lawyers.
Section 84	Reference to a solicitor who has in force, or who has applied for, a practising certificate is to be read as a reference to a European lawyer who is registered or who has applied for registration in the register of European lawyers. Reference in subsection (3) to a practising solicitor is to be read as a reference to a registered European lawyer."

Amendment of the European Communities (Recognition of Professional Qualifications) Regulations 2007

4. The table in Schedule 5 to the European Communities (Recognition of Professional Qualifications) Regulations 2007(**a**) is amended so that in relation to the entry "Solicitor in England and Wales" in the left hand column, for the entry "The Master of the Rolls" in the right hand column substitute "The High Court".

Signed by authority of the Lord Chancellor

Name
Parliamentary Under Secretary of State
Ministry of Justice

Date

(**a**) S.I. 2007/2781. Schedule 5 of this instrument has been amended by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008 (S.I. 2008/2683).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119) (as amended) ("the 2000 Regulations") and makes an amendment to the European Communities (Recognition of Professional Qualifications) Regulations 2007 (S.I. 2007/2781). The 2000 Regulations implemented Council Directive No. 98/5/EC ("the Directive"), dated 16th February 1998, 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.

The amendments made by this Order reflect the changes made to the regulation of legal professionals, in particular, solicitors, in England and Wales as a result of the Legal Services Act 2007 (c. 29) ("the 2007 Act"). There have not been any changes to the effect of the Directive since the 2000 Regulations were last amended.

The amendments made by articles 2(6) and 3(2) to (10) and (15) are required to ensure that the 2000 Regulations are consistent with amendments to, and insertions and substitutions of, provisions in the Solicitors Act 1974 (c. 47) ("the 1974 Act") and the Courts and Legal Services Act 1990 (c. 41) made by the 2007 Act. Where required, these provisions of the 1974 Act are modified as specified in the Table to reflect the existing regulatory regime for registered European lawyers. The Table is inserted in Schedule 4 to the 2000 Regulations by article 3(18).

Amendments made by article 3(12), (13) and (17) are to references in the 2000 Regulations to provisions of the Administration of Justice Act 1985 (c. 61) which have been amended by the 2007 Act.

Amendments in articles 2(2)(b), (3), (4) and (5)(a) and 3(11), (14) and (16) reflect changes in other domestic legislation since the 2000 Regulations were last amended.

The amendment made by article 2(5)(b) to the 2000 Regulations and by article 4 to the European Communities (Recognition of Professional Qualifications) Regulations 2007 reflect the change of approach in the 2007 Act to routes of appeal, where the appellate role of the Master of the Rolls has been considerably reduced.

An impact assessment has not been prepared for this Order, but a full Regulatory Impact Assessment was prepared for the Legal Services Bill in November 2006, supplemented in 2007. Copies of those documents are annexed to the Explanatory Memorandum which is available alongside this instrument on the OPSI website.

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2009 No. xxxx

LEGAL PROFESSION, ENGLAND AND WALES

The Legal Services Act 2007 (Registered European Lawyers) Order 2009

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