
STATUTORY INSTRUMENTS

1978 No. 1910

LEGAL PROFESSION

The European Communities (Services of Lawyers) Order 1978

Laid before Parliament in draft

Made - - - - 20th December 1978

Coming into Operation 1st March 1979

At the Court at Buckingham Palace, the 20th day of December 1978

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been laid before Parliament and has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by section 2(2) of the European Communities Act 1972, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and commencement

1. This Order may be cited as the European Communities (Services of Lawyers) Order 1978 and shall come into operation on 1st March 1979.

Interpretation

2. In this Order, unless the context otherwise requires—

“advocate”, “barrister” and “solicitor” mean, in relation to any part of the United Kingdom, a person practising in that part as an advocate, barrister or solicitor as the case may be;

“the Directive” means the European Communities Council Directive No.77/249/EEC to facilitate the effective exercise by lawyers of freedom to provide services;

“EEC lawyer” means a person entitled to pursue his professional activities under the designation, in Belgium of an avocat—advocaat, in Denmark of an advokat, in Germany of a Rechtsanwalt, in France of an avocat, in the Republic of Ireland of a barrister or solicitor, in Italy of an avvocato, in Luxembourg of an avocat-avoué, or in the Netherlands of an advocaat;

“member State of origin”, in relation to an EEC lawyer, means the member State or States in which he is established; and

“own professional authority”, in relation to an EEC lawyer, means an authority entitled to exercise disciplinary authority over him in his member State of origin.

3.—(1) The Interpretation Act 1978 shall apply to this Order as it applies to subordinate legislation made after the commencement of that Act.

(2) Unless the context otherwise requires, any reference in this Order to a numbered article or to the Schedule is a reference to an article of, or the Schedule to, this Order.

Purpose of Order

4. The provisions of this Order shall have effect for the purpose of enabling an EEC lawyer to pursue his professional activities in any part of the United Kingdom by providing, under the conditions specified in or permitted by the Directive, services otherwise reserved to advocates, barristers and solicitors; and services which may be so provided are hereafter in this Order referred to as services.

Representation in legal proceedings

5. No enactment or rule of law or practice shall prevent an EEC lawyer from providing any service in relation to any proceedings, whether civil or criminal, before any court, tribunal or public authority (including appearing before and addressing the court, tribunal or public authority) by reason only that he is not an advocate, barrister or solicitor;

provided that throughout he is instructed with, and acts in conjunction with, an advocate, barrister or solicitor who is entitled to practise before the court, tribunal or public authority concerned and who could properly provide the service in question.

6. Nothing in this Order shall enable an EEC lawyer:—

- (a) if he is established in practice as a barrister in the Republic of Ireland, to provide in the course of any proceedings any service which could not properly be provided by an advocate or barrister;
- (b) if he is instructed with and acts in conjunction with an advocate or barrister in any proceedings, to provide in the course of those proceedings, or of any related proceedings, any service which an advocate or barrister could not properly provide;
- (c) if he is instructed with and acts in conjunction with a solicitor in any proceedings, to provide in the course of those proceedings, or of any related proceedings, any service which a solicitor could not properly provide.

7. An EEC lawyer in salaried employment who is instructed with and acts in conjunction with an advocate or barrister in any proceedings may provide a service on behalf of his employer in those proceedings only in so far as an advocate or barrister in such employment could properly do so.

Drawing of documents, etc. not related to legal proceedings

8. No enactment or rule of law or practice shall prevent an EEC lawyer from drawing or preparing for remuneration:—

- (i) in England, Wales or Northern Ireland, an instrument relating to personal estate, or
- (ii) in Scotland, a writ relating to moveable property,

by reason only that he is not an advocate, barrister or solicitor.

9. Nothing in this Order shall entitle an EEC lawyer to draw or prepare for remuneration any instrument, or in Scotland any writ:—

- (i) creating or transferring an interest in land; or
- (ii) for obtaining title to administer the estate of a deceased person.

Legal aid

10. Services may be provided by an EEC lawyer by way of legal advice and assistance or legal aid under the enactments specified in Part 1 of the Schedule; and references to counsel and solicitors in those and any other enactments relating to legal advice and assistance or legal aid shall be construed accordingly.

Title and description to be used by EEC lawyers

11. In providing any services, an EEC lawyer shall use the professional title and description applicable to him in his member State of origin, expressed in the language or one of the languages of that State, together with the name of the professional organisation by which he is authorised to practise or the court of law before which he is entitled to practise in that State.

Power to require an EEC lawyer to verify his status

12. A competent authority may at any time request a person seeking to provide any services to verify his status as an EEC lawyer.

13. Where a request has been made under article 12, the person to whom it is made shall not, except to the extent (if any) allowed by the competent authority making the request, be entitled to provide services in the United Kingdom until he has verified his status as an EEC lawyer to the satisfaction of that authority.

14. For the purposes of articles 12 and 13, a competent authority is:—

- (a) where the services which the person concerned seeks to provide are reserved to advocates or barristers, or in any case where the person concerned claims to be a barrister established in practice in the Republic of Ireland, the Senate of the Inns of Court and the Bar, the Faculty of Advocates, or the Benchers of the Inn of Court of Northern Ireland, according to the part of the United Kingdom concerned; or
- (b) where subparagraph (a) does not apply, the Law Society, the Law Society of Scotland, or the Incorporated Law Society of Northern Ireland, according to the part of the United Kingdom concerned; or
- (c) in any case, any court, tribunal or public authority before which the person concerned seeks to provide services.

Professional misconduct

15.—(1) A complaint may be made to a disciplinary authority that an EEC lawyer providing any services has failed to observe a condition or rule of professional conduct referred to in article 4 of the Directive and applicable to him.

(2) Where a complaint is made under paragraph (1), the disciplinary authority concerned shall consider and adjudicate upon it in accordance with the same procedure, and subject to the same rights of appeal, as apply in relation to an advocate, barrister or solicitor (as the case may be) over whom that authority has jurisdiction.

(3) For the purposes of this article and article 16, a disciplinary authority is:—

- (a) where the services in question are reserved to advocates or barristers, or in any case where the person whose conduct is in question is established in practice as a barrister in

the Republic of Ireland; an authority having disciplinary jurisdiction over advocates or barristers (as the case may be) in the part of the United Kingdom concerned;

- (b) where subparagraph (a) does not apply, an authority having disciplinary jurisdiction over solicitors in the part of the United Kingdom concerned.

16.—(1) Where a disciplinary authority finds that an EEC lawyer against whom a complaint has been made under article 15(1) has committed a breach of a condition or a rule of professional conduct mentioned in that article, that authority:—

- (a) shall report that finding to the EEC lawyer's own professional authority; and
(b) may, if it thinks fit, direct him not to provide services in the United Kingdom, except to such extent and under such conditions (if any) as the disciplinary authority may specify in the direction.

(2) A disciplinary authority may at any time, if it thinks fit, vary, cancel or suspend the operation of a direction given by it under paragraph (1)(b).

17. An EEC lawyer in respect of whom a direction is made under article 16(1)(b) shall not be entitled to provide services in the United Kingdom except as allowed by the direction.

Modification of enactments

18.—(1) Without prejudice to the generality of articles 5 and 8, the enactments specified in Part 2 of the Schedule (being enactments which reserve the provision of certain services to advocates, barristers, solicitors and other qualified persons) shall be construed subject to those articles.

(2) Notwithstanding anything in the Solicitors (Scotland) Act, 1933, the Solicitors Act 1974 or the Solicitors (Northern Ireland) Order 1976, references to unqualified persons, however expressed, in the enactments specified in Part 3 of the Schedule (being enactments relating to unqualified persons acting as solicitors) shall not include an EEC lawyer providing services within the meaning of this Order.

(3) Nothing in section 42 of the Solicitors (Scotland) Act 1933 shall prevent an EEC lawyer from recovering any remuneration or expenses to which that section applies by reason only that he is not qualified as a solicitor.

N.E. Leigh
Clerk of the Privy Council

SCHEDULE

Article 10

PART 1

ENACTMENTS RELATING TO THE PROVISION OF LEGAL ADVICE AND ASSISTANCE AND LEGAL AID

Legal Aid and Advice Act (Northern Ireland) 1965 (c. 8).

Legal Aid (Scotland) Act 1967 (c. 43).

Legal Advice and Assistance Act 1972 (c. 50).

Legal Aid Act 1974 (c. 4).

Legal Aid, Advice and Assistance (Northern Ireland) Order 1977 (S.I. No. 1252 (N.I. 19)).

Article 18(1)

PART 2

ENACTMENTS RESERVING THE PROVISION OF SERVICES TO ADVOCATES, BARRISTERS, SOLICITORS, ETC

Solicitors (Scotland) Act 1933 (c. 21), section 39.

Magistrates' Courts Act 1952 (c. 55), section 99.

Magistrates' Courts Act (Northern Ireland) 1964 (c.21(N.I.)), section 165(1).

County Courts Act 1959 (c. 22), section 89.

County Courts Act (Northern Ireland) 1959 (c.25(N.I.)), section 139.

Solicitors Act 1974 (c.47), sections 20, 22.

Solicitors (Northern Ireland) Order 1976 (S.I. No. 582 (N.I.12)), articles 19, 23.

Article 18(2)

PART 3

ENACTMENTS RELATING TO UNQUALIFIED PERSONS ACTING AS SOLICITORS

Solicitors (Scotland) Act 1933 (c.21), sections 37, 38.

Solicitors Act 1974 (c.47), sections 25(1), 39(1).

Solicitors (Northern Ireland) Order 1976 (S.I. No. 582 (N.I. 12)), articles 25(1), 27.

EXPLANATORY NOTE

This Order, which is made under the European Communities Act 1972 and comes into effect on 1st March 1979, gives effect to the EEC Council Directive of 22nd March 1977 on the services of lawyers, by enabling, under certain conditions, lawyers qualified in other EEC member States to provide services in the United Kingdom which could otherwise be provided only by advocates, barristers or solicitors.

Articles 5 to 7 provide for the representation of a client by an EEC lawyer in legal proceedings. Article 5 enables an EEC lawyer to provide any service in such proceedings, including addressing a court, tribunal or public authority, which an advocate, barrister or solicitor could do, provided that throughout he is instructed and acts in conjunction with an advocate, barrister or solicitor entitled to practise before the court, tribunal or public authority and who could properly provide the service in question. Article 6 provides that barristers qualified in the Republic of Ireland may not provide any service in proceedings which could not be provided by a United Kingdom advocate or barrister, and that EEC lawyers may not provide services otherwise reserved to solicitors and to barristers respectively in the same proceedings. Article 7 prohibits an EEC lawyer in salaried employment who is instructed and acts in conjunction with an advocate or barrister in any proceedings from providing any service on behalf of his employer which a salaried advocate or barrister could not properly provide.

Article 8 enables an EEC lawyer to draw or prepare for remuneration instruments relating to personal estate, or in Scotland writs relating to moveable property. Article 9 prohibits EEC lawyers from drawing or preparing for remuneration instruments (or writs in Scotland) creating or transferring interests in land, and for obtaining title to administer estates.

Article 10 and Part 1 of the Schedule enable an EEC lawyer to provide services by way of legal advice and assistance and legal aid in accordance with the relevant enactments.

Articles 11 to 17 contain provisions relating to the description, verification of status and conduct of EEC lawyers providing services in the United Kingdom. Article 11 requires an EEC lawyer providing services to use the appropriate professional title and description applicable to him in his member State of origin. Article 12 empowers a competent authority (as defined by article 14) to request a person seeking to provide services as an EEC lawyer to verify his status as such. Article 13 provides that, except to the extent allowed by a competent authority, the person to whom such a request is made may not provide services in the United Kingdom concerned until he has satisfied the requesting authority of his status as an EEC lawyer. Article 15 provides that a complaint of professional misconduct by an EEC lawyer may be made to a disciplinary authority (as defined by that article). Article 16 requires a disciplinary authority, where it finds that the EEC lawyer has been guilty of professional misconduct, to report its finding to his own professional authority, and enables it, if it thinks fit, to direct the EEC lawyer not to provide services in the United Kingdom except insofar as the direction allows. The direction may be varied, cancelled or suspended by the disciplinary authority at any time. Article 17 provides that an EEC lawyer in respect of whom such a direction is made is not entitled to provide services in the United Kingdom except to the extent allowed by the direction.

Article 18 and Parts 2 and 3 of the Schedule make consequential modifications to enactments affected by the Directive.