



The Law Society of Scotland

Solicitors (Scotland) (Foreign Lawyers)

(Registration) Rules 2004

## **SOLICITORS (SCOTLAND) (FOREIGN LAWYERS) (REGISTRATION) RULES 2004**

The Solicitors (Scotland) (Foreign Lawyers) (Registration) Rules 2004 dated 24th September 2004 made by the Council of the Law Society of Scotland under section 60A(2) of the Solicitors (Scotland) Act 1980 and approved by the Lord President of the Court of Session under section 34(3) of that Act.

### **Title and Commencement**

1. (1) These rules may be cited as the Solicitors (Scotland) (Foreign Lawyers) (Registration) Rules 2004.
- (2) These rules shall come into operation on 1st February 2005.

### **Definitions and Interpretation**

2. (1) In these rules, unless the context otherwise requires:
  - “**the Act**” means the Solicitors (Scotland) Act 1980;
  - “**applicant**” means a person who wishes to become a registered foreign lawyer or a registered foreign lawyer who wishes to renew his registration;
  - “**the Council**” means the Council of the Society;
  - “**European Lawyer**” shall have the meaning given in regulation 2(2) and (3) of the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000;
  - “**foreign lawyer**” shall have the meaning given in section 65(1) of the Act;
  - “**Guarantee Fund**” means The Scottish Solicitors Guarantee Fund as referred to in section 43 of the Act;
  - “**grouping**” means any entity, whether or not having legal personality, within which lawyers pursue their professional activities jointly under a joint name;
  - “**home jurisdiction**” shall mean a jurisdiction in which a foreign lawyer is a member of a legal profession;
  - “**home professional title**” means a professional title used by a foreign lawyer as a member of a legal profession in his home jurisdiction;
  - “**incorporated practice**” shall have the meaning given in section 34(1A) of the Act;
  - “**multi-national practice**” shall have the meaning given in section 65(1) of the Act;
  - “**principal**” means a registered foreign lawyer who is a partner in a firm of lawyers or a member or director of an incorporated practice or a member of a multi-national practice;
  - “**register**” shall mean the register of foreign lawyers established and maintained by the Council pursuant to section 60(A)(2) of the Act, and “**registered**” and “**registration**” shall be construed accordingly;
  - “**the Society**” means the Law Society of Scotland; and
  - “**year**” means the period ending on the next 31 October.
- (2) The provisions of the Interpretation Act 1978 shall apply to the interpretation of these rules as they apply to the interpretation of an Act of Parliament.
- (3) The headings to these rules do not form part of these rules.

### **Application for registration**

3. An applicant shall apply in writing to the Society for registration by completing (so far as applicable to him) and signing a form in, or substantially in, the form set out in the Schedule to these rules, and by making payment of such application fee(s) as the Council shall from time to time prescribe.

### **Requirements for registration**

4. (1) No applicant shall be registered unless–
  - (a) he has completed an application form in terms of rule 3;
  - (b) he has paid such application fee(s) as the Council has prescribed in accordance with rule 3;
  - (c) he is a foreign lawyer;
  - (d) he has satisfied the Council–
    - (i) that he is a fit and proper person to be a registered foreign lawyer;
    - (ii) that the legal profession of which he is a member is so regulated as to make it appropriate for the applicant to be allowed to enter into multi-national practices with solicitors or incorporated practices; and
    - (iii) that he is, or will on registration become, a principal of a multi-national practice;
  - (e) he provides –
    - (i) evidence that he is covered (or will on registration be covered) by a certificate of professional indemnity insurance issued to him, or to the multi-national practice of which he is a principal or of which he will on registration become a principal, which is equivalent in terms of the conditions and extent of its cover to the professional indemnity insurance which is required of solicitors in Scotland by the Council; or
    - (ii) evidence that he is covered by professional indemnity insurance taken out in accordance with the professional rules of his home jurisdiction and that such insurance is equivalent in terms of the conditions and extent of its cover to the professional indemnity insurance which is required of solicitors in Scotland by the Council; or
    - (iii) where the insurance referred to in sub-paragraph (e)(ii) is less than equivalent in terms of the conditions and extent of its cover to the insurance referred to at sub-paragraph (e)(i), evidence of professional indemnity insurance taken out in accordance with the professional rules of his home jurisdiction and, to the extent of the lack of equivalence, evidence of insurance cover as specified in sub-paragraph (e)(i); or
    - (iv) such evidence as may be required by the Council that he has satisfied its requirements as to the professional indemnity insurance cover required of registered foreign lawyers as they apply to him;
  - (f) he provides–
    - (i) a contribution by him, or the multi-national practice of which he is a principal or of which he will on registration become a principal, to the Society on behalf of the Guarantee Fund as required by the Council; or
    - (ii) evidence that he is covered by a guarantee taken out in accordance with the professional rules of his home jurisdiction and that such guarantee is equivalent in terms of the conditions and extent of its cover to the Guarantee Fund; or

- (iii) where the guarantee referred to in sub-paragraph (f)(ii) is less than equivalent to the Guarantee Fund, evidence of the terms of the conditions and extent of the guarantee taken out in accordance with the professional rules of his home jurisdiction and, to the extent of the lack of equivalence, a contribution as specified in paragraph (f)(i); or
  - (iv) such evidence as may be required by the Council that he has satisfied its requirements as to the guarantee fund cover required of registered foreign lawyers as they apply to him;
  - (g) he is not an advocate or a barrister in England and Wales or Northern Ireland, or the Republic of Ireland, and has made a declaration to that effect; and
  - (h) he is not a European Lawyer registered with the Society or the Faculty of Advocates or with the barristers' professional bodies in England and Wales, Northern Ireland or the Republic of Ireland, and has made a declaration to that effect.
- (2) The Council shall, where satisfied that an applicant complies with paragraph (1), register that applicant.

#### **Entry on register**

5. (1) If the Council grants an application pursuant to rule 4, it shall cause the name of the applicant to be entered on the register.
- (2) The duration of registration shall be one year.

#### **Removal from register**

6. A person shall be removed from the register if he ceases to comply with any requirement set out in rule 4(1).

#### **Waiver**

7. The Council may waive or modify any provision of these rules either generally or in respect of any particular case, subject to such conditions, if any, as it considers appropriate.

**FORM OF APPLICATION FOR REGISTRATION AS A FOREIGN LAWYER**

If this is the first time that you have applied to be registered as a foreign lawyer with the Law Society of Scotland please complete the entire form and complete, sign and date the declaration at Part 1. If you are already registered with the Law Society of Scotland as a foreign lawyer please check that the information printed below is correct and amend or complete it to the extent that it is not correct or is incomplete, and complete, sign and date the declaration at Part 2.

Notes on the completion of this Form of Application appear below.

**APPLICATION FOR REGISTRATION**

**1. Your full name and personal details**

Surname .....
First name(s) .....
Title (e.g. Mr/Mrs/Miss/Ms/Dr/Prof) .....
Sex: Male/Female .....
Address .....
Town .....
Region .....
Country.....
Post Code .....
Telephone .....
Fax .....
E-mail .....
Date of Birth.....
Place of Birth.....
Nationality.....

**2. Name and address of the multi-national practice of which you wish to become/are a principal**

Name .....
Address .....
Town .....
Region .....
Country .....
Post Code .....
Telephone .....
Fax .....
E-mail .....

**3. Any business name(s) and address(es) of yours used in your practice as a foreign lawyer**

Name .....
Address .....
Town .....
Region .....
Country .....
Post Code .....
Telephone .....
Fax .....
E-mail .....

**4. Please confirm your current status**

Partner .....
Sole Principal .....
Assistant .....
Consultant .....
Director .....
Other (Please specify) .....

**5. Are you a partner, director or member of any firm(s) or grouping(s)?**

Yes/No .....
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**6. Names and address of the principal place of business of any firm(s) or grouping(s) of which you are a partner, director or member**

Name .....
Address .....
Town .....
Region .....
Country .....
Post Code .....
Telephone .....
Fax .....
E-mail .....

**7. Are any partners of that firm or members or directors of that grouping not lawyers?**

Yes/No .....

**8. Is the capital of that firm or grouping held entirely or partly by persons who are not lawyers?**

Yes/No .....

**9. Is the name under which that firm or grouping practises used by persons who are not lawyers?**

Yes/No .....

**10. Is the decision-making power in that firm or grouping exercised in fact or in law by persons who are not lawyers?**

Yes/No .....

**11. Your home professional title(s) in an official language of the relevant home jurisdiction(s) and (where that language is not English) also expressed in English**

Title in official language of home state .....

Title in English .....

Title in official language of home state.....

Title in English .....

Title in official language of home state .....

Title in English .....

**12. Name and address of the competent authority (e.g. Bar, Chamber, Law Society and/or Court) with which you are registered in each home jurisdiction**

Name .....
Address .....
Town .....
Region .....
Country .....
Post Code .....
Telephone .....
Fax .....
E-mail .....

**13. Have you completed your training?**

Yes/No .....
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**14. Are you currently authorised to practise by the competent authority or authorities whose details you have provided in answer to question 12?**

Yes/No .....
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**15. Have you previously made an application for registration under the Solicitors (Scotland) (Foreign Lawyers) (Registration) Rules 2004 or the European Lawyers (Registration) (Scotland) Regulations 2001 or the equivalent procedure of any other jurisdiction?**

In the Scottish jurisdiction (Yes/No) .....
In another jurisdiction (Yes/No) .....
If yes, which one(s) .....

**16. Full details of professional indemnity insurance as is required of you (or of your firm or grouping) in accordance with the rules which your home jurisdiction(s) lays down for professional activities pursued in its territory, together with full details of the conditions and extent of cover actually taken out by you (or by your firm or grouping) in respect of professional indemnity insurance**

**17. Full details of membership of any professional guarantee fund as is required of you (or of your firm or grouping) in accordance with the rules which your home jurisdiction(s) lays down for professional activities pursued in its territory, together with full details of the conditions and extent of cover actually taken out by you (or by your firm or grouping) in respect of any professional guarantee fund**

**18. Material events**

18.1. Have formal proceedings alleging professional misconduct by you been started before a court or disciplinary tribunal in any jurisdiction? If yes in any case, please give details.

Yes/No .....

18.2. Have you ever been struck off or suspended from practice as a result of disciplinary proceedings in any jurisdiction?

Yes/No .....

18.3. Have you been subject to any other disciplinary sanctions in any jurisdiction?

Yes/No .....

18.4. Are there any material events which have occurred relating to your fitness to practise since your last application (if any) for registration (e.g. bankruptcy, criminal conviction, and breach of any of the professional rules of any of the bodies named in question 12 or any of the rules of the Law Society of Scotland as they apply to you)?

Yes/No .....



**Part 2**

**APPLICATION FOR SUBSEQUENT REGISTRATION**

I enclose herewith–

1. a certificate or certificates, dated not more than three months before the date of my application, confirming my registration with the competent authority in my home jurisdiction in which I am a member (entitled to practise as such) of a legal profession and confirming my good standing with that competent authority and, where any such certificate is not in English, a certified translation of it into English;
2. payment of the application fee of £350.00;
3. evidence in respect of professional indemnity insurance cover as required by rule 4(1)(e);
4. payment of the contribution required by rule 4(1)(f) or the evidence required thereby; and
5. written confirmation from the practice named in my response to question 2 that I am a principal of that practice.

I hereby declare that I am not a solicitor or an advocate in Scotland or a barrister in England or Wales, that I am not registered as a European Lawyer pursuant to the European Communities (Lawyers Practice) (Scotland) Regulations 2000 with the Faculty of Advocates in Scotland or with the Inns of Court and the General Council of the Bar of England and Wales or with the Executive Council of the Inn of Court of Northern Ireland and that I am not a barrister in the Republic of Ireland.

I hereby declare that I am authorised to practise under the professional title(s) specified in my response to question 11.

I hereby declare that I am a principal of the practice named in my response to question 2.

I hereby declare that I do not practise in Scotland, that I do not intend to practise in Scotland and that I do not consider that any act or default of mine will be so closely connected with the practice of any other member of the multi-national practice named in my response to question 2 in Scotland that such act or default could give rise to any claim on the Guarantee Fund. (Delete if inapplicable.)

I hereby declare that the information supplied in this application is complete and accurate and that I shall advise the Law Society of Scotland immediately of any material changes to that information or if any declaration made by me ceases to be true, whether prior to or during the period of my registration.

Declaration in regard to the Solicitors (Scotland) Accounts etc. Rules:

1. I hereby declare that I have complied with the Solicitors (Scotland) Accounts etc. Rules in so far as they are applicable to me.
2. I hereby declare that I have not held or received clients' money during the practice year ended 31 October 20 .

(Delete 1 or 2 above, whichever is inapplicable.)

I hereby agree to abide by the rules of professional conduct of the Law Society of Scotland as they apply to me during the period of my registration and I also agree that my home Bar, Chamber, Law Society and/or Court and any other Bar, Chamber, Law Society and/or Court with which I am registered from time to time and the Law Society of Scotland can freely exchange all relevant information about my professional activities.

I hereby apply for a certificate of registration for the year ending 31 October 20

Dated this                      day of    20

..... (Signature)

## Notes

1. Where there is insufficient space for a full answer to any of the questions on this form, please provide the additional information on a continuation sheet under reference to the relevant numbered question.
2. For the purpose of question 2, the practice referred to may be one which is not currently a multi-national practice but will become one on your joining it as a principal.
3. For the purpose of question 5, a “firm” means a partnership and a “grouping” means any entity whether or not having legal personality within which lawyers pursue their professional activities jointly under a joint name.
4. If you have answered no to question 5, then you need not answer questions 6 to 10.
5. Please note, in relation to questions 11 and 12, that you should supply the required information in respect of each home State under whose professional title you intend to practise in Scotland.
6. Please provide full information in answering questions 16 and 17. This information is required in order that the Law Society can assess whether the cover which is taken out either by you or by your firm or grouping is equivalent to the cover required of solicitors in Scotland in respect of professional indemnity insurance and membership of a guarantee fund. All applicants are required to provide this information. It will assist the processing of your application if you are able to supply copies of relevant certificates of insurance together with policy schedules specifying the conditions and extent of the cover.
7. If you have answered yes to any part of question 18, please give full details.
8. Documents such as a photocopy of your passport will generally be acceptable proof of your nationality and identity, where a sufficiently good reproduction of your photographic likeness is produced and where that copy is certified as true and accurate by a state official or other trustworthy person, whose name and address are provided.
9. It is essential that the certificate or certificates confirming your registration with the competent authority in your home jurisdiction and your good standing with that authority are dated not more than three months before the date on which you sign this application form. It is also essential that the certificate or certificates confirm your date of admission, that you are entitled to practise under the relevant home professional title, specify any limitations on your entitlement to practise under the relevant home professional title, and confirm that there are either no completed or pending disciplinary proceedings against you, or give full details if there are or have been such proceedings.
10. The registration fee is £350.00. It must be enclosed with this application form and cheques should be made payable to “The Law Society of Scotland” and crossed “& Co”.