
Practical Guide for EU, EEA and Swiss Lawyers on Service and Establishment

UK – SCOTLAND

SEPTEMBER 2018

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If an error is identified, please bring it to the attention of the CCBE which will correct it, where appropriate.

Structure	Information received
1. Establishment	
1.1. Registration with Host Bar	<p>The Law Society of Scotland:</p> <ul style="list-style-type: none">• Application form + registration fee (£550 pa)• Certificate of registration from home bar (including indication of good standing / disciplinary record)• Evidence of equivalent PI cover• Evidence of equivalent compensation fund cover• Letter confirming that lawyer is going to live/practice in Scotland for the 3-year period (min) <p>It costs £550 to register and £550 p/a thereafter for membership.</p> <p>The registration form can be found here.</p> <p>Pursuant to regulation 15 and 16 of the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 (SSI 2000 No. 121)</p>
1.2. Title	<p>Practitioner must practice under home title.</p> <p>Relevant provision:</p> <ul style="list-style-type: none">- Regulation 7 of the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 (SSI 2000 No. 121)
1.3. Salaried practice	<p>REL can work individually or as an employed lawyer.</p>

	<p>Relevant provision:</p> <ul style="list-style-type: none"> - Regulation 6 of the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 (SSI 2000 No. 121) <p>(2) A registered European lawyer who is in salaried employment may carry out professional activities whether in Scotland or elsewhere under his home professional title to the same extent that an employed member of the professional body with which he is registered may do so.</p>
1.4. Legal Form and Shareholding	<p>All types currently permitted in Scotland (MDPs/ABSs not yet permitted – framework legislation is in place but not in force yet – once it is they will be able to work and hold shares in an ABS).</p> <p>Relevant provisions:</p> <p>Incorporated practices (Rule D5 of the Law Society of Scotland Practice Rules 2011)</p> <p>Multi-national practices (Rule D8 of the Law Society of Scotland Practice Rules 2011), although a Scottish firm does not require to qualify as an MNP if it has RELs as managers, only non-EU lawyers.</p>
1.5. Joint Practice	<p>Yes</p> <p>Relevant provision:</p> <ul style="list-style-type: none"> - Regulations 8-10 of the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 (SSI 2000 No. 121)
1.6. Areas of Activity	<p>Any entitled under home rules; not the areas reserved to Scottish solicitors</p> <p>Relevant provision:</p> <ul style="list-style-type: none"> - Section 32 of the Solicitors (Scotland) Act 1980
1.7. Practice Rules	<p>Law Society of Scotland Practice Rules 2011 apply, with certain exceptions.</p> <p>Relevant provisions:</p> <ul style="list-style-type: none"> - Law Society of Scotland Practice Rules 2011 - This table shows those which apply to RELs.
1.8. Principle of Double Deontology	<p>This would be considered on a case-by-case basis.</p>
1.9. Disciplinary proceedings	<p>The Council of the Law Society of Scotland, the Scottish Legal Complaints Commission and the Scottish Solicitors Discipline Tribunal all have regulatory/disciplinary reach over Registered European Lawyers, whether in relation to the service they provide (SLCC) or in relation to their conduct (LSS, SSDT).</p> <p>Relevant provisions:</p> <ul style="list-style-type: none"> - Regulation 26 of the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 (SSI 2000 No. 121) sets out the relevant disciplinary procedure. Further information about the SSDT disciplinary procedure is contained in Part

	IV of the Solicitors Scotland Act 1980 and further information about the SLCC complaints procedure is contained in Part I of the Legal Profession and Legal Aid (Scotland) Act 2007
1.10. Insurance (professional indemnity insurance, social security, etc.)	<ul style="list-style-type: none"> - Professional Indemnity Insurance: equivalent cover required - Social security: will require to pay Tax/NI contributions to HMRC
1.11. Fees	<p>RELs must pay a registration fee equivalent to that of the Practising Certificate fee for Scottish solicitors.</p> <p>Relevant provision:</p> <ul style="list-style-type: none"> - Rule D6 of the Law Society of Scotland Practice Rules 2011
1.12. Continuing Legal Education	<p>RELs are required to undertake a minimum of 20 hours Continuing Professional Development (CPD) in each practice year. Of those minimum 20 hours, a minimum of 15 must be verifiable CPD. Up to 5 hours may be by private study.</p> <p>Relevant provisions:</p> <ul style="list-style-type: none"> - Solicitors (Scotland) (Continuing Professional Development) Regulations 1993 - And related guidance.
1.13. Bar	RELs are not currently members of the Law Society of Scotland. Our founding Act of Parliament defines 'member' very narrowly to mean Scottish solicitors with a current practising certificate. We are currently lobbying the Scottish Government to update the Act to allow for greater flexibility in this and other areas.
1.14. Conditions for the Acquisition of the Title of a 'National Lawyer'	<p>Either via EU Aptitude Test or assimilation via Article 10 of Directive 98/5/EC upon proof of effective regular pursuit for a period of at least three years.</p> <p>Relevant provision:</p> <p>See below for details of EU Aptitude Test.</p>
2. Services	
2.1. Under home title & representation before courts	EU or EEA lawyers may have rights of audience in the Scottish courts under the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 (which implemented Council Directive 98/5/EC), regulation 11, if accompanied by a Scottish lawyer. These rights have limitations. See also European Communities (Services of Lawyers) Order 1978 (S.I. 1978/1910) as amended most recently by the European Communities (Services of Lawyers) Amendment (Scotland) Order 2004
2.2. Deontology	The REL would be required to abide by the relevant practice rules and the rules of the court.

	<p>Relevant provision:</p> <ul style="list-style-type: none"> - Law Society of Scotland Practice Rules 2011. This table shows those which apply to RELs
2.3. Fees	<p>Fees charged must be fair and reasonable in all the circumstances. When the work is to be charged at an hourly rate, the REL must inform the client what that hourly rate will be and of any change to the hourly rate. When tendering for business or at the earliest practical opportunity upon receiving instructions to undertake any work on behalf of a client, the REL shall provide the following information to the client in writing:</p> <ul style="list-style-type: none"> (a) an outline of the work to be carried out on behalf of the client; (b) save where the client is being provided with legal aid or advice and assistance, details of either- <ul style="list-style-type: none"> (i) an estimate of the total fee to be charged for the work, including VAT and outlays which may be incurred in the course of the work; or (ii) the basis upon which a fee will be charged for the work, including VAT and outlays which may be incurred in the course of the work <p>RELs must advise clients in writing when it becomes known that the cost of work will materially exceed any estimate that has been given and must also advise the client in writing when the limit of the original estimate is being approached.</p> <p>There is also a general prohibition (with certain limited exceptions) on the sharing of fees with non-qualified persons.</p> <p>Relevant provision:</p> <ul style="list-style-type: none"> - Rule B1.11 (Professional Fees) and Rule B4 (Client Communication)
3. Acquisition of the national lawyer's title	
3.1. Via Establishment Directive	See above point 1.14
3.2. Via Professional Qualification Directive	<p>Pass the aptitude test (or having a period of adaptation up to 3 years): see Articles 13-14 of Directive 2005/36 on recognition of professional qualifications.</p> <p>Relevant provision:</p> <p>The test is 'open book' and consists of 4 papers:</p> <ol style="list-style-type: none"> 1. the law of property, trusts & succession, family law 2. Scottish legal system, evidence and civil & criminal procedure 3. European Union law and Institutions

	<p>4. Professional conduct, the accounts rules</p> <p>Exemptions can be granted on cause shown (and usually are for paper 3)</p> <p>Breakdown of related fees:</p> <p>Certificate of eligibility</p> <ul style="list-style-type: none"> • £400 for the application (non refundable fee) • £25 for Disclosure Scotland Application <p>Examination fees</p> <ul style="list-style-type: none"> • £80 per examination (paper) <p>Exemption application fees</p> <ul style="list-style-type: none"> • £30 non-refundable fee <p>All information can be found here.</p>
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4. Practicalities

4.1. Practical information	<p>You can find information on the court system, addresses, contacts and opening hours of all Scottish courts under: www.scotcourts.gov.uk</p> <p>For further information, visit www.lawscot.org.uk.</p>
4.2. National organisation	N/A
4.3. Reference to national legislation with other languages available + links	N/A
4.4. Reference to existing national guides	N/A
4.5. Reference to services available for lawyers in that jurisdiction	N/A
4.6. Contact information	N/A

