

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5074 GIBRALTAR Thursday 27th July 2023

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LEGAL NOTICE NO. 216 OF 2023

## EUROPEAN UNION (WITHDRAWAL) ACT 2019 EUROPEAN UNION (WITHDRAWAL AGREEMENT) ACT 2020

### EEA AND REGISTERED EUROPEAN LAWYERS (REVOCATION ETC) (EU EXIT) REGULATIONS 2023

In exercise of the powers conferred upon her by section 11 and paragraph 1 of Schedule 3 of the European Union (Withdrawal) Act 2019, and sections 12 and 14 and paragraph 1 of Schedule 1 of the European Union (Withdrawal Agreement) Act 2020 and all other enabling powers, the Minister has made the following Regulations-

#### **Title.**

1. These Regulations may be cited as the EEA and Registered European Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2023.

#### **Commencement.**

2.(1) Subject to subregulation (2), these Regulations come into operation on the day of publication.

(2) Regulation 3(2) comes into operation on 1 September 2023.

#### **Amendment of the Supreme Court Act.**

3.(1) The Supreme Court Act is amended in accordance with this regulation.

(2) Delete Part IVA.

(3) Delete Parts VI, VII, VIII, IX, X, XI and Schedule 1.

#### **Transitional provisions: Part IVA and disciplinary proceedings.**

4.(1) This regulation applies where-

(a) a complaint has been made under section 35H of the Supreme Court Act (professional misconduct) before the commencement of this regulation against an EEA lawyer; and

(b) one of the following applies-

- (i) the Chief Justice had not adjudicated upon the complaint before commencement;
- (ii) the Chief Justice had adjudicated upon the complaint and an appeal had been made against that adjudication before commencement, but the appeal had not been finally determined or withdrawn before commencement; or
- (iii) the Chief Justice had adjudicated upon the complaint before commencement but an appeal against that adjudication was not made until on or after commencement.

(2) Section 35H and Part II of Schedule 1 of the Supreme Court Act, and sections 35A and 35B as they apply to section 35H, continue to apply to the complaint, as if Part IVA of the Supreme Court Act had not been repealed by regulation 3, until the complaint and, if applicable, any appeal, have been finally determined or withdrawn.

**Transitional provisions: Swiss citizen's rights agreement.**

5. Schedule 1 gives effect to the Swiss citizen's rights agreement.

**Transitional provision: pending application to be entered on a register before commencement of this regulation.**

6.(1) This regulation applies where-

- (a) before the commencement of this regulation, a European Lawyer has made an application to the competent authority under Part VIII of the Supreme Court Act; and
- (b) the application has not been finally determined before the commencement of this regulation.

(2) For the purposes of subregulation (1), an application is finally determined when –

- (a) the competent authority has notified or is deemed to have notified the applicant of its decision; and
- (b) either –
  - (i) the period for appeal against that decision has expired without an appeal being made; or
  - (ii) an appeal made under section 55 has been determined.

(3) Sections 52, 53, 54 and 55 of the Supreme Court Act continue to apply on and after the commencement of this regulation as if they had not been repealed in relation to that application.

**Transitional and saving provision – registered European lawyers registered before commencement.**

7.(1) This regulation applies to-

- (a) an individual who was a registered European lawyer pursuant to Part VIII of the Supreme Court Act before the commencement of this regulation; and
- (b) an individual who becomes a registered European lawyer after the commencement of this regulation pursuant to regulation 6.

(2) Sections 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 57, 58, 59, 60, 61, 62, 63, 72 and Schedule 1 of the Supreme Court Act continue to have effect as if they had not been repealed by regulation 3 in relation to an individual who falls within subregulation (1), subject to the modifications set out in subregulation (3).

(3) The modifications referred to in subregulation (2) are –

- (a) section 60, modified so that it has effect as if the words “as a member of the Gibraltar Bar” were substituted with “as may be prescribed by the Legal Services Act 2017”.
- (b) section 62(1) and (4), modified so that they have effect as if for “shall” there were substituted “may”.
- (c) section 63, modified so that for “shall” there were substituted “may”.

**Transitional and saving provision: applications for entry into profession of solicitor or barrister.**

8.(1) This regulation applies to -

- (a) an individual who was a registered European lawyer pursuant to Part VIII of the Supreme Court Act before the commencement of this regulation; and
- (b) an individual who becomes a registered European lawyer after commencement of this regulation pursuant to regulation 6.

(2) Sections 64 to 71 of the Supreme Court Act continue to apply to a registered European lawyer who falls within subregulation (1), as if not repealed by regulation 3 but with the modifications specified in subregulation (3).

(3) The provisions referred to in subregulation (2) are –

- (a) section 65, modified –

- (i) as if subsection (1) read “Subject to subsection (3), the competent authority shall grant an application under section 64 if it considers that the requirements under subsection (2) or (3) of section 64 have been met, and the applicant has completed an approved academic course in Gibraltar law, within the meaning of section 27W.”;
  - (ii) in subsection (3) as if for “exemption” there were substituted “application”.
- (b) the title to section 66 modified so that the words “for exemption” were omitted.
- (c) section 70 modified so that for “give the exemption and” there were substituted “grant”.

**Transitional provision: duty of co-operation.**

9.(1) This regulation applies to the competent authority in relation to a solicitor or barrister in the situations described in subregulations (2) or (3).

(2) The first situation is where the barrister or solicitor has a pending application under Article 10(1), (3) and (4) of the Directive as referred to in Article 28 of the withdrawal agreement or Article 27 of the EEA EFTA separation agreement (as defined in section 3 of the European Union (Withdrawal Agreement) Act 2020).

(3) The second situation is where Article 30(2), 31(1) (to the extent it applies Articles 2 and 10 of the Directive) or (2), 32(3) or (4) of the Swiss citizens’ rights agreements (as that agreement is defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020) applies to the barrister or solicitor.

(4) Where this regulation applies, the provisions of the Supreme Court Act mentioned in subregulation (5) continue to have effect as if they had not been repealed by regulation 3, but with the modifications specified in that subregulation.

(5) The provisions referred to in subregulation (4) are-

- (a) section 41;
- (b) section 42, modified so that it has effect as if
  - (i) for subsection (1) there were substituted-

“(1) In order to facilitate compliance with Article 29 of the withdrawal agreement, Article 28 of the EEA EFTA separation agreement and Article 33 of the Swiss citizens’ rights agreement (as those agreements are defined in section 3 of the European Union (Withdrawal Agreement) Act 2020), a professional body must cooperate with any authority in any of the States listed in Schedule 1 Part III which has been designed under the Directive by that State as

a competent authority in that State and may supply to or receive from any such authority, information relating to a solicitor or barrister or to any person with whom that solicitor or barrister jointly practises.”; and

(ii) in subsection (2) the reference to “European lawyer” were a reference to “solicitor or barrister”.

(c) section 63, modified so that for “section 41(3)” there were substituted “section 41(2)”.

(6) In this regulation the terms “barrister”, “Directive”, and “solicitor” have the same meaning as in section 41 of the Supreme Court Act as it had effect immediately before commencement of this regulation.

**Consequential amendments and further transitional provisions.**

10.(1) The Legal Services Act 2017 is amended in accordance with this regulation.

(2) In section 2-

(a) delete the definition of “EEA lawyer”;

(b) for the definition of “registered European lawyer” substitute –

“registered European lawyer” means a European lawyer, as defined in Part VI of the Supreme Court Act as it had effect immediately before commencement of the EEA and Registered European Lawyers and Lawyer’s Practice (Revocation etc)(EU Exit) Regulations 2023;”

(3) In section 6(3)(h) delete “an EEA lawyer or”.

(4) In Schedule 3, paragraph 2(3)(c) delete “an EEA lawyer or”.

## SCHEDULE

### **Transitional provisions: Part IVA and Switzerland.**

1.(1) This paragraph applies to-

- (a) an EEA lawyer who is-
  - (i) a UK national or a Swiss national, and
  - (ii) established in Switzerland; or
- (b) an EEA lawyer who is integrated into the regular labour market of Switzerland and who is posted for the provision of carrying on services in professional activities in Gibraltar by their employer who is established in Switzerland.

(2) For the purposes of this paragraph, “EEA lawyer” has the same meaning as in section 35A of the Supreme Court Act as it had effect immediately before commencement but with the modification set out at subparagraph (5)(c).

(3) Subject to subparagraph (4), Part IVA continues to have effect in relation to an EEA lawyer to whom this regulation applies as if it were not repealed by regulation 3, but were subject to the modifications specified in subparagraph (5), until the later of-

- (a) the end of the period of 5 years beginning on 1 January 2021; or
- (b) if the period referred to in sub-paragraph (a) is extended in accordance with Article 23(2) of the Swiss citizens’ rights agreement (as that agreement is defined in section 3 of the European Union (Withdrawal Agreement) Act 2020), the end of that period as extended.

(4) An EEA lawyer may only carry on professional activities in accordance with Part IVA of the Supreme Court Act –

- (a) on the basis of a written contract or contracts which were concluded, and the performance of which started, before 1 January 2021; and
- (b) for a period not exceeding 90 days in total in a calendar year.

(5) The modifications to Part IVA of the Supreme Court Act referred to in subparagraph (3) are that section 35A and Schedule 1 Part 1 have effect as if-

- (a) for the definition of “EEA State of origin” there were substituted –

“country of origin”, in relation to an EEA lawyer, means the state listed in column 1 of Part 1 of Schedule 1 in which that lawyer acquired authorisation to pursue professional activities and if the lawyer is authorised in more than one or those states, it means any of those states;”;

- (b) in the definition of “own professional authority” –
  - (i) after “means an authority” there were inserted “in Switzerland”, and
  - (ii) “in his EEA state of origin” were omitted.
- (c) the table at Schedule 1 Part 1 contained the following entry-

“Switzerland  
Avocat/Advocat/Rechtsanwalt/Anwalt/Furesprecher/Fursprech/Avvocato.  
”.

**Transitional provisions: Parts VI to XI and Swiss lawyers.**

2.(1) This paragraph applies to a Swiss lawyer.

(2) For the purposes of this paragraph, “Swiss lawyer” means a UK national or a Swiss national who-

- (a) immediately before 1 January 2021 was authorised in Switzerland to pursue professional activities under the professional title of Avocat, Advokat, Rechtsanwalt, Anwalt, Fursprecher, Fursprech or Avvocato; or
- (b) had started training towards but not yet obtained their professional qualifications before 1 January 2021 in order to be authorised in Switzerland to pursue professional activities under one of the professional titles referred to in paragraph (a) but who completed their qualifications and were so authorised before the end of the period of four years beginning with 1 January 2021.

(3) The provisions of Parts VI to XI mentioned in subparagraph (6) continue, subject to subparagraphs (4) and (5), to have effect in relation to a Swiss lawyer as if not repealed by regulation 3 but with the modifications specified in subparagraph (6).

(4) The provisions of Part VI to XI referred to in subparagraph (3) cease to have effect in relation to a Swiss lawyer at the end of the period of four years beginning with 1 January 2021 unless-

- (a) the Swiss lawyer is a registered European lawyer immediately before the end of that period;
- (b) the Swiss lawyer had applied before the end of that period for registration under section 52 of the Supreme Court Act (as it has effect by virtue of this regulation) and

- (i) that application had not been decided before the end of that period,
  - (ii) the application had been rejected, or deemed to be rejected, under section 54 of the Supreme Court Act (as it has effect by virtue of this regulation) and an appeal against that decision had not been finally determined or withdrawn before the end of that period, or
  - (iii) the application had been rejected, or deemed to be rejected, under section 54 of the Supreme Court Act but an appeal against that decision was not made until at or after the end of that period;
- (c) the Swiss lawyer's registration as a registered European lawyer was suspended before the end of the period of four years beginning on 1 January 2021 and-
- (i) that suspension does not end until at or after the end of that period,
  - (ii) an application to terminate that suspension or an appeal against that suspension had not been finally determined or withdrawn before the end of that period,
  - (iii) an appeal against any determination of an application to terminate that suspension had not been finally determined or withdrawn before the end of that period,
  - (iv) an appeal against that suspension was not made until at or after the end of that period, or
  - (v) any appeal against any determination of any application to terminate that suspension was not made until at or after the end of that period;
- (d) the Swiss lawyer's registration as a registered European lawyer was withdrawn or revoked before the end of the period of four years beginning with 1 January 2021 by the competent authority and-
- (i) an appeal against that withdrawal or revocation had not been finally determined or withdrawn before the end of that period, or
  - (ii) an appeal against that withdrawal or revocation was not made until at or after the end of that period.

(5) The provisions of Parts VI to X of the Supreme Court Act referred to in subparagraph (3) cease to continue to have effect in relation to an individual where that individual ceases to be registered with the competent authority under section 53 (as it has effect by virtue of this regulation) at or after the end of the period of four years beginning with 1 January 2021 and that individual –



- (a) was a registered European lawyer before the end of the period of four years beginning with 1 January 2021;
  - (b) is a Swiss lawyer of the description in subparagraph (4)(b) who became a registered European lawyer at or after the end of the period of four years beginning with 1 January 2021;
  - (c) is a Swiss lawyer of the description in subparagraph (4)(c) whose suspension as a registered European lawyer ended or was terminated at or after the end of the period of four years beginning with 1 January 2021; or
  - (d) is a Swiss lawyer of the description in subparagraph 4(d) whose registration as a registered European lawyer was restored at or after the end of the period of four years beginning with 1 January 2021 following the final determination of an appeal.
- (6) The provisions referred to in subparagraph (3) are-
- (a) section 41, modified so that-
    - (i) subsection (1) has effect as if-
      - (aa) the definition of “home State” were omitted;
      - (bb) the definition of “home professional title” were omitted;
      - (cc) after the definition of “solicitor” there were inserted  
““Swiss professional title” means, in relation to a European lawyer, any of the professional titles specified in subsection (2)(b) under which that lawyer is authorised in Switzerland to pursue professional activities.”,
    - (ii) subsection (2) has effect as if-
      - (aa) in sub-paragraph (a), for “of a State listed in Part III of Schedule I” there were substituted “a Swiss national”; and
      - (bb) in sub-paragraph (b), for “any of the States listed in Part III of Schedule 1” there were substituted “Switzerland” and for “that subsection” there were substituted “that Schedule”;
    - (iii) for Part III Schedule 1 there were substituted “The professional titles referred to in the definitions of “Swiss professional title” and “European lawyer” in section 41(1) are “Avocat, Advokat, Rechtsanwalt, Anwalt, Fursprecher, Fursprech or Avvocato.”;

- (b) except where paragraph 3(4)(b) of this Schedule applies, section 42, modified so that it has effect as if-
- (i) for subsection (1) there were substituted-

“(1) In order to facilitate the application of the Directive and to prevent its provisions from being misapplied, and to facilitate compliance with Article 33 of the Swiss citizens’ rights agreement (as that agreement is defined in section 3 of the European Union (Withdrawal Agreement) Act 2020), the competent authority must cooperate with any authority which has been designated by Switzerland under the Directive as a competent authority in Switzerland and may supply or receive any information relating to a European lawyer, or to any person with whom that European lawyer jointly practises, with other professional bodies, the Faculty of Advocates or Law Society of Scotland or an authority which has been designated by Switzerland under the Directive as a competent authority in Switzerland.”, and
  - (ii) subsection (3) were omitted;
- (c) section 43, modified so that it has effect as if for “home professional title”, in both places where it occurs, there were substituted “Swiss professional title”;
- (d) section 44, modified so that it has effect as if-
- (i) in subsection (1)(a), for “his home State” there were substituted “Switzerland”, and
  - (ii) in subsection (2)-
    - (aa) in paragraph (a), for “home professional title” there were substituted “Swiss professional title” and for “his home State” there were substituted “Switzerland”; and
    - (bb) in paragraph (b) for “that State” there were substituted “Switzerland”;
- (e) section 45, modified so that it has effect as if-
- (i) for “home professional title”, in the first place where it occurs, there were substituted “Swiss professional title”,
  - (ii) for paragraph (b) there were substituted –
    - “(b) with another individual who is-
      - (i) a UK national, a national of a member State of the European Union, Iceland, Liechtenstein, Norway or Switzerland; and

- (ii) practising on a permanent basis under their Swiss professional title in Switzerland.”
- (f) section 46, modified so that subsection (1) has effect as if –
  - (i) for “his home State” there were substituted “Switzerland”, and
  - (ii) for “home professional title” there were substituted “Swiss professional title”;
- (g) section 47, modified so that it has effect as if for “his home State” there were substituted “Switzerland”;
- (h) section 48;
- (i) section 49-
  - (i) in paragraph (a), modified so that it has effect as if “unless he has a home professional title obtained in Denmark, the Republic of Ireland, Finland or Sweden” were omitted;
  - (ii) in paragraph (b), modified so that it has effect as if “unless he has a home professional title obtained in Denmark, Germany, the Republic of Ireland, Austria, Finland or Sweden” were omitted;
- (j) section 50;
- (k) section 51;
- (l) section 52, modified so that it has effect as if-
  - (i) in subsection (1), for “home professional title” there were substituted “Swiss professional title”, and
  - (ii) in paragraph (2), for “each home State under whose home professional title” there were substituted “Switzerland under whose Swiss professional title”;
- (m) section 53, modified so that subsection (2) has effect as if for “the home State” there were substituted “Switzerland”;
- (n) section 54;
- (o) section 55;
- (p) section 58;

- (q) section 59;
- (r) section 60, modified so that it has effect as if for “home professional title” there were substituted “Swiss professional title”;
- (s) section 61;
- (t) section 62, modified so that it has effect as if-
  - (i) in subsection (1)(a), for “his home State” there were substituted “Switzerland”,
  - (ii) in subsection (2)-
    - (aa) for “Subject to subsection (3), where” there were substituted “Where”;
    - (bb) for “the registered European lawyer’s home State” there were substituted “Switzerland”; and
    - (cc) for “the home professional title” there were substituted “his Swiss professional title”,

**Transitional provision: applications by Swiss lawyers for entry into profession of solicitor or barrister.**

3.(1) This paragraph applies to a Swiss lawyer to whom paragraph 2 applies.

(2) Where this paragraph applies, Parts VI to X of the Supreme Court Act continue to have effect in relation to a Swiss lawyer referred to in subparagraph (1) as if not repealed by regulation (3), or amended by the Supreme Court (EEA Lawyers)(EU Exit) Regulations 2020 but subject to subparagraph (3) and the modifications specified in subparagraph (4).

(3) Any application made under section 64 of the Supreme Court Act (as it has effect by virtue of this paragraph) for an exemption for a requirement to pass an aptitude test must be made before the end of the period of four years beginning with 1 January 2021.

(4) The modifications to the Supreme Court Act referred to in subregulation (2) are-

- (a) section 41, modified so that-
  - (i) subsection (1) has effect as if-
    - (aa) the definition of “home State” were omitted;
    - (bb) the definition of “home professional title” were omitted;
    - (cc) after the definition of “solicitor” there were inserted

““Swiss professional title” means, in relation to a European lawyer, any of the professional titles specified in subsection (2)(b) under which that lawyer is authorised in Switzerland to pursue professional activities.”,

- (ii) subsection (2) has effect as if-
    - (aa) in sub-paragraph (a), for “of a State listed in Part III of Schedule I” there were substituted “a Swiss national”; and
    - (bb) in sub-paragraph (b), for “any of the States listed in Part III of Schedule 1” there were substituted “Switzerland” and for “that subsection” there were substituted “that Schedule”;
  - (iii) for Part III Schedule 1 there were substituted “The professional titles referred to in the definitions of “Swiss professional title” and “European lawyer” in section 41(1) are “Avocat, Advokat, Rechtsanwalt, Anwalt, Fursprecher, Fursprech or Avvocato.”;
- (b) section 42, modified so that it has effect as if for subsection (1) there were substituted-
- “(1) In order to facilitate compliance with Article 33 of the Swiss citizens’ rights agreement (as that agreement is defined in section 3 of the European Union (Withdrawal Agreement) Act 2020), a professional body must cooperate with an authority which has been designed by Switzerland under the Directive as a competent authority in Switzerland and may supply to or receive from any such authority, information relating to a European lawyer or to any person with whom that European lawyer jointly practises;”;
- (c) section 64, modified so as to have effect as if-
- (i) “under the provisions of the Qualification Act” were omitted, and;
  - (ii) in subsections (2)(b) and (3)(b) and (c), for “home professional title” there were substituted “Swiss professional title”; and
- (d) section 71 is modified so as to have effect as if-
- (i) in subsection (2)-
    - (aa) for “home professional title” in both places where it occurs, there were substituted “Swiss professional title”; and
    - (bb) for “his home State” in both places where it occurs, there were substituted “Switzerland”, and

- (ii) in subsection (3) for “home professional title”, in both places where it occurs, there were substituted “Swiss professional title”.

Dated: 27<sup>th</sup> July 2023.

S. SACRAMENTO,  
Minister with responsibility for Justice.

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### **EXPLANATORY MEMORANDUM**

These Regulations are made in exercise of the powers in section 11 of the European Union (Withdrawal) Act 2019 resulting from the withdrawal of the United Kingdom and Gibraltar from the European Union. They are also made in exercise of the powers conferred by sections 12 and 14 of the European Union (Withdrawal Agreement) Act 2020 which make provision for the recognition of professional qualifications and equal treatment and provisions implementing the withdrawal agreement, the EEA EFTA separation agreement and the Swiss citizens’ rights agreement (as those agreements are defined in section 3 of that Act).

These Regulations repeal with some savings and transitional provisions, parts of the Supreme Court Act.